

<b>Location:</b>	<b>Related to 88 Grand Avenue</b>
<b>Assessor's Parcel Number:</b>	<b>008-0656-004-00 &amp; 008-0656-001-00</b>
<b>Proposal:</b>	Appeal of an Administrative Determination that an appeal was untimely filed after the appeal deadline and therefore not valid. Appellant attempted to be file the appeal on the project at 88 Grand Avenue under Planning Case number PLN18-406, which had an appeal deadline of March 2, 2020 at 4pm. It was filed one day late, with the appeal fee, on March 3, 2020.
<b>Appellant:</b>	Sara Dudley, Adams Broadwell, Joseph & Cordozo
<b>Phone Number:</b>	916-444-6201
<b>Planning Permits Required:</b>	Appeal of Administrative Determination
<b>General Plan:</b>	Central Business District
<b>Zoning:</b>	D-BV-2
<b>Environmental Determination:</b>	N/A
<b>Historic Status:</b>	Not a historic property
<b>City Council district</b>	3
<b>Status:</b>	Pending
<b>Staff Recommendation</b>	Deny appeal and uphold determination that appeal was not timely filed.
<b>Finality of Decision:</b>	Final
<b>For further information:</b>	Contact case planner <b>Peterson Z. Vollmann</b> at <b>510-238-6167</b> or by <b>e-mail at <a href="mailto:pvollmann@oaklandca.gov">pvollmann@oaklandca.gov</a></b> .

## SUMMARY

This report addresses an appeal by applicant Sara Dudley of Adams Broadwell Joseph & Cordozo representing Oakland Residents for Responsible Development, of a determination made by the Zoning Manager to summarily reject submittal appeal documents as untimely since the application fee was not submitted before the end of the appeal period. The attempted appeal filing, which is **NOT** before the Planning Commission, was intended to be filed against a February 20, 2020 approval of a development project located at 88 Grand Avenue under Planning case number PLN18-406. The approval letter included standard language identifying the appeal deadline as March 2, 2020 at 4:00 p.m.. The filing of the appeal with the fee was not filed by this time, and the following morning on March 3, 2020 a courier attempted to file the appeal on the project, which was rejected since it was past the deadline.

The appeal language in the decision letter (Attachment A) is standard and staff routinely enforces those procedures. The letter required the inclusion of the application fee along with the appeal documentation. Both staff and the appellant agree that the appeal timeframe expired and the appeal fee was not included with the appeal documents. Hence, the appeal was untimely and there is no exception in the Planning Code for good cause or clerical errors.

Therefore, staff recommends that the Planning Commission uphold the Zoning Manager's determination and deny the appeal based on this fact.

## **BASIS FOR DENIAL**

Staff sent a copy of the decision letter to the appellant, as requested, on February 20, 2020 as well as an e-mail with an electronic copy (See Attachment B) approving the development project under PLN18-406. That letter described the procedures for filing an appeal. Specifically, the letter stated that:

*“... an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, **by 4:00 pm on March 2, 2020**. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of Peterson Vollmann, Planner IV. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$1622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City’s decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.”*

The appeal was not submitted to Suite 2114 as described and did not contain the appeal fee by the end of the appeal timeframe. Therefore, the Zoning Manager summarily rejected the appeal documentation as untimely.

## **BASIS FOR THE APPEAL**

On March 12, 2020, the appellant filed an appeal (Attachment D) of the Zoning Manager’s determination that the previous appeal filing was untimely and summarily rejected. The appellant’s arguments are summarized below. Staff’s response to each argument follows.

**Appellants’ Argument #1:** An electronic version of the appeal was sent to the case planner by e-mail prior to the deadline.

### **Staff Response:**

It is accurate that the appellant had sent an e-mail containing attachments with the appeal form and supporting documentation at 3:35pm to case planner Pete Vollmann, which was prior to the 4:00 p.m. filing deadline. However, the e-mail indicated that certain supporting documents were missing from the e-mail and the appeal fee was not included. The decision letter clearly states that appeals need to be filed at the Planning office in suite 2114 of 250 Frank Ogawa Plaza with the required fees. Planning staff had previously made this firm aware of such requirements on a previous appeal filing for a different development proposal (Attachment C) when they had

submitted the appeal document electronically. In that e-mail correspondence staff had specifically warned the appellant that if it was not filed at the office with the fees by the deadline, the appeal would be invalid.

**Appellant's Argument #2:** A good faith effort was made to file the appeal and fees at the office prior to the deadline, but was not done due to a mistake by the courier

**Staff Response:**

The appellant argues that the City should accept the filing since they intended to file the appeal on time and it was based upon a mistake or error on the behalf of their courier that the appeal did not get filed by the March 2, 2020 4:00 p.m. deadline. They state that the courier arrived at 4:50 p.m. on March 2, 2020 but the offices were closed. The courier arrived the next morning on March 3, 2020 to file, but the filing was rejected as untimely. The Planning & Building Department permit center closes to the public daily at 4:00 p.m., which is why the appeal directions in the decision letter make clear that any filing must be made prior to 4:00 p.m. by the final deadline date. While it is unfortunate for the appellant that they made a mistake, it is consistent with the City's past and ongoing practice not to make exceptions to filing deadlines.

In a prior case that came before the Planning Commission on appeal (A07-550), a similar determination was made when an appeal was rejected as untimely because the fee was not paid before the appeal deadline. In that case, the Planning Commission rejected the appeal and upheld the determination that the filing was untimely since the fee was not paid before the appeal filing deadline. Here, if the appeal was permitted to move forward, it would set a dangerous precedent of permitting late filings due to what an applicant may simply term as "excusable neglect" when the appeal directions clearly set forth the submittal and deadline requirements for an appeal. The applicant and interested parties need certainty as to when appeal periods have expired, and the City has a substantial interest in providing them with this certainty.

**RECOMMENDATIONS:** 1. Uphold the Zoning Manager’s Determination that the appeal was not filed within a timely manner.

Prepared by:



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PETERSON Z. VOLLMANN  
Planner IV

Reviewed by:



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CATHERINE PAYNE  
Acting Development Planning Manager  
Bureau of Planning

Approved for forwarding to the  
City Planning Commission:



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ED MANASSE, Deputy Director  
Department of Planning and Building

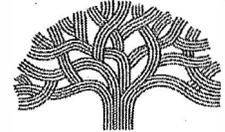
**ATTACHMENTS:**

- A. Decision Letter for PLN18-406 at 88 Grand Avenue - Appeal language
- B. Staff e-mail correspondence with appellant re: decision letter
- C. Staff e-mail correspondence with appellant re: appeal filing requirements
- D. March 12 Appeal filing

**LEGAL NOTICE:** This action of the Planning Commission is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days (Code of Civil Procedure Section 1094.6) unless a shorter period applies.

# ATTACHMENT A

## CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department  
Bureau of Planning

(510) 238-3941  
FAX (510) 238-6538  
TDD (510) 238-3254

Sent via U.S. Mail

February 20, 2020

Fred Metzger / KTG  
1814 Franklin Street, Suite 400  
Oakland, CA 94612

**RE: Case File No. PLN18-406, "88" Grand Avenue (008-0656-004-00 & 008-0656-001-00)**

Dear Applicant:

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

<b>Proposal:</b>	To develop a new 35 story residential building containing 275 dwelling units above ground level retail. The proposal includes the Transfer of Development Rights from the property at 2250 Broadway, which contains an existing office building, to the "88" Grand Avenue tower site. The proposal will be taking advantage of the affordable housing density bonus by including 5% very low income units (12 units) and requesting a concession for parking and a development waiver for height.
<b>Planning Permits Required:</b>	Regular Design Review for new construction, Minor Conditional Use Permit for Transfer of Development Rights, and a Tentative parcel map to merge and re-subdivide two lots, including one that will include new condominiums for the new construction (TPM10922).
<b>General Plan:</b>	Central Business District
<b>Zoning:</b>	D-BV-2
<b>Environmental Determination:</b>	A detailed CEQA Analysis was prepared for this project which concluded that the proposed project satisfies each of the following CEQA Guidelines sections: 15183 - Projects consistent with a community plan, general plan, or zoning; 15183.3 - Streamlining for in-fill projects; and/or 15164 - Addendum to the 2014 certified Broadway Valdez District Specific Plan EIR; Each of which provides a separate and independent basis for CEQA compliance.
<b>Historic Status:</b>	Non-historic property
<b>City Council District:</b>	3

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 pm on March 2, 2020**. An appeal shall be on a form provided by

the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Peterson Vollmann, Planner IV**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1622.57** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

If you have any questions, please contact the case planner, **Peterson Vollmann, Planner IV** at (510) **238-6167** or **pvollmann@oaklandca.gov**, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



CATHERINE PAYNE  
Acting Development Planning Manager

Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals
- C. Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP)

CC: Adams Broadwell Joseph & Cardozo  
Attn: Janet Laurain  
601 Gateway Blvd., Suite 1000  
So. San Francisco, CA 94080

# ATTACHMENT B

**From:** [Vollmann, Peterson](#)  
**To:** [Janet M. Laurain](#)  
**Cc:** [Christina Caro](#); [Sara F. Dudley](#); [Payne, Catherine](#)  
**Bcc:** [Mulry, Brian](#)  
**Subject:** RE: 88 Grand Avenue Project - Request for copy of decision letter via email on day decision is released  
**Date:** Thursday, February 20, 2020 4:28:00 PM  
**Attachments:** [PLN18-406, 88 Grand Avenue - Decision Letter.pdf](#)

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Janet-

Attached is the decision letter for 88 Grand Avenue, Planning Case number PLN18-406 that you had requested a copy of. A hard copy will also be mailed to you as requested.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

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**From:** Janet M. Laurain [mailto:[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)]  
**Sent:** Tuesday, January 28, 2020 4:23 PM  
**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Cc:** Christina Caro <[ccaro@adamsbroadwell.com](mailto:ccaro@adamsbroadwell.com)>; Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** 88 Grand Avenue Project - Request for copy of decision letter via email on day decision is released  
**Importance:** High

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hi Pete,

To follow up on our phone conversation today, you are anticipating that the decision letter regarding the **88 Grand Avenue Project** will be completed sometime next week. As we discussed and you agreed to, please email us a copy of the letter on the day the decision is released. Also, please direct or otherwise reply to all individuals cc'd on this email in your email to us next week.

Thank you, in advance, for your attention to this matter.

Janet Laurain

Janet M. Laurain, Paralegal  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660  
[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)

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# ATTACHMENT C

**From:** [Rita Chavez](#)  
**To:** [Vollmann, Peterson](#); [City Clerk](#)  
**Cc:** [Laura E. Horton](#)  
**Subject:** RE: 2400 Valdez Street Project (PLN15-336) Appeal to Oakland City Council  
**Date:** Friday, April 29, 2016 4:57:59 PM

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Mr. Vollmann,

We are having the documents and the check delivered by UPS overnight delivery for early morning (10 am) receipt to your office. We will contact your office on Monday morning to ensure receipt of the documents and the check. Please let me know if you have any questions.

Thank you.

Regards,

*Rita*

**Rita I. Chavez**  
**Legal Secretary**  
**Adams Broadwell Joseph & Cardozo**  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660 ext 24  
[chavezr@adamsbroadwell.com](mailto:chavezr@adamsbroadwell.com)

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**From:** Vollmann, Peterson [mailto:[PVollmann@oaklandnet.com](mailto:PVollmann@oaklandnet.com)]  
**Sent:** Friday, April 29, 2016 4:40 PM  
**To:** Rita Chavez; City Clerk  
**Cc:** Laura E. Horton  
**Subject:** RE: 2400 Valdez Street Project (PLN15-336) Appeal to Oakland City Council

Please be advised that Monday May 2, 2016 at 4pm is the deadline to file the appeal. The appeal needs to be filed before that time, so if you are planning on sending this in by mail it may be a better idea to come in person to file at the Planning office on the 2<sup>nd</sup> Floor of 250 Frank Ogawa Plaza to make sure that it is here on time with the fees paid. If the appeal and fees are not received by my office on the 2<sup>nd</sup> floor by 4pm on Monday the May 2nd, the appeal will not be valid.

**Peterson Z. Vollmann**, Planner III | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510) 238-4730 | Email: [pvollmann@oaklandnet.com](mailto:pvollmann@oaklandnet.com) | Website: [www.oaklandnet.com/planning](http://www.oaklandnet.com/planning)

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**From:** Rita Chavez [mailto:[chavezr@adamsbroadwell.com](mailto:chavezr@adamsbroadwell.com)]  
**Sent:** Friday, April 29, 2016 4:01 PM

**To:** Vollmann, Peterson; City Clerk  
**Cc:** Laura E. Horton  
**Subject:** 2400 Valdez Street Project (PLN15-336) Appeal to Oakland City Council

On behalf of Oakland Residents for Responsible Development, attached please find our Appeal to the Oakland City Council for the above-referenced project. Hard copies of the appeal will be sent by overnight delivery to both parties for delivery on the morning of May 2, 2016. The appeal fee of \$1,891.09 will be sent directly to Peterson Vollmann. Please contact **Laura Horton** directly if you have any questions.

Thank you.

Regards,

*Rita*

**Rita I. Chavez**  
**Legal Secretary**  
**Adams Broadwell Joseph & Cardozo**  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660 ext 24  
[chavezr@adamsbroadwell.com](mailto:chavezr@adamsbroadwell.com)

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# ATTACHMENT D



## CITY OF OAKLAND APPEAL FORM FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

### PROJECT INFORMATION

Case No. of Appealed Project: PLN-18-406  
Project Address of Appealed Project: 88 Grand Ave, Oakland  
Assigned Case Planner/City Staff: P. Vollmann

### APPELLANT INFORMATION:

Printed Name: Sara F. Dudley Phone Number: 916 444-6201  
Mailing Address: 500 Capitol Mall, Ste. 350 Alternate Contact Number: ~~650~~ 650 589 1660  
City/Zip Code: Sacramento, CA 95814 Representing: EBRD / Oakland Residents for  
Email: sdudley@adamsbroadwell.com Responsible Development

An appeal is hereby submitted on:

- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

### YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision  
 Denying an application for an Administrative Decision  
 Administrative Determination or Interpretation by the Zoning Administrator /Director / Staff  
 Other (please specify) \_\_\_\_\_

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)  
 Determination of General Plan Conformity (OPC Sec. 17.01.080)  
 Design Review (OPC Sec. 17.136.080)  
 Small Project Design Review (OPC Sec. 17.136.130)  
 Minor Conditional Use Permit (OPC Sec. 17.134.060)  
 Minor Variance (OPC Sec. 17.148.060)  
 Tentative Parcel Map (OMC Section 16.304.100)  
 Certain Environmental Determinations (OPC Sec. 17.158.220)  
 Creek Protection Permit (OMC Sec. 13.16.450)  
 Creek Determination (OMC Sec. 13.16.460)  
 City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)  
 Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)  
 Other (please specify) \_\_\_\_\_

(Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**       Granting an application to:      OR       Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) \_\_\_\_\_

**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

**The appeal is based on the following:** *(Attach additional sheets as needed.)*

*See attached appeal, Exhibits 1-4 and Exhibit attachments.*

**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)



Signature of Appellant or Representative of  
Appealing Organization

3/11/2020

Date

**TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE**

APPEAL FEE: \$ \_\_\_\_\_

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

**Below For Staff Use Only**

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

sdudley@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660

FAX: (650) 589-5062

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
AARON M. MESSING  
WILLIAM C. MUMBY  
CAMILLE G. STOUGH

MARC D. JOSEPH  
Of Counsel

\*Admitted in Colorado

March 12, 2020

**VIA HAND DELIVERY AND EMAIL**

Mr. William Gilchrist, Director of  
City Planning  
Mr. Peterson Vollmann, Planner V  
Planning and Zoning Division of the  
Community and Economic  
Development Agency  
City of Oakland Bureau of Planning  
– Zoning Division  
250 Frank H. Ogawa Plaza, Suite  
2114  
Oakland, CA 94612-2031  
**Email:** [Pvollmann@oaklandca.gov](mailto:Pvollmann@oaklandca.gov);  
[WGilchrist@oaklandnet.com](mailto:WGilchrist@oaklandnet.com)

Chair Jahmese Myres  
Members of the Planning Commission  
c/o City Clerk  
City of Oakland  
1 Frank H. Ogawa Plaza, 1st & 2nd Floors  
Oakland, CA 94612

**Email:**  
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[amandamonchamp@gmail.com](mailto:amandamonchamp@gmail.com);  
[cmanusopc@gmail.com](mailto:cmanusopc@gmail.com);  
[tlimon.opc@gmail.com](mailto:tlimon.opc@gmail.com);  
[SShiraziOPC@gmail.com](mailto:SShiraziOPC@gmail.com)

**VIA EMAIL ONLY**

Ms. Catherine Payne, Acting Dev. Planning Manager ([cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov))  
Mr. Robert Merkamp, Zoning Manager ([Rmerkamp@oaklandca.gov](mailto:Rmerkamp@oaklandca.gov))  
Brian Mulry, Deputy City Attorney ([BMulry@oaklandcityattorney.org](mailto:BMulry@oaklandcityattorney.org))

**Re: Appeal of Administrative Determination to Reject Filing of  
EBRRD Appeal of Zoning Manager Approval, 88 Grand Avenue  
Project (PLN 18-406)**

Dear Mr. Gilchrist, Mr. Vollmann, Commissioners, Ms. Payne, Mr. Merkamp:

I am writing on behalf of East Bay Residents for Responsible Development (“EBRRD”), also known as Oakland Residents for Responsible Development, to appeal the March 3, 2020 administrative decision taken by the Director of City Planning, by and through City of Oakland Planning staff member Mr. Peterson Vollmann, Planner IV, to incorrectly reject EBRRD’s appeal of the City of

March 12, 2020

Page 2

Oakland's<sup>1</sup> approval of the 88 Grand Avenue Development Project, PLN 18-406 ("Appeal") as untimely.<sup>2</sup> EBRRD respectfully requests that the Planning Commission<sup>3</sup> vacate the Planning Director's decision and accept EBRRD's Appeal.

The City issued a Letter of Decision on February 20, 2020 approving the Project. Pursuant to the instructions on the Letter of Decision, the deadline to file an appeal of the City's decision to approve the Project was 4:00 pm on March 2, 2020. EBRRD sought to appeal the decision. EBRRD's counsel timely submitted electronic versions of the documents in support of EBRRD's Appeal to Mr. Vollmann and all other required City officials at approximately 3:30 p.m. on March 2, 2020, prior to the stated 4:00 p.m. deadline, including the Appeal form required by the City's Planning Code. EBRRD also made a good-faith effort to deliver the duplicate hard copy versions of its Appeal documents and the Appeal fees in person to the Planning Department on March 2, 2020. Due to an inadvertent mistake by EBRRD's legal courier service, the courier arrived at the Planning Department between 4:00 p.m. and 5:00 p.m. on March 2, 2020, to find the office closed. EBRRD attempted to re-deliver the hard copies and Appeal fees to the Planning Department at 8:00 a.m. the following morning, March 3, 2020, when the office reopened. Mr. Vollman rejected the courier's March 3, 2020 attempt to re-deliver the hard copies of the Appeal documents and the check for the Appeal fees as untimely because they had not been received by 4:00 p.m. the previous day.

EBRRD appeals the Planning Director's decision to reject the Appeal on the basis that it was error and an abuse of discretion to reject EBRRD's timely electronic submission of the Appeal. The City's Planning Code does not prescribe that appeals must be filed in hard copy, and does not prohibit electronic submission.<sup>4</sup> The Code simply prescribes that the appeal "shall be made on a form prescribed by the City Planning Department and shall be filed with such Department"<sup>5</sup> with payment of the filing fee, and that appeals of CEQA exemption determinations be "***appealed in writing***...prior to the close of the public comment

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<sup>1</sup> "City."

<sup>2</sup> Underlying approval are the approval of Minor Conditional Use Permit, Tentative Parcel Map, Design Review, approval of a CEQA Checklist / Addendum, and findings that the Project qualifies for CEQA streamlining under provisions for in-fill development.

<sup>3</sup> Or other legally authorized City decisionmaker.

<sup>4</sup> See *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 591-592 (exhaustion requirements satisfied where administrative appeal is made "in the manner prescribed by the town code.").

<sup>5</sup> OPC § 17.134.060.

March 12, 2020

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period on the underlying permits/decision.”<sup>6</sup> “Writing” includes electronic submissions.<sup>7</sup> EBRRD’s Appeal was submitted electronically, in writing, on the required City Appeal Form, before the close of the City’s appeal period for the Project. EBRRD’s attempted delivery of the Appeal fees after 4:00 pm on March 2, 2020 was the harmless error of its courier, and did not prejudice the City or the Applicant’s ability to consider the merits of EBRRD’s Appeal by the Appeal deadline. EBRRD’s electronic submission of its Appeal before the City’s appeal deadline was therefore timely, and should have been accepted by the City.

In the alternative, EBRRD respectfully requests that the Planning Commission vacate the Planning Director’s decision to reject EBRRD’s Appeal as an abuse of discretion pursuant to California Code of Civil Procedure, Section 473(b),<sup>8</sup> due to the inadvertent mistake of its legal courier service to deliver the hard copies of the Appeal documents and check for Appeal fees before 4:00 pm on March 2, 2020.

Pursuant to Oakland Planning Code, <sup>9</sup>Section 17.132.020, the deadline to file an appeal of an administrative determination or decision of the Director of City Planning is ten days. The administrative determination / decision at issue was made on March 3, 2020. This appeal is therefore timely submitted less than 10 days after the disputed administrative determination / decision.

For the reasons stated herein, EBRRD urges the Planning Commission to overturn the determination of the Planning Director to reject EBRRD’s Appeal, and to order the Planning Department to duly accept EBRRD’s Appeal as timely filed.

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<sup>6</sup> OPC § 17.158.220(A).

<sup>7</sup> PRC § 21167.6(e)(6) (CEQA record of proceedings must include “[a]ll written comments received in response to, or in connection with, environmental documents prepared for the project”); and (e)(7) (“[a]ll written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.”); Gov. Code § 6252(e) (“Writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, *transmitting by electronic mail* or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored”) (emphasis added); *Citizens for Open Government v. City of Lodi* (“Lodi”) (March 28, 2012) 205 Cal. App.4th 296, 309-311 (emails are part of CEQA administrative record).

<sup>8</sup> “CCP 473.”

<sup>9</sup> “OPC.”

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Attached to this appeal is the following:

1. Appeal Form;
2. Exhibit 1: Declaration of Sara F. Dudley and Exhibits;
3. Exhibit 2: Declaration of Joe Jacques and Exhibits;
4. Exhibit 3: Declaration of Alan Rodriguez and Exhibits; and
5. Exhibit 4: March 2, 2020 88 Grand Appeal, including Appeal Form, Appeal letter, Exhibits, supporting documents, and check for Appeal filing fees (\$1622.57).

#### **I. INTEREST OF APPELLANT**

EBRRD (“Oakland Residents”) is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of Oakland residents; the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, The International Association of Sheet Metal, Air, Rail and Transportation Workers, SMW Local No. 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County, including Michael Capps, Kahlil Larn and Jennifer Choi.

Individual members of Oakland Residents, and its affiliated labor organizations live, work, recreate and raise their families in the County of Alameda, City of Oakland, and surrounding areas. These members would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has a strong interest in enforcing the State’s environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by causing building moratoriums or restrictions, making it more difficult and more expensive for business and industry to expand in the region, and making it less desirable for businesses to locate and for people to live there.

Oakland Residents actively and fully participated in the administrative process for this proceeding before the Director.

## II. GROUNDS FOR APPEAL

This appeal is brought pursuant to OPC, Section 17.132.50,<sup>10</sup> which provides:

Within ten (10) calendar days after the date of any administrative determination or interpretation made by the Director of City Planning under the zoning regulations, an appeal from such decision may be taken to the City Planning Commission by any interested party. In the case of appeals involving one- or two-unit Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department and shall be accompanied by such a fee as specified in the City fee schedule. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof and, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal.

The Planning Director's decision to reject EBRRD's Appeal as untimely was in error and was an abuse of discretion. First, the City's Planning Code, which governs EBRRD's Appeal of the Project Approvals, does not state that appeals must be filed in hard copy.<sup>11</sup> Rather, the Planning Code simply requires that appeals "shall be made on a form prescribed by the City Planning Department and shall be filed with such Department, along with the appropriate fees required by the City's

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<sup>10</sup> Or any other applicable provision of the Oakland Municipal Code, Oakland Planning Code, or Oakland Charter.

<sup>11</sup> See e.g. OPC, §§ 17.134.060 (minor use permits), 17.158.210 (CEQA), 17.136.080 (design review); OMC, Section 16.04.100 (tentative parcel map).

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Master Fee Schedule.”<sup>12</sup> In response to the undersigned’s email inquiries about EBRRD’s Appeal filing, Mr. Vollmann also indicated that appeal attachments that were provided by electronic weblinks would be provided to the Planning Commission “with the link citation as submitted with your appeal.”<sup>13</sup>

The electronic version of EBRRD’s Appeal, which included the required City Appeal form and supporting documentation, was timely submitted to the required recipient, Mr. Vollmann, and all applicable City Planning staff and officials. EBRRD’s electronic submission was also reviewed by the City’s Zoning Manager prior to the 4:00 p.m. deadline, on March 2, 2020.<sup>14</sup> The City was therefore on notice of EBRRD’s Appeal submission before the deadline stated in the Letter of Decision and had access to EBRRD’s Appeal documents in a timely manner. EBRRD’s courier was subsequently unable to deliver the Appeal fee check and duplicate hard copies of the Appeal documents prior to the 4:00 p.m. deadline due to an inadvertent mistake regarding the time of day that the Planning Department office closed. However, there is no evidence demonstrating that either the City or the Project Applicant were prejudiced in any way from receiving hard copies the Appeal and the check for the Appeal filing fees at 8:00 a.m. the following day, on March 3, 2020, as opposed to 4:00 p.m. on March 2, 2020. Accordingly, based on the plain language of the Oakland Planning Code, EBRRD substantially complied with the Code requirements to file its Appeal with the Planning Department. The Planning Director’s decision to reject EBRRD’s March 3, 2020 delivery of duplicate hard copies of the Appeal documents and the Appeal filing fees constituted error and an abuse of discretion.

Second, the Planning Director’s decision to reject EBRRD’s Appeal as untimely was in error and an abuse of discretion because EBRRD’s failure to provide the City with the hard copies of its Appeal documents and Appeal filing fees was the result of inadvertence and excusable mistake by its courier. California Code of Civil Procedure, Section 473.<sup>15</sup> CCP 473, subdivision (b) provides that “[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

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<sup>12</sup> See OPC, § 17.134.060.

<sup>13</sup> Dudley Declaration, Exhibit B.

<sup>14</sup> Dudley Declaration, Exhibit F.

<sup>15</sup> “CCP 473.”

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EBRRD easily meets the criteria for granting relief under the California Supreme Court's three-factor test:<sup>16</sup>

- 1) EBRRD's mistake was excusable, defined as a mistake than any reasonable person could make even when exercising due care. This includes mistakes made by parties employed or supervised by the attorney;
- 2) EBRRD has otherwise diligently participated in this action by filing a comment letter and multiple requests under the California Public Records Act. EBRRD also diligently sought to correct the mistake by attempting to file at 8:20 am the next day; and
- 3) the City was not prejudiced in accepting what the City deemed a late filing, because the City was aware of the basis for Appeal, was aware that EBRRD was attempting to file the Appeal prior to the deadline, and the City Zoning Manager opened the transmission email containing the Appeal documents before the 4:00 pm deadline.

In determining that relief is proper, the courts have considered public policy under California Environmental Quality Act<sup>17</sup> which favors reaching decisions on their merits in CEQA disputes. This is because unlike disputes between private litigants CEQA suits "*involve the health, welfare and safety of the public at large and so a forfeiture of a hearing on the merits deprives not only the petitioners, but all citizens, of judicial resolution of the controversy concerning the project and its effects on those who live and work in the community.*"<sup>18</sup>

Moreover, courts have granted relief under the judicial doctrine of "extrinsic mistake" which works to prevent a default or dismissal and favors trying cases on their merits, under similar circumstances.

### **A. Facts and Timeline**

The supporting Declarations of Sara F. Dudley (the undersigned), Joe Jacques, and Alan Rodriguez and attached exhibits, attached to this letter, attest to the following facts:

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<sup>16</sup> E.g., *Elston v. City of Turlock* (1985) 38 Cal.3d 227; *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249.

<sup>17</sup> "CEQA," Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq. ("CEQA Guidelines").

<sup>18</sup> *McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352, 362, emphasis added.  
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On the morning of March 2, 2020, Ms. Dudley emailed Mr. Vollmann to inquire about the methods of transmission for appeal documents. Ms. Dudley asked if documents cited at weblinks / URLs could be provided on an electronic storage device (USB or similar) because they were voluminous (the “supporting documents”). Mr. Vollmann informed Ms. Dudley that, in order for the Planning Commission to have printed copies of the supporting documents in their appeal packet, the documents needed to be printed in hard copy and delivered with the Appeal, but that “otherwise they will be provided with the link citation as submitted with your appeal.”<sup>19</sup>

Ms. Dudley then finalized EBRRD’s Appeal documents in electronic form, and transmitted the Appeal documents, including the Cover Letter, Appeal Form, Appeal Letter, Exhibits, and a link to supporting documents to County Legal Services, a legal courier and filing service used regularly by the undersigned’s law firm, at around 1:00 pm on March 2, 2020.<sup>20</sup> Ms. Dudley’s transmission email to County Legal provided the City’s appeal deadline: “Please note that it must be delivered by **4pm**. Call me directly if you have any issues.”<sup>21</sup> Subsequent emails reiterated the 4:00 pm deadline.

Joe Jacques was the employee at County Legal who responded to the request. Mr. Jacques confirmed receipt of the delivery order, and forwarded the order to its contractor, Ace Attorney Service.<sup>22</sup> Ace is a document delivery service based in Oakland, California, who County Legal used for printing and delivering the documents. By approximately 2:00 pm, Ace had received all of the documents. At approximately 3:30 pm on March 2, 2020, Ms. Dudley spoke with Mr. Jacques of County Legal, and asked about the status of the delivery to the Planning Department. Mr. Jacques stated that he believed that the runner had just left to deliver the documents to the City of Oakland.

At approximately 3:32 pm on March 2, 2020, the undersigned’s legal assistant, Ms. Lorrie J. LeLe, electronically submitted EBRRD’s Appeal Cover Letter, Appeal Form, Appeal Letter, and Exhibits as email attachments to Mr. Vollmann, all members of the Planning Commission, Ms. Catherine Payne (Acting Development Planning Manager), Mr. William Gilchrist (Director of City Planning),

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<sup>19</sup> Exhibit B to the Dudley Declaration.

<sup>20</sup> “County Legal.”

<sup>21</sup> Dudley Declaration, Exhibit C, emphasis in original.

<sup>22</sup> “Ace.” See Jacques Declaration and attached exhibits.

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and Mr. Robert Merkamp (Zoning Manager).<sup>23</sup> Consistent with Mr. Vollmann's email correspondence earlier that day, supporting documents were contained in weblink references within the attached documents, but were not attached to Ms. LeLe's email, due to file size. At the time Ms. LeLe submitted the Appeal documents to the Planning Department electronically, EBRRD's counsel had been informed that hard copies of the Appeal documents, including the check for Appeal filing fees and the supporting documents, had been printed and were en route to Mr. Vollmann's office.

Mr. Merkamp opened Ms. LeLe's email at approximately 3:40 pm on March 2, 2020, confirming that City Planning staff received the Appeal submission email prior to the 4:00 p.m. deadline.<sup>24</sup>

At approximately 5:25 pm on March 2, 2020, Mr. Jacques called Ms. Dudley and informed her that the hard copy documents had not been delivered. Mr. Jacques stated that the runner had arrived at the Planning Department at 4:50 pm. He offered no explanation as why they would attempt filing after 4:00 pm, contrary to her instructions. Ms. Dudley instructed County Legal to return to the City at 8:00 am the next morning to make a second attempt to "hand deliver" the hard copies of the Appeal documents and the check for the Appeal filing fees.

On March 3, 2020, Mr. Jacques explained to Ms. Dudley that he had mistakenly thought that they could deliver the Appeal documents to the Planning Department until 5:00 pm on March 2, 2020, and had incorrectly authorized County Legal's contractor from Ace to deliver the documents after 4:00 pm.

Ace's staff returned to the Planning Department on March 3, 2020, at approximately 8:20 am, to re-deliver the Appeal documents and check to the City. The filing was rejected. On March 3, 2020 at 9:03 am, Mr. Vollmann emailed Ms. Dudley to inform her that that the City had rejected the Appeal as untimely.<sup>25</sup>

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<sup>23</sup> Dudley Declaration, Exhibit E.

<sup>24</sup> Dudley Declaration, Exhibit F.

<sup>25</sup> Dudley Declaration, Exhibit H.

**B. The Planning Director's Rejection of EBRRD's Appeal Was An Abuse of Discretion Not Authorized by the Planning Code.**

The City's Planning Code, which governs EBRRD's Appeal of the Project Approvals, does not prescribe that appeals must be filed in hard copy.<sup>26</sup> Therefore, the Planning Director's decision to reject EBRRD's Appeal as untimely when EBRRD's electronic submission of the Appeal was timely, was not authorized under the Planning Code, and violated EBRRD's due process rights to have its administrative appeal heard by the Planning Commission.<sup>27</sup>

The Planning Code requires that appeals of Planning Director decisions "shall be made on a form prescribed by the City Planning Department and shall be filed with such Department, along with the appropriate fees required by the City's Master Fee Schedule"<sup>28</sup> and that CEQA appeals must be "***appealed in writing***...prior to the close of the public comment period on the underlying permits/decision."<sup>29</sup> The Planning Code does not state that appeals must be presented in "hard copy" or "paper" form. Rather, the Code requires that the correct City form must be used, that the appeal must be "in writing," and that the appeal fee be paid. The OPC does not define "writing" or "filing," and therefore does not prescribe that either of these words must be interpreted to mean "on paper," "in hard copy," or "in person." Under rules of municipal code construction, applicable sections of the Planning Code must be interpreted pursuant to the "plain meaning of the statutory language" and may not be interpreted to result in an unreasonable construction that is not stated in the code.<sup>30</sup> By rejecting EBRRD's Appeal filing as untimely, the Planning Director implied a meaning in the Planning Code which is not contained in the Code – i.e. that Appeals must be filed "on paper" and "in person." This construction resulted in the absurd result of EBRRD's timely electronic submission of its Appeal being rejected as untimely.

By contrast, state laws construe electronic documents to meet the requirements for "written" submissions to local agencies like the City. In particular, CEQA and the Public Records Act – both of which apply to the City's record on this Project – clearly define "written" documents and "writing" to include "emails,"

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<sup>26</sup> See e.g. OPC, §§ 17.134.060 (minor use permits), 17.158.210 (CEQA), 17.136.080 (design review); OMC, § 16.04.100 (tentative parcel map).

<sup>27</sup> CCP § 1094.5(b).

<sup>28</sup> See OPC sec. 17.134.060.

<sup>29</sup> OPC § 17.158.220(A).

<sup>30</sup> *Lateef v. City of Madera* (Cal. Ct. App., Feb. 14, 2020, No. F076227) 2020 WL 746176, at \*4. 4782-011j

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“transmitting by electronic mail,” and documents attached to electronic transmissions.<sup>31</sup> Guidance from the League of California Cities similarly explains that “[a]n email is simply a document,” and that “[e]mails that [] forward attached correspondence to the agency before the decisionmaking body made its decision” must be “include[d] with attached correspondence” in the administrative record for the project.<sup>32</sup>

Indeed, the City has recognized the same rule in past correspondence related to this Project. On January 7, 2020, Mr. Vollmann confirmed acceptance of EBRRD’s January 6, 2020 electronic submission of its CEQA comment letter on the Project as timely.<sup>33</sup> Additionally, in response to Ms. Dudley’s March 2, 2020 email inquiries about EBRRD’s Appeal filing, Mr. Vollmann indicated that appeal attachments would be accepted electronically “with the link citation as submitted with your appeal.”<sup>34</sup> It was therefore reasonable for EBRRD to rely on its electronic submission of the Appeal prior to the 4:00 pm deadline on March 2, 2020 to constitute a timely filing of the Appeal pursuant to the language of the City’s Planning Code and the City’s past representations to EBRRD regarding electronic transmission.

The record demonstrates that the electronic version of EBRRD’s Appeal was timely submitted to Mr. Vollmann and all applicable City staff and officials, and

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<sup>31</sup> PRC § 21167.6(e)(6) (CEQA record of proceedings must include “[a]ll written comments received in response to, or in connection with, environmental documents prepared for the project”); and (e)(7) (“[a]ll written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.”); Gov. Code § 6252(e) (“Writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, **transmitting by electronic mail** or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored”) (emphasis added); *Citizens for Open Government v. City of Lodi* (“Lodi”) (March 28, 2012) 205 Cal. App.4th 296, 309-311 (emails are part of CEQA administrative record).

<sup>32</sup> See Scope of Materials and E-Mails in the Administrative Record in CEQA and Other Writ Cases (May 7, 2014), available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwis2p2Rr5XoAhUHrp4KHajCr0QFjACegQIAhAB&url=http%3A%2F%2Fwww.cacities.org%2FResources-Documents%2FMember-Engagement%2FProfessional-Departments%2FCity-Attorneys%2FLibrary%2F2014%2FSpring-Conf%2F5-2014-Spring-Holly-Whatley-Scope-of-Materials-and.aspx&usq=AOvVaw3PTVTt9nGqjWKTlevfZqTv> (last visited 3/12/20).

<sup>33</sup> See 1/7/20 email exchange between P. Vollmann and L. LeLe attached hereto.

<sup>34</sup> See Dudley Declaration, Exhibit B.

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was reviewed by the City Zoning Manager prior to the 4:00 p.m. deadline, on March 2, 2020. The City was therefore on notice of EBRRD's Appeal submission, and had the Appeal documents in its possession, before the appeal deadline passed. The City cannot argue that the substantive components supporting the merits of the Appeal were not received before the deadline.

The only component of EBRRD's Appeal that was not received by the City by 4:00 pm on March 2, 2020 was EBRRD's check for the Appeal fees. Due to the courier's mistake, the check for the Appeal fees was not delivered until the following morning. EBRRD's courier's failure to timely arrive with the check for the Appeal filing fees was harmless error and an extrinsic mistake that should not preclude the City from finding EBRRD's Appeal to be timely.

In *Rappleyea v. Campbell* (1994) 8 Cal.4th 975 ("*Rappleyea*"), the California Supreme Court overturned a default judgement, and granted equitable relief under the doctrine of extrinsic mistake, for a similar situation in which a litigant timely filed a court document, but failed to timely pay the filing fee. The error initially led to a default judgment against defendants of over \$200,000.<sup>35</sup> On appeal, the Supreme Court reversed the default, holding that 1) a mistake was made that led to unintended consequences of failure to timely pay the filing fee; 2) that the underlying case had merit; and 3) the moving party showed diligence in correcting the mistake.<sup>36</sup> The holding in *Rappleyea* is consistent with judicial policy which favors cases being resolved on their merits.<sup>37</sup>

Here, the City was notified by EBRRD's timely electronic submission that the Appeal fees were in the process of being delivered to Mr. Vollman's office. There was therefore no surprise, and no harm, to the City or the Project Applicant in receiving the Appeal check and the hard copy version of EBRRD's Appeal the following morning, since they already knew it was coming. The late arrival of EBRRD's courier at the Planning Department at 4:50 pm was the result of an inadvertent, extrinsic mistake by the courier service. It was not due to any fault of EBRRD or its legal counsel, who provided the courier with the correct 4:00 pm delivery deadline. There is no dispute that EBRRD's Appeal raises meritorious issues related to the City's compliance with CEQA, which EBRRD has a right to raise under State law. Finally, EBRRD diligently attempted to correct the courier's

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<sup>35</sup> *Id.* at p. 978.

<sup>36</sup> *Id.* at pp. 981–982.

<sup>37</sup> *Id.*

mistake by promptly providing the Appeal fees to the City as soon as the Planning Department opened the following day. Moreover, the City failed to demonstrate any prejudice from receiving EBRRD's check for the Appeal filing fees at 8:00 a.m. on March 3, 2020, as opposed to 4:00 p.m. on March 2, 2020, which is in stark contrast to the significant prejudice that EBRRD will suffer from the City's erroneous rejection of its Appeal. Under *Rappleyea*, the City should consider the late delivery of the Appeal fees to be harmless error and extrinsic mistake, and must deem EBRRD's Appeal to be timely filed.

Accordingly, based on the plain language of the Oakland Planning Code, EBRRD substantially complied with the Code requirements to file its Appeal with the Planning Department.<sup>38</sup> The Planning Director's decision to reject EBRRD's March 3, 2020 delivery of duplicate hard copies of the Appeal documents and the Appeal filing fees constituted error and an abuse of discretion.

### **C. The City Should Provide Relief Consistent with CCP 473.**

The City has not promulgated standards for evaluating staff or Director decisions to reject a filing and dismiss an appeal of a planning decision on procedural grounds. However, the California courts have provided guidance at CCP 473. CCP 473, subdivision (b) provides that "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." The City should evaluate the decision of its Director and staff under this guidance.

#### ***i. Standard under CCP 473***

The California Supreme Court articulated the rule for interpreting CCP 473 in *Elston v. City of Turlock* (1985) 38 Cal.3d 227 ("*Elston*")<sup>39</sup> and *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249 ("*Zamora*"). In both cases, the Court found excusable mistake and granted relief from default or dismissal.

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<sup>38</sup> See e.g. *Davis v. Allstate Ins. Co.* (1989) 217 Cal. App. 3d 1229, 1231 (service of summons and complaint not invalid because of defects that do not impair timely notice to defendant).

<sup>39</sup> Superseded by statute on other grounds.

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Under *Zamora*, *Elston* and following cases in the CEQA and land use context, the courts found excusable mistake where: 1) the mistake was “reasonable,” defined as a mistake that anyone could make, even when exercising due care; 2) the attorney was diligent by within the CCP 473 timeline; and 3) there was no prejudice to the opposing party or to their case. Excusable mistake was found even where third parties (including staff under the direction and supervision of the attorney) made the error, because staff failed to follow explicit instructions or office procedures.

In *Zamora*, the attorney’s legal assistant inserted a typographical error into a settlement offer. The attorney had given the legal assistant instructions by phone and authorized his assistant to send out the documents on his behalf, but did not review them. As a result of the error, the offer stated that Zamora was to pay Clayborn, although what had been previously agreed to was that Clayborn was to pay Zamora.<sup>40</sup>

In analyzing the first factor, “whether the attorney’s mistake or inadvertence was excusable, the court inquires whether a reasonably prudent person under the same or similar circumstances might have made the same error.”<sup>41</sup> The Court then stated that the moving party must be “diligent,” which the Court defined as seeking relief within CCP 473’s statutory timeline. The Court also considered “if no prejudice to the opposing party will ensue.”<sup>42</sup>

The Court concluded that the error was excusable because it was “a clerical or ministerial mistake that could have been made by anybody. While counsel’s failure to review the document before sending it out was imprudent, we cannot say that his imprudence rendered the mistake inexcusable under the circumstances.”<sup>43</sup>

That the mistake had been made by a staff member (third party) was *not* a bar to granting relief. “Indeed, appellate courts have routinely affirmed orders vacating judgments based on analogous mistakes made by an attorney *or his or her staff*.”<sup>44</sup>

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<sup>40</sup> *Zamora*, *supra*, 28 Cal.4th at p. 253.

<sup>41</sup> *Id.* at p. 258, internal citations and quotations omitted.

<sup>42</sup> *Id.* at pp. 258-259.

<sup>43</sup> *Id.* at p. 259.

<sup>44</sup> *Ibid.* and citing *Romadka v. Hoge* (1991) 232 Cal.App.3d 1231 (attorney mistakenly checked box for “with prejudice” instead of “without prejudice”); *Bergloff v. Reynolds* (1960) 181 Cal.App.2d 349, 4782-011j

*Elston* concerned a personal injury suit by private litigant against a city, where an attorney failed to answer a set of admissions. The attorney's excuse was that he was not aware of the request for admissions, as the office had recently become short-staffed and so the admissions had been misplaced. The city moved to have all the allegations deemed admitted. In granting relief to *Elston*, the Court analyzed the facts under the three-factor test stated above. The Court also stated that CCP 473 "is often *applied liberally*" where the party is diligent and the opposing party will not suffer prejudice; moreover, "the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default."<sup>45</sup>

**ii. CCP 473 applied to CEQA and Land Use Cases**

The standard set by the Court has been applied in the CEQA and land use context. These cases strengthen the presumption that relief should be granted here, as CEQA cases involve the health, safety and welfare of the entire community.

In *McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352 ("*McCormick*"), the petitioner filed a claim under CEQA. Although the petitioner failed to file the required request for a hearing within CEQA's statutory deadline, the court granted relief from dismissal. The court stated the basic rule above, and also based its finding on the public policy underlying CEQA claims, stating "*we cannot overlook the fact that the proceeding below involves not merely a dispute between private litigants. CEQA proceedings concern the whole community and involve the health, welfare and safety of the public at large. ... The forfeiture of a hearing on the merits deprives not only the petitioners, but all citizens, of judicial resolution of the controversy concerning the project and its effects on those who live and work in the community.*"<sup>46</sup>

In *Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116 ("*Comunidad*"), the petitioner also failed to timely file a notice requesting a hearing under CEQA and sought relief under CCP 473. The Court overturned the

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358–359 (associate misinterpreted instructions and gave wrong information at a hearing); *Alderman v. Jacobs* (1954) 128 Cal.App.2d 273, 275–276 (secretary lost document).

<sup>45</sup> *Elston, supra*, 38 Cal.3d 227, 233, internal citations omitted.

<sup>46</sup> *McCormick, supra*, 198 Cal.App.3d at p. 362 and citing *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3d 491, 503 and *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936, 231, internal quotations omitted, emphasis added.

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dismissal. The petitioner's excuse was that he simply failed to calendar the deadline, and the error was compounded by being distracted and out of town due to a family emergency.

The court reiterated the test under CCP 473 and stated that it "cannot be disputed that Comunidad's counsel was diligent in prosecuting this case and the motion for relief was filed a week after the hearing request, well within a reasonable time. Nor can it reasonably be argued respondents would have suffered prejudice from Comunidad's one-week delay in requesting a hearing as respondents successfully sought extensions to prepare the administrative record, which was not ready at the time Comunidad requested a hearing."<sup>47</sup>

The *Comunidad* court also reconciled competing public policies under CEQA and CCP 473: "the strong preference for a trial on the merits and the policy favoring expeditious review of CEQA challenges."<sup>48</sup> Notwithstanding CEQA's policy favoring expedited review, CEQA does not bar relief under CCP 473.<sup>49</sup>

A holding in recent case arising in Oakland, where the court found that relief was not appropriate under CCP 473, is distinguishable. In *McClain v. Kissler* (2019) 39 Cal.App.5th 399 ("*McClain*"), the Second District Court of Appeals found against the moving party under CCP 473, but in very different circumstances than here. In *McClain*, the defendant, Kissler, failed to answer the complaint despite a Minute Order from the court ordering her to comply. The court found that the trial court did not abuse its discretion in denying relief where the trial court, whose duty it is to weigh evidence, found that Kissler's error was "knowing and deliberate" and her assertion that she misunderstood the court's Minute Order was not "credible."<sup>50</sup>

Here, EBRRD has submitted three signed declarations, attesting to the same basic facts, supporting the assertion that our claims here are credible. Nor did EBRRD knowingly or deliberately ignore the City's instructions to file by 4:00 pm. The opposite is true. EBRRD acted with good-faith to comply, as particularly evidenced by counsel's emails to Mr. Vollmann, asking instructions on what documents needed to be printed and subsequent attempt refile the Appeal.

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<sup>47</sup> *Comunidad, supra*, 219 Cal.App.4th at p. 1133.

<sup>48</sup> *Id.* at pp. 1131-1132.

<sup>49</sup> *Ibid.*

<sup>50</sup> *McClain, supra*, 39 Cal.App.5th at pp. 404-405, 417-418.  
4782-011j

***iii. The City should provide relief consistent with CCP 473.***

Applying these standards here, any mistake by EBRRD's courier in delivering the Appeal documents to the Planning Department after 4:00 pm on March 2, 2020 was excusable, because any reasonable person would have relied on the statements of its legal courier service stating that the Appeal was in process for timely deliver, consistent with EBRRD's express instructions: EBRRD's counsel had informed County Legal of the filing deadline; EBRRD's counsel was informed repeatedly by County Legal that there were no issues or concerns with the delivery; and EBRRD was told that the Appeal and related documents were out for delivery at 3:30 pm. Any reasonable person would rely on these representations, made by a professional legal courier service. As the courts have found, when staff fail to follow express instructions, an ensuing mistake can be deemed "excusable."

EBRRD was also diligent in seeking relief in several ways. First, EBRRD has diligently represented itself and its members in all stages of the administrative proceeding below, by filing a comment letter and multiple requests for documents under the Public Records Act. EBRRD was diligent in correcting its mistake by instructing its courier to promptly re-deliver the Appeal the next morning, as soon as the Planning Department's office reopened. EBRRD has been further diligent, by filing this appeal within 10 days of the City's rejection.

The City has not alleged, nor could it, that it has suffered any prejudice by the untimely filing of the CEQA Appeal, for several reasons. First, the Zoning Manager opened EBRRD's email at 3:30, before the deadline. Second, Mr. Vollmann was in communication with EBRRD starting that morning, and so was aware that EBRRD was filing the CEQA Appeal; thus, the City cannot claim that it was surprised that an Appeal was filed.

Third, the CEQA Appeal reiterates all of our previous arguments that were made below, because appeals from these approvals are not de novo. This is even a stronger set of facts that under *Elston*, where the opposing party would not know what the other party may admit or deny. Fourth, per the Oakland Planning and Municipal Codes, appeal hearings for these approvals are noticed seventeen days prior to the hearing. In other matters, the City has taken months to schedule an appeal. In this context, the passage of a few hours can hardly be taken as prejudicial.

Finally, a relief from dismissal of the appeal here is consistent with the court's liberal interpretation of CCP 473, in favor of moving party, so that cases can be tried on their merits, rather than resolved based on non-prejudicial procedural errors. This is particularly true, in CEQA disputes as here, where the moving party acts to protect the health, safety and welfare of entire community.

#### **D. Extrinsic Mistake**

EBRRD would also be entitled to relief under the equitable remedy of "extrinsic mistake, "a term broadly applied when circumstances extrinsic to the litigation have unfairly cost a party a hearing on the merits."<sup>51</sup>

In *Rappleyea v. Campbell* (1994) 8 Cal.4th 975 ("*Rappleyea*"), the California Supreme Court overturned a default judgement, and granted equitable relief under the doctrine of extrinsic mistake. The test set forth by the Court is if the party can show: 1) a mistake was made that led to unintended consequences; 2) that the case has merit; and 3) the moving party showed diligence in correcting the mistake, which is intertwined with an inquiry as to whether the other party would be prejudiced. This is consistent with judicial policy which favors cases being resolved on their merits.<sup>52</sup> The Court noted that this a separate basis for relief, independent of CCP 473.<sup>53</sup>

In *Rappleyea* the clerk's office had misadvised defendants' informal counsel as to the correct filing fee. The clerk's error led to a default judgment against defendants of over \$200,000.<sup>54</sup>

The first element of the extrinsic mistake doctrine was satisfied because the clerk never intended for a default to occur when he committed a "ministerial action" and provided the wrong information.<sup>55</sup>

Second, the court found that the case had merit. "Moreover, the answer did deny, admit, or otherwise respond to the allegations. And the Arizona lawyer who informally aided defendants declared under oath that he believed these Defendants

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<sup>51</sup> *Rappleyea, supra*, 8 Cal.4th at p. 981.

<sup>52</sup> *Id.* at pp. 981-982.

<sup>53</sup> *Id.* at p.986 (noting that the moving part did not file for relief within CCP 473's statutory deadline, so relief under that statute was not available).

<sup>54</sup> *Id.* at p. 978.

<sup>55</sup> *Id.* at p. 983.

have a very good (and certainly a justiciable) defense to the Plaintiff's claim. On the combined strength of these facts, we believe defendants have sufficiently shown merit."<sup>56</sup>

The third element, a showing of diligence, is intertwined with prejudice. "If heightened prejudice strengthens the burden of proving diligence, so must reduced prejudice weaken it. Under that view, and given this record, we believe defendants have sufficiently shown diligence."<sup>57</sup> For example, opposing counsel repeatedly told the moving party that he would stipulate to allow the moving party to file.<sup>58</sup>

Here, as with the clerk's error, the mistake was a ministerial error made by a third party. Second, EBRRD can show merit, as our CEQA Appeal properly alleged that the City abused its discretion and failed to support its findings with substantial evidence. Third, the City cannot demonstrate prejudice, as discussed above.

### III. CONCLUSION

The Planning Director's decision to reject EBRRD's Appeal as untimely was an abuse of discretion and in error. The Planning Commission should vacate this decision, and direct Planning Department staff to accept the Appeal, so that this matter may be heard by the Planning Commission and evaluated on its merits.

Sincerely,



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Sara Dudley

SFD:lj1

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<sup>56</sup> *Ibid.*, internal citations and quotations omitted.

<sup>57</sup> *Id.* at pp. 978-979.

<sup>58</sup> *Id.* at pp. 983-984.

## Christina Caro

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**From:** Sara F. Dudley  
**Sent:** Tuesday, January 7, 2020 4:02 PM  
**To:** Christina Caro  
**Subject:** FW: Comments - 88 Grand Avenue Project (4782)

**From:** Vollmann, Peterson <PVollmann@oaklandca.gov>  
**Sent:** Tuesday, January 7, 2020 4:00 PM  
**To:** Lorrie J. LeLe <ljlele@adamsbroadwell.com>; rmerkamp@oakland.ca.gov; Mulry, Brian <BMulry@oaklandcityattorney.org>  
**Cc:** Sara F. Dudley <sdudley@adamsbroadwell.com>  
**Subject:** RE: Comments - 88 Grand Avenue Project (4782)

Yes, I received it.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

**From:** Lorrie J. LeLe [<mailto:ljlele@adamsbroadwell.com>]  
**Sent:** Tuesday, January 7, 2020 3:54 PM  
**To:** [rmerkamp@oakland.ca.gov](mailto:rmerkamp@oakland.ca.gov); Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>; Mulry, Brian <[BMulry@oaklandcityattorney.org](mailto:BMulry@oaklandcityattorney.org)>  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** RE: Comments - 88 Grand Avenue Project (4782)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Following up to make sure you received our comments from yesterday by email.

Thank you,

*Lorrie LeLe*

Legal Assistant  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, CA 95814  
[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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**From:** Lorrie J. LeLe  
**Sent:** Monday, January 6, 2020 2:37 PM  
**To:** [rmerkamp@oakland.ca.gov](mailto:rmerkamp@oakland.ca.gov); [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov); [bmulry@oaklandcityattorney.org](mailto:bmulry@oaklandcityattorney.org)  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** Comments - 88 Grand Avenue Project (4782)

Please find attached Comments submitted on behalf of Oakland Residents for Responsible Development regarding the 88 Grand Avenue Project (PLN 18-406). The original will be hand-delivered today.

If you have any questions, please contact Sara Dudley directly.

Thank you,

*Lorrie LeLe*

Legal Assistant

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Sacramento, CA 95814

[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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# EXHIBIT 1

**DECLARATION OF SARA F. DUDLEY**

1 I, Sara F. Dudley, hereby declare:

2 1. I am an attorney at law, duly admitted to practice before all courts of the State of California  
3 and am an attorney at the law firm of Adams Broadwell Joseph & Cardozo, attorneys representing  
4 East Bay Residents for Responsible Development (“EBRRD”), also known as Oakland Residents  
5 for Responsible Development, in the matter of the 88 Grand Avenue development project, PLN 18-  
6 406 (“Project”). I have personal knowledge of the information contained herein, and if called to  
7 testify, I could and would do so as set forth herein.

8 2. On February 20, 2020, the City Planning and Building Department issued its Letter of  
9 Decision approving the Project, including a Minor Conditional Use Permit (“Minor CUP”),  
10 Tentative Parcel Map (“TPM”), Design Review (“DR”), and a CEQA Checklist / Addendum for  
11 the Project asserting exemptions under the California Environmental Quality Act (“CEQA”)  
12 (collectively, “Project Approvals”). The Letter of Decision stated that appeals of the Project  
13 Approvals “must be filed by no later than ten (10) calendar days from the date of this letter, by 4:00  
14 pm on March 2, 2020.” The Letter of Decision further explained that appeals were required to be  
15 “on a form provided by the Planning and Zoning Division of the Community and Economic  
16 Development Agency” and “submitted to the same” at the City’s Planning and Zoning Division, to  
17 the attention of “Peterson Vollmann, Planner IV.” A true and correct copy of the Letter of  
18 Decision is attached hereto as **Exhibit A**.

19 3. I prepared EBRRD’s appeal of the Planning Director’s decision approving the Project  
20 (“Appeal”). Documents that I prepared in support of the Appeal included the Appeal form  
21 provided by the City’s Planning and Zoning Division, an Appeal cover letter setting forth the legal  
22 and factual basis for the Appeal, and supporting evidence and attachments. While preparing the  
23 Appeal, I noted that the Oakland Planning Code does not state whether written appeals of Planning  
24 Director decisions shall be submitted in hard copy or electronically. See e.g. OPC, Sections  
25 17.134.060 (minor use permits), 17.158.210 (CEQA), 17.136.080 (design review); OMC, Section  
26 16.04.100 (tentative parcel map).

1       4. On March 2, 2020, at approximately 10:16 am, while I was finalizing the Appeal  
2 documents for submission to the City, I emailed Mr. Peterson Vollmann, the City Planner assigned  
3 to this matter. My email asked whether the City would accept attachments and exhibits to the  
4 Appeal on a CD or flash drive, or whether the City required attachments to be provided in printed  
5 form. Mr. Vollmann replied to my email with an email which stated: “*Typically* we get everything  
6 in a hard copy so we can reproduce it for the Planning Commission exactly as filed,” and “*we also*  
7 *like* to have everything including the appeal application on a thumb drive/CD as well so we can  
8 upload the electronic version.” With regards to electronic links to documents in support of the  
9 Appeal, Mr. Vollmann clarified that paper copies were required “*if you want* the content in the  
10 links printed into the packet that goes to the Planning Commission.” Otherwise, the email stated  
11 that appeal documents “*will be provided* with the link citation as submitted with your appeal.” Mr.  
12 Vollmann’s email did not state that appeal documents were required to be filed in hard copy. A  
13 true and correct copy of the email exchange is attached hereto as **Exhibit B** (emphasis added).

14       5. Following my email exchange with Mr. Vollmann, I finalized the Appeal documents in  
15 electronic form, including the required City Appeal Form, our supporting Appeal letter, exhibits,  
16 and attachments. I also made arrangements to have a hard copy of the Appeal delivered to the  
17 address provided on the Letter of Decision (the Planning and Building Department, at 250 Frank H.  
18 Ogawa Plaza, Suite 2114, Oakland) that same day, along with the check for Appeal filing fees.

19       6. On March 2, 2020, at approximately 12:42 p.m., I emailed my firm’s legal filing and  
20 process service, County Legal. We regularly use County Legal to file court documents and to  
21 deliver administrative documents to the City of Oakland. A true and correct copy of my email,  
22 without attachments, is attached hereto as **Exhibit C**. In my email, I asked County Legal to print  
23 the Appeal Form and various attachments to the Appeal, and to write a check for Appeal filing  
24 fees. The email stated, “Please note that it *must be delivered by 4pm*. Call me directly if you have  
25 any issues.” (Exhibit B, first emphasis added, second emphasis in original).

26       7. On March 2, 2020, between approximately 12:49 pm and 1:51 pm, I had a further email  
27 exchange with County Legal, in which I provided the remainder of the Appeal documents for  
28

SARA F. DUDLEY DECLARATION

1 printing and confirmed the delivery cutoff of 4:00 pm. A true and correct copy of this email  
2 exchange is attached hereto as **Exhibit D**. At approximately 3:00 pm on March 2, 2020, I  
3 telephoned Mr. Jacques at County Legal. I asked him about the status of the hard copy delivery to  
4 Mr. Vollmann's office. Mr. Jacques stated that the documents were being printed at County  
5 Legal's Oakland office and that "everything was fine."

6 8. At approximately 3:30 pm on March 2, 2020, I telephoned Mr. Jacques for an update on the  
7 delivery. Mr. Jacques stated that the runner had left their Oakland office to deliver the documents.  
8 I did not receive any further communications from County Legal before 4:00 pm.

9 9. At approximately 3:32 pm on March 2, 2020, I instructed my firm's legal assistant, Ms.  
10 Lorrie J. LeLe, to submit the EBRRD Appeal documents electronically to Mr. Vollmann and other  
11 City officials and staff. Ms. LeLe's submission email was addressed to Mr. Vollmann, all  
12 members of the Planning Commission, Ms. Catherine Payne (Acting Development Planning  
13 Manager), Mr. William Gilchrist (Director of City Planning), and Mr. Robert Merkamp (Zoning  
14 Manager). The documents submitted electronically by Ms. LeLe included the following  
15 documents I had prepared in support of EBRRD's Appeal: "1. Cover letter; 2. Appeal Form; 3.  
16 Appeal letter; 4. Exhibits A through E and their attachments." Ms. LeLe's email stated that the  
17 Planning and Building Department would also receive a hard copy delivery of the attached  
18 documents that day, a check for \$1622.57, and additional "Supporting Documents" which had not  
19 been attached to Ms. LeLe's email due to large file size. A true and correct copy of Ms. LeLe's  
20 email, without its attachments, is attached hereto as **Exhibit E**.

21 10. At the time Ms. LeLe emailed the Appeal documents to Mr. Vollmann, it was my belief  
22 that a hard copy of the entire Appeal package, including the Appeal check and Supporting  
23 Documents, had been printed and was in the process of being delivered to Mr. Vollmann's office.

24 11. Mr. Merkamp opened Ms. LeLe's email at approximately 3:40 pm, indicating that the City  
25 had received Ms. LeLe's electronic submission of the Appeal. A true and correct copy of Mr.  
26 Merkamp's email receipt notification is attached hereto as **Exhibit F**.

27  
28  
SARA F. DUDLEY DECLARATION

1       12. At approximately 4:15 pm on March 2, 2020, I called County Legal’s main office directly,  
2 to confirm that the hard copy of the Appeal had been delivered. The dispatcher informed me that  
3 she was “waiting to hear from the runner.”

4       13. At approximately 5:25 pm on March 2, 2020, Mr. Jacques of County Legal telephoned me.  
5 He stated that the documents had not been delivered to Mr. Vollmann’s office. He told me that the  
6 City office was closed when their runner arrived. I instructed Mr. Jacques to have the runner return  
7 to Mr. Vollmann’s office at 8:00 am the next morning to deliver the documents.

8       14. At approximately 6:30 pm on March 2, 2020, I spoke to Mr. Jacques again by telephone.  
9 He informed me that the runner had arrived at Mr. Vollmann’s office that day at 4:50 pm. He said  
10 he did not know why the runner attempted delivery after 4pm.

11       15. I emailed and spoke to Mr. Jacques by telephone again between approximately 6:30 and  
12 6:50 pm on March 2, 2020, to confirm that County Legal would hand-deliver the documents,  
13 including the check for the filing fees, the next morning at 8:00 am, to ensure that the Appeal  
14 package was delivered as soon as Mr. Vollmann’s office reopened. A true and correct copy of my  
15 email is attached hereto as **Exhibit G**.

16       16. On March 3, 2020 at approximately 9:03 am, Mr. Vollmann emailed me to inform me that a  
17 runner had attempted to file the Appeal and related documents that morning, and that the City had  
18 rejected this filing as untimely. A true and correct copy of Mr. Vollmann’s email is attached hereto  
19 as **Exhibit H**.

20       17. On March 3, 2020, at approximately 9:30 am, I spoke with Mr. Jacques and asked him to  
21 explain the circumstances from the March 2, 2020 hand delivery to the City. He stated that he  
22 thought that County Legal could deliver the documents until 5pm on March 2, 2020. He stated that  
23 he did not call the City Clerk’s office, check the City’s website, or have any other basis for this  
24 belief. On the telephone call, Mr. Jacques also informed me that County Legal used another  
25 service, Ace Attorney Service (“Ace”), to print and deliver the Appeal documents.

26       18. On March 3, 2020, at approximately 10:45 am, I spoke with Mr. Rodriguez of Ace, who  
27 stated that Ace’s runner left Ace at 4:50 pm, and arrived at the City Clerk’s office right before  
28

SARA F. DUDLEY DECLARATION

1 5pm. Mr. Rodriguez stated that Mr. Jacques of County Legal gave him approval to deliver the  
2 documents before 5:00 pm.

3 19. Mr. Rodriguez stated that Ace's runner returned to the City Clerk's office at the Oakland  
4 Planning and Building Department at 8:20 am on March 3, 2020, for its second attempt to deliver  
5 the Appeal documents. He stated that the filing was rejected by City staff upon arrival.

6 I declare under penalty of perjury under the laws of the State of California, that the  
7 foregoing is true and correct.

8

9 Dated: March 11, 2020

10

ADAMS BROADWELL JOSEPH & CARDOZO

11



12

By: \_\_\_\_\_  
Sara F. Dudley

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SARA F. DUDLEY DECLARATION

DUDLEY DECLARATION

**EXHIBIT A**

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department  
Bureau of Planning

(510) 238-3941  
FAX (510) 238-6538  
TDD (510) 238-3254

Sent via U.S. Mail

February 20, 2020

Fred Metzger / KTG  
1814 Franklin Street, Suite 400  
Oakland, CA 94612

**RE: Case File No. PLN18-406, "88" Grand Avenue (008-0656-004-00 & 008-0656-001-00)**

Dear Applicant:

Your application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

<b>Proposal:</b>	To develop a new 35 story residential building containing 275 dwelling units above ground level retail. The proposal includes the Transfer of Development Rights from the property at 2250 Broadway, which contains an existing office building, to the "88" Grand Avenue tower site. The proposal will be taking advantage of the affordable housing density bonus by including 5% very low income units (12 units) and requesting a concession for parking and a development waiver for height.
<b>Planning Permits Required:</b>	Regular Design Review for new construction, Minor Conditional Use Permit for Transfer of Development Rights, and a Tentative parcel map to merge and re-subdivide two lots, including one that will include new condominiums for the new construction (TPM10922).
<b>General Plan:</b>	Central Business District
<b>Zoning:</b>	D-BV-2
<b>Environmental Determination:</b>	A detailed CEQA Analysis was prepared for this project which concluded that the proposed project satisfies each of the following CEQA Guidelines sections: 15183 - Projects consistent with a community plan, general plan, or zoning; 15183.3 - Streamlining for in-fill projects; and/or 15164 - Addendum to the 2014 certified Broadway Valdez District Specific Plan EIR; Each of which provides a separate and independent basis for CEQA compliance.
<b>Historic Status:</b>	Non-historic property
<b>City Council District:</b>	3

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by 4:00 pm on March 2, 2020. An appeal shall be on a form provided by

the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Peterson Vollmann, Planner IV**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of **\$1622.57** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

If you have any questions, please contact the case planner, **Peterson Vollmann, Planner IV** at (510) 238-6167 or [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov), however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



CATHERINE PAYNE  
Acting Development Planning Manager

Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals
- C. Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP)

CC: Adams Broadwell Joseph & Cardozo  
Attn: Janet Laurain  
601 Gateway Blvd., Suite 1000  
So. San Francisco, CA 94080

**ATTACHMENT A: FINDINGS**

---

This proposal meets all the required Design Review Criteria (Section 17.136.050) and Conditional Use Permit Criteria (Sections 17.134.050 & 17.106.050) as set forth below and which are required to approve your application. This proposal does not contain characteristics that require denial pursuant to the Tentative Map Findings (Section 16.08.030) and is consistent with the Lot Design Standards (Section 16.24.040) of the Oakland Subdivision Regulations. Required findings are shown in **bold type**; reasons your proposal satisfies them are shown in normal type.

**17.136.050(A) - RESIDENTIAL DESIGN REVIEW CRITERIA:**

- 1. The proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.**

The proposed project is located at the northeast corner of Grand Avenue and Webster Street at the northern end of Downtown Oakland. The surrounding area contains a mix of high density mid-rise and high-rise structures containing residential, office and mixed use buildings ranging in height from 80 to 400 feet, which all contain various architectural styles and exterior finishes. The high-rise structures in the surrounding area vary in exterior treatments from largely glass curtain wall exteriors, to a mix of masonry and punched window recesses to metal panel and glass exterior wall systems. The desirable character at the street level along Grand Avenue is the tall ground floor heights with active ground floor uses that make for an inviting pedestrian atmosphere. The proposed tower at 88 Grand will include a double height ground floor with ground floor commercial and residential lobby facilities that will activate the pedestrian realm along Grand Avenue. All measures have been made to move non-active uses off the Grand Avenue frontage by moving loading and utility facilities to Webster Street and off an internal driveway, with only a minimal presence of the utility room on Grand Avenue, which will be non-visible and contain a wall with proposed public art installations and/or architectural finishes to enhance the visual aesthetic. The proposed tower will be clad in a mix of metal panel, clear glazing, and spandrel glass which will relate to other towers within the area. The northern façade, which is located in close proximity to the northern property line is limited to the amount of openings, but will contain spandrel glass and metal paneling to screen out the largely solid structural wall system required by the Building Code for the portions of the building above approximately 220 feet. The elevations below this will be limited only to pre-cast and metal panels that will create a visual pattern as the northern adjacent lot has had plans for an additional tower that will eventually block the lower portions of this building elevation.

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

The proposed design will enhance the desirable neighborhood characteristics by filling in an underdeveloped site that is currently used as an auto fee parking lot with a new mixed use residential tower that creates an active ground floor environment at the pedestrian level, as well as provide for a dense residential environment in close proximity to downtown jobs, commercial uses including restaurants and retail, local and regional transit and open space.

- 3. The proposed design will be sensitive to the topography and landscape.**

The project site is flat and void of any landscaping.

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

The project site is not located on a hill.

**5. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.**

The project site is located within the Broadway Valdez District Specific Plan Area. The Broadway Valdez District Specific Plan provides a vision and planning framework for future growth and development in the approximately 95 acre area along Oakland's Broadway corridor between Grand Avenue and I-580. The Specific Plan, which has been developed with a thorough analysis of the area's economic and environmental conditions and input from City decision-makers, landowners, developers, real estate experts, and the community at large, provides a comprehensive vision for the Plan Area along with goals, policies, and development regulations to guide future public and private actions relating to the area's development. The Plan also serves as the mechanism for ensuring that future development will be coordinated and occur in an orderly and well-planned manner. The proposed development is consistent with the Design Guidelines set forth in the Broadway Valdez Specific Plan as well as the City's Corridor Design Guidelines.

The Project is consistent with the following Specific Plan goals and policies:

**BVDSP-Policy LU-1.3**—Balance retail uses with a mix of residential, office, and service uses that complement and support the economic viability of the commercial core, and contribute to the creation of a new "24-hour" neighborhood with around-the-clock vitality.

**BVDSP-Policy LU-2.1** – Establish the Broadway Valdez District as an attractive pedestrian and transit oriented, mixed use neighborhood with a core of retail and complementary commercial uses.

**BVDSP-Policy LU-4.1**—Encourage the gradual transition of the Plan Area toward uses that will contribute to the creation of a vibrant, pedestrian-oriented, mixed-use district.

**BVDSP-Policy LU-8.1**—Promote the development of the Valdez Triangle as a dynamic pedestrian-oriented retail district within a mixed-use setting that includes a complementary mix of retail, office, entertainment, and residential uses.

**BVDSP-Policy LU-9.2**—The intent is to promote a complementary mix of retail, office, entertainment, and residential uses that creates a vibrant urban corridor that is active both day and night, and on weekdays and weekends.

The Project is consistent with the above mentioned goals and policies by creating a new, mixed use development located within the Broadway Valdez District Specific Plan to replace the existing surface parking lot. The proposal will contain an active ground floor commercial presence with new retail space that will promote a vibrant, pedestrian-oriented environment for the frontage. The Project also will create high density, upper level residential uses that will be near transit access and help to create a 24-hour neighborhood.

The proposed project is consistent with the Corridor Design Guidelines and constructing a new high density residential building within a few blocks of the 19<sup>th</sup> Street BART station would be consistent with the Central Business District land use classification. The proposal is consistent with the following General Plan Land Use and Transportation Element (LUTE) policies:

Policy D6.1 – Developing Vacant Lots – Construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible.

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12<sup>th</sup> Street, 19<sup>th</sup> Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

Policy N3.1 – Facilitating Housing Construction – Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

Policy N3.2 – Encourage In-fill Development – In order to facilitate the construction of needed housing units, in-fill development that is consistent with the General Plan should take place throughout the City of Oakland.

**SECTION 17.134.050 –CONDITIONAL USE PERMIT FINDINGS:**

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

The location, size, design and operating characteristics of the proposed Project will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood. The proposed project is consistent with scale, bulk, coverage and density requirements of the General Plan and applicable zoning regulations, and proposed height, scale and bulk of the building is compatible with similar structures in the immediate vicinity of the Project site. Several new multi-family residential developments of similar scale, bulk, coverage and density to the Project have been developed in the immediate vicinity of the project site in recent years. The BVDSP EIR outlined the potential traffic impacts within the area through the anticipated growth through the adopted plan, mitigations for improvements to intersections throughout the area were included, and each project is required to pay a fair share traffic impact fee that will go towards these future improvements to address traffic concerns.

The proposal requires a Conditional Use Permit for a Transfer of Development Rights from the property at 2250 Broadway to the tower site at 88 Grand Avenue. This transfer in density is appropriate given that the properties are directly adjacent to one another and the 2250 Broadway site is currently built up with an office tower, and thus would not be left as an underdeveloped site due to the transfer. In addition, the resulting overall intensity for the subject block bounded by Broadway, Grand Avenue, Webster and 23<sup>rd</sup> Streets would be no greater than what would be allowed if developed all at once under a single development proposal.

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

The proposal will provide for a functional living environment that will be of a high-quality design with ample open space and amenity spaces as well as being located in an area planned for development of the kind proposed by the Project in very close proximity to downtown jobs and regional and local public transit.

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

The development proposed by the Project will help to fulfill the vision of the BVDSP by developing a high density residential development with active ground floors in close proximity to both the main shopping streets Broadway and Valdez Street within the plan area to add to the pedestrian vibrancy of those streets, as well as being developed in close proximity to downtown jobs and local and regional mass transportation options. The project will also add needed housing

stock and provide pedestrian friendly retail opportunities, thereby further enhancing the neighborhood's basic community functions and providing an essential service to the community and region.

- 4. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

The proposed Project does conform to all applicable design review criteria, as described in the Residential Design Review Criteria findings above, which are hereby incorporated by reference.

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

The Project is consistent with the goals and policies of the Oakland General Plan, including the Broadway Valdez District Specific plan, and with all applicable zoning controls, as indicated in the Findings in Sections 17.136.050 above, hereby incorporated by reference.

**SECTION 17.106.050 - FINDINGS FOR TRANSFER OF DEVELOPMENT RIGHTS:**

- A. That the applicant has acquired development rights from the owners of abutting lots, restricting the number of living units or the amount of floor area which may be developed thereon so long as the facilities proposed by the applicant are in existence;**

The applicant presently owns the entire project site (both 2250 Broadway and "88" Grand Avenue). The proposal will retain the existing office building at 2250 Broadway while transferring all of the allowed residential development potential to the site at "88" Grand Avenue.

- B. That the owners of all such abutting lots shall prepare and execute an agreement, approved as to form and legality by the City Attorney and filed with the Alameda County Recorder, incorporating such restriction;**

Planning staff along with the City Attorney's Office will review all final language of an agreement and deed restriction memorializing the Transfer of Development Rights and the restriction of future residential development on the 2250 Broadway site that will be filed with the Alameda County Recorder's Office.

- C. That the resultant reduction in potential number of living units or amount of floor area on the abutting lots is sufficient in amount and is so located as to cause the net effect upon the surrounding neighborhood to be substantially equivalent to that of the development which would be allowable otherwise.**

The 2250 Broadway site is currently built up with an office tower, and thus would not be left as an underdeveloped site due to the transfer. In addition, the resulting overall intensity for the subject block bounded by Broadway, Grand Avenue, Webster and 23<sup>rd</sup> Streets would be no greater than what would be allowed if developed all at once under a single development proposal.

**16.08.030 - TENTATIVE MAP FINDINGS** (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act))

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

**A. That the proposed map is not consistent with applicable general and specific plans as specified in the State Government Code Section 65451.**

The proposal is consistent with the Central Business District General Plan designation and with the Broadway Valdez District Specific Plan by creating a mixed-use development with active ground floor uses along the important commercial street Grand Avenue. The Project is consistent with the goals and policies of the Oakland General Plan, including the Broadway Valdez District Specific plan, and with all applicable zoning controls, as indicated in the Findings in Sections 17.136.050 above, hereby incorporated by reference.

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

The proposal is consistent with the Central Business District General Plan designation and with the Broadway Valdez District Specific Plan by creating a mixed-use development with active ground floor uses along the important commercial street Grand Avenue. The Project is consistent with the goals and policies of the Oakland General Plan, including the Broadway Valdez District Specific plan, and with all applicable zoning controls, as indicated in the Findings in Sections 17.136.050 above, hereby incorporated by reference.

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

The site is suitable for the proposed development as it is located close to public utilities, transit, and other civic facilities, and fulfills the vision for the area as set forth in the Broadway Valdez District Specific Plan.

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

The proposed density is consistent with the General Plan and Specific Plan density envisioned for the area.

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

This site has been previously developed and does not contain any wildlife habitat or waterways.

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

There should be no adverse health effects. This is in a mixed use development containing residential and retail uses located in the downtown area and it will introduce no new use classifications that are incompatible with the surrounding neighborhood.

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

There are no easements on this property at present to allow the public access to anything.

**H. That the design of the subdivision does not provide to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision**

The project could to be set up for solar panels on the rooftop.

**SECTION 16.24.040 – LOT DESIGN STANDARDS**

- A. No lot shall be created without frontage on a public street, except lots created in conjunction with approved private access easements.**

The lots will have frontage on Broadway, Grand Avenue, and Webster Street.

- B. The side lines of lots shall run at right angles or radially to the street upon which the lot fronts, except where impractical by reason of unusual topography.**

The side lot lines will run at generally right angles similar to the pattern of other side lot lines along the block and in the neighborhood.

- C. All applicable requirements of the zoning regulations shall be met.**

The resulting lots from the proposed lot line adjustment will meet the minimum lot size requirements of the D-BV Zones.

- D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area.**

The proposal would adjust lot lines between two existing large lots, which both resulting lots would be larger than the minimum required lot size and consistent with the prevalent lot size in the area.

- E. Lots shall be designed in a manner to preserve and enhance natural out-croppings of rock, specimen trees or group of trees, creeks or other amenities.**

No such natural features exist on the site.

## CEQA COMPLIANCE FINDINGS

I. Introduction: These findings are made pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.; "CEQA Guidelines") by the Zoning Manager in connection with the environmental analysis of the effects of implementation of the 88 Grand Avenue project, as more fully described elsewhere in this Decision Letter and City Of Oakland ("City")-prepared CEQA Analysis document entitled "88 Grand Avenue Project CEQA Analysis" dated December 2019 ("CEQA Analysis") (the "Project"). The City is the lead agency for purposes of compliance with the requirements of CEQA. These CEQA findings are attached and incorporated by reference into each and every decision associated with approval of the Project and are based on substantial evidence in the entire administrative record.

II. Adoption of BVDSP and Certification of BVDSP EIR: The City finds and determines that (a) the Oakland City Council on June 17, 2014 adopted Resolution No. 85065 C.M.S. which adopted the Broadway Valdez District Specific Plan ("BVDSP"), made appropriate CEQA findings based on substantial evidence contained in the entire administrative record relating to the BVDSP Environmental Impact Report ("EIR"), including certification of the BVDSP EIR; and (b) the BVDSP satisfies the description of "Community Plan" set out in Public Resources Code section 21083.3(e) and in CEQA Guidelines section 15183 as well the description of "Planning Level Document" set out in Public Resources Code section 21094.5 and in CEQA Guidelines section 15183.3. The City Council, in adopting the BVDSP following a public hearing, approved as a part thereof Standard Conditions of Approval ("SCAs") which constitute uniformly applied development policies or standards (together with other City development regulations) and determined that the uniformly applicable development policies or standards, together with the mitigation measures set out in the BVDSP EIR, would substantially mitigate the impacts of the BVDSP and future projects thereunder.

III. CEQA Analysis Document: The CEQA Analysis and all of its findings, determinations and information is hereby incorporated by reference as if fully set forth herein. The CEQA Analysis concluded that the Project satisfies each of the following CEQA provisions, qualifying the Project for two separate CEQA statutory exemptions and that the CEQA Analysis constitutes an addendum to the BVDSP EIR, as summarized below and provides substantial evidence to support the following findings.

The City hereby finds that, as set forth below and in the checklist attached as part of the CEQA Analysis, the Project is exempt from any additional CEQA Analysis under the "Community Plan Exemption" of Public Resources Code section 21083.3 (CEQA Guidelines §15183) and/or the "Qualified Infill Exemption" under Public Resources section 21094.5 (CEQA Guidelines §15183.3) and that the CEQA Analysis also constitutes an Addendum to the BVDSP EIR pursuant to Public Resources Code section 21166 (CEQA Guidelines §15162) and that such Addendum determines that none of the three events requiring subsequent or supplemental environmental analysis as stipulated in Public Resources Code section 21166 have occurred, thus no additional environmental analysis beyond the BVDSP EIR and the CEQA Analysis is necessary. The specific statutory exemptions and the status of the CEQA Analysis as an Addendum are discussed below in more detail.

A. Community Plan Exemption: Public Resources Code Section 21083.3 (CEQA Guidelines §15183): The City finds and determines that, for the reasons set out below and in the CEQA Analysis, the Community Plan Exemption applies to the Project. Therefore, no further environmental analysis is required because all of the Project's effects on the environment were adequately analyzed and mitigation measures provided in the BVDSP EIR; there are no significant effects on the environment which are peculiar to the Project or to the parcel upon which it is located not addressed and mitigated in the BVDSP EIR; and there is no new information showing that any of the effects shall be more significant than described in the BVDSP EIR.

As set out in detail in Attachment C to the CEQA Analysis, the City finds that, pursuant to CEQA Guidelines section 15183 and Public Resources Code section 21083.3, the Project is consistent with the development density established by the BVDSP and analyzed in the BVDSP EIR and that there are no environmental effects of the Project peculiar to the Project or the Project Site which were not analyzed as significant effects in the BVDSP EIR; nor are there potentially significant off-site impacts and cumulative impacts not discussed in the BVDSP EIR; nor are any of the previously identified significant effects which, as a result of substantial information not known at the time of certification of the BVDSP EIR, are now determined to present a more severe adverse impact than discussed in the BVDSP EIR. As such, no further analysis of the environmental effects of the Project is required.

B. Qualified Infill Exemption; Public Resources Code Section 21094.5 (CEQA Guidelines §15183.3): The City finds and determines that, for the reasons set forth below and in the CEQA Analysis, a Qualified Infill Exemption applies to the Project and no further environmental analysis is required since all the Project's effects on the environment were adequately analyzed and mitigation measures provided in the BVDSP EIR; the Project will cause no new specific effects not addressed in the BVDSP EIR that are specific to the Project or the Project Site; and there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the BVDSP EIR.

The City finds that, pursuant to CEQA Guidelines section 15183.3, the CEQA Analysis contains in Attachment D a written analysis consistent with Appendix M to the CEQA Guidelines examining whether the Project will cause any effects that require additional review under CEQA. The contents of Attachment D documents that the Project is located in an urban area satisfying the requirements of CEQA Guidelines section 15183.3 and satisfies the applicable performance standards set forth in Appendix M to the CEQA Guidelines. It also explains how the effects of the Project were analyzed in the BVDSP EIR; and indicates that the Project incorporates all applicable mitigation measures and SCAs from the BVDSP EIR. Attachment D also determines that the Project will cause no new specific effects not analyzed in the BVDSP EIR; determines that there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the BVDSP EIR, determines that the Project will not cause new specific effects or more significant effects, and documents how uniformly applicable development policies or standards (including, without limitation, the SCAs) will mitigate environmental effects of the Project. Based upon the CEQA Analysis and other substantial evidence in the record, the City finds and determines that no further environmental analysis of the effects of the Project is required.

C. CEQA Analysis Constitutes an Addendum; Public Resources Code Section 21166 (CEQA Guidelines §15164): The City finds and determines that the CEQA Analysis constitutes an Addendum to the BVDSP EIR and that no additional environmental analysis of the Project beyond that contained in the BVDSP EIR is necessary. The City further finds that no substantial changes are proposed in the Project that would require major revisions to the BVDSP EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; no substantial changes occur with respect to the circumstances under which the Project will be undertaken which will require major revisions of the BVDSP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and there is no new information of substantial importance not known and which could not have been known with the exercise of reasonable diligence as of the time of certification of the BVDSP EIR showing that the Project will have one or more significant effects not discussed in the BVDSP EIR; significant effects previously examined will be substantially more severe than shown in the BVDSP EIR, mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project; or mitigation measures or alternatives which are considerably different from those analyzed in the BVDSP EIR would substantially reduce one or more significant effects on the environment.

Based on these findings and determinations, the City further finds that no Subsequent or Supplemental EIR or additional environmental analysis shall be required because of the Project. The City has considered the CEQA Analysis along with the BVDSP EIR prior to making its decision on the Project and a discussion is set out in the CEQA Analysis explaining the City's decision not to prepare a Subsequent or Supplemental EIR pursuant to Guidelines sections 15162 and/or 15163.

IV. Severability: The City finds that all three CEQA provisions discussed and determined to be applicable in Section III above are separately and independently applicable to the consideration of the Project and should any of the three be determined not to be so applicable, such determinations shall have no effect on the validity of these findings and the approval of the Project on any of the other grounds.

V. Incorporation by Reference of Statement of Overriding Considerations: The BVDSP EIR identified six areas of environmental effects of the BVDSP that presented significant and unavoidable impacts.<sup>1</sup> The areas identified include the following:

***Aesthetics, Shadow, and Wind*** – Significant and unavoidable impacts from new shadow on the Temple Sinai (Impact AES-4), new adverse wind conditions from structures 100-feet in height or taller (Impact AES-5), and cumulative wind and shadow impacts from development in and around the plan area (Impact AES-6);

***Air Quality*** – Significant and unavoidable impacts from construction emissions (Impact AIR-1), operational emissions (Impact AIR-2), and construction and operational Toxic Air Contaminants (Impact AIR-4);

***Cultural Resources*** – Significant and unavoidable impacts from destruction or alteration of historic resources (Impact CUL-1), and cumulative impacts to cultural resources from development in and around the plan area (Impact CUL-5);

***Greenhouse Gases and Climate Change*** – Significant and unavoidable impacts from the production of greenhouse gas emissions (Impact GHG-1);

***Noise*** – Significant and unavoidable impacts from traffic noise (Impact NOI-5); cumulative traffic noise from development in and around the plan area (Impact NOI-6) and cumulative stationary noise sources (Impact NOI-7);

***Traffic and Circulation*** – Significant and unavoidable impacts from project and cumulative traffic generation in and around the plan area to studied intersections (Impacts TRANS-2, TRANS-6 through -10, TRANS-12 through -14, TRANS-17 through -22, TRANS-24, TRANS-26 through -28), roadway segment degradation from development under the plan (TRANS-29) and previously identified impacted intersections.

Because the Project may contribute to some significant and unavoidable impacts identified in the BVDSP EIR, but a Subsequent and/or Supplemental EIR is not required in accordance with CEQA Guidelines sections 15162, 15163, 15164, 15183 and 15183.3, a Statement of Overriding Considerations is not legally required. Nevertheless, in the interest of being conservative, the Statement of Overriding Consideration for the BVDSP EIR, approved as Section XII of the CEQA Findings adopted by the City Council on June 17, 2104, via Resolution No. 86065 C.M.S., is hereby incorporated by reference as if fully set forth herein.

<sup>1</sup> If these or any other findings inaccurately identify or fail to list a significant and unavoidable impact identified in the analysis, findings and conclusions of the BVDSP EIR or its administrative record as a whole, the identification of that impact and any mitigation measure or SCA required to be implemented as part of the Project is not affected.

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**ATTACHMENT B: CONDITIONS OF APPROVAL**

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The proposal is hereby approved subject to the following Conditions of Approval:

**Part 1: Standard Conditions of Approval –  
General Administrative Conditions**

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**1. Approved Use**

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans dated **September 3, 2019**, as amended by the following conditions of approval and mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

**2. Effective Date, Expiration, Extensions and Extinguishment**

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

**3. Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

**4. Minor and Major Changes**

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent

permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

**5. Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

**6. Signed Copy of the Approval/Conditions**

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

**7. Blight/Nuisances**

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

**8. Indemnification**

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation

of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

- b. Within ten (10) calendar days of the City being served any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

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

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. **Compliance Matrix**

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to

the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

**13. Construction Management Plan**

Prior to the issuance of the first construction-related permit, the project applicant and his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.

**14. Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)**

- a. All mitigation measures identified in the **88 Grand Avenue CEQA Analysis** are included in the Standard Condition of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP) which is included in these Conditions of Approval and are incorporated herein by reference, as **Attachment C**, as Conditions of Approval of the project. The Standard Conditions of Approval identified in the **88 Grand Avenue CEQA Analysis** are also included in the SCAMMRP, and are, therefore, incorporated into these Conditions by reference but are not repeated in these Conditions. To the extent that there is any inconsistency between the SCAMMRP and these Conditions, the more restrictive Conditions shall govern. In the event a Standard Condition of Approval or mitigation measure recommended in the **88 Grand Avenue CEQA Analysis** has been inadvertently omitted from the SCAMMRP, that Standard Condition of Approval or mitigation measure is adopted and incorporated from the **88 Grand Avenue CEQA Analysis** into the SCAMMRP by reference, and adopted as a Condition of Approval. The project applicant and property owner shall be responsible for compliance with the requirements of any submitted and approved technical reports, all applicable mitigation measures adopted, and with all Conditions of Approval set forth herein at his/her sole cost and expense, unless otherwise expressly provided in a specific mitigation measure or Condition of Approval, and subject to the review and approval by the City of Oakland. The SCAMMRP identifies the timeframe and responsible party for implementation and monitoring for each Standard Condition of Approval and mitigation measure. Monitoring of compliance with the Standard Conditions of Approval and mitigation measures will be the responsibility of the Bureau of Planning and the Bureau of Building, with overall authority concerning compliance residing with the Environmental Review Officer. Adoption of the SCAMMRP will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in section 21081.6 of CEQA.

- b. Prior to the issuance of the first construction-related permit, the project applicant shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

## Project-Specific Conditions of Approval

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### 15. Public Improvements Consistent with the BVDSP

Requirement: Plans shall be submitted for review and approval that include public right of way improvements that are consistent with the Broadway Valdez District Specific Plan. This shall apply to all project frontages.

When Required: Prior to issuance of Building Permit

Initial Approval: Bureau of Planning; Public Works

Monitoring/Inspection: Bureau of Building

### 16. Exterior Finishes

Requirement: The final building permit plan set shall contain detailed information on all proposed exterior finishes for city approval. If requested by the Bureau of Planning sample materials shall be submitted and are subject to final approval by the Zoning Manager.

When Required: Prior to issuance of a Building Permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Planning

### 17. Public Art for Private Development Condition of Approval

Requirement: The project is subject to the City's Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. ("Ordinance"). The public art contribution requirements are equivalent to one-half percent (0.5%) for the "residential" building development costs, and one percent (1.0%) for the "non-residential" building development costs. The contribution requirement can be met through the commission or acquisition and installation of publicly accessible art, or satisfaction of alternative compliance methods described in the Ordinance. The applicant shall provide proof of full payment of the in-lieu contribution, or provide proof of installation of artwork on the development site prior to the City's issuance of a final certificate of occupancy for each phase unless a separate, legal binding instrument is executed ensuring compliance within a timely manner subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations that are verified by the City to either hold a valid Oakland business license and/or be an Oakland-based 501(c) (3) tax designated organization in good standing.

When Required: Prior to issuance of Final Certificate of Occupancy and Ongoing

Initial Approval: Bureau of Planning

### 18. Miscellaneous Transportation Improvement Measures

Requirement #1: The proposed driveways to the site shall consist of an "in-only" off of Grand Avenue and an "out-only" onto Broadway. In addition, the project frontage along Grand Avenue shall be designed in a manner that is consistent with the Grand Avenue Mobility Plan, which shall be reviewed and approved as part of the p-job application, and may be required to include a raised cycle track or protected bike lanes. Consistency with the Grand Avenue Mobility Plan and the requirement for a raised cycle track or protected bike lane shall be determined by City Staff in its sole and absolute discretion.

Requirement #2: Ensure that the project driveways on Grand Avenue and Broadway would provide adequate sight distance between motorists exiting the driveway and pedestrians on the adjacent sidewalks. This may require redesigning and/or widening the driveway. This may include prohibition of on-street parking within 20 feet on either side of the driveways if feasible.

Requirement #3: Transit Incentive for Residents – Provide a monthly transit benefit to each dwelling unit in an amount equal to either one-half the price of an Adult 31-Day AC Transit Pass (valued at \$84.60 as of September 2019) or an AC Transit EasyPass.

When Required: Prior to issuance of p-job permit and ongoing

Initial Approval: Bureau of Planning/DOT

### **19. Affordable Residential Ownership Units - Agreement and Monitoring**

Requirement #1: Pursuant to Section 17.107 of the Oakland Planning Code and the State Density Bonus Law California Government Code Section 65915 et seq. ("State Density Bonus Law"), the proposed project shall provide a minimum of 12 target dwelling units available at very low income (as 5% of the units) for receiving a density bonus, concession and/or waiver of development standards.

Requirement #2: Prior to submittal of a construction-related permit, the applicant shall contact the Housing and Community Development Department (Housing Development Services Division) to enter into an Affordability Agreement based on the City's model documents, as may be amended from time to time, governing the target dwelling units. The Affordability Agreement shall provide that target dwelling units are offered at an affordable housing cost and that only households that (i) meet the eligibility standards for the target dwelling units, and (ii) agree to execute an equity share agreement with the City are eligible to occupy the target dwelling units.

The Affordability Agreement shall be recorded with the Alameda County Recorder's Office as an encumbrance against the property, and a copy of the recorded agreement shall be provided to and retained by the City. The Affordability Agreement may not be subordinated in priority to any other lien interest in the property.

Requirement #3 The restricted target dwelling units must comply with the City of Oakland Affordable Homeownership Development Program Guidelines. The applicant shall ensure that the initial occupant of all for-sale target dwelling units are Very Low-, Low, or Moderate-Income Households, as required, and that the units are offered at an Affordable Housing Cost in accordance with California Health and Safety Code Section 50052.5 and its implementing regulations.

Requirement #4: For-sale target living units require a one-time fee to determine the eligibility of the initial homebuyer. The City's fee is \$250 per unit currently per the Master Fee Schedule, which is updated annually and available from the Budget Office of the City Oakland's Finance Department: <https://www.oaklandca.gov/departments/finance-department>.

Requirement #5: The owner of a for-sale affordable unit may not rent out the unit. The unit must remain owner occupied.

Requirement #6: The applicant shall provide for initial homebuyer education to apprise buyers of the long-term affordability restrictions applicable to the targeted dwelling units, and shall submit information regarding the initial homebuyer's income, household size and other funding sources to City staff in the

Housing and Community Development Division, for their review and approval. If a potential initial homebuyer does not meet the City's underwriting requirements, then the proposed homebuyer will not be allowed to purchase the home, and the applicant will be required to find qualified substitute buyer.

Requirement #7: The applicant shall submit for review and approval by the City Attorney, Bureau of Planning and any other relevant City departments as determined by the City, proof that all initial homebuyers of for-sale target dwelling units have entered into a density bonus equity share agreement, consistent with State Density Bonus Law, with the City prior to purchasing the unit or property, and the grant deed conveying title to the unit to the initial homebuyer shall reference the equity share agreement.

The equity share agreement shall specify that the title to the subject property or unit may not be transferred without prior approval of the City. Following City approval, the applicant shall record the equity share agreement against the parcel containing the target dwelling unit, as well as a Deed of Trust and Request for Notice in the event of default, sale, or refinancing, with the Alameda County Recorder's Office, and shall provide a copy of the recorded equity share agreement to the City. The equity share agreement shall further provide that upon future resale of a target dwelling unit, the initial homebuyer must notify the Housing and Community Development Division of its intent to sell the unit. Upon resale, the initial homebuyer may recoup the value of its own down payment, any improvements to the target dwelling unit, and the initial homebuyer's proportionate share of appreciation. The initial homebuyer shall repay to the City the City's initial subsidy and the City's proportionate share of appreciation. The City's initial subsidy is to be equal to the difference between the fair market value of the target dwelling unit at the time of initial sale and the initial sale price to the initial homebuyer, plus the amount of down payment assistance or mortgage assistance, if any. If upon resale the fair market value of the target dwelling unit is lower than the initial fair market value, then the value at the time of the resale shall be used as the initial fair market value. The City's proportionate share of appreciation is equal to the ratio of the local government's initial subsidy to the fair market value of the target dwelling unit at the time of the initial sale. The City will apply these repayment proceeds to the promotion of low to moderate income homeownership opportunities within five years of its receipt.

Requirement #8: The floor area, number of bedrooms, and amenities (such as fixtures, appliances, location and utilities) of the affordable units shall be substantially equal in size and quality to those of the market rate units. Further, the proportion of unit types (i.e. three-bedroom and four-bedroom, etc.) of the affordable units shall be roughly the same as the project's market rate units.

Requirement #9: Households in affordable units must have equal access to the project's services and facilities as households in all other units within the project.

Requirement #10: Affordable units must be evenly distributed throughout the project.

Requirement #11: The applicant shall comply with the requirements of Section 65915(c)(3)(A) of the State Density Bonus Law requiring, without limitation, replacement units in those circumstances where the parcel subject to the density bonus contains or contained affordable units within the last five years.

Requirement #12: The applicant shall comply with all applicable provisions of State Density Bonus Law and all provisions of the City's density bonus law that are not preempted by state law.

Requirement #13: Affordable units shall be constructed prior to or concurrent with the construction of the market rate units in each phase of the project.

Requirement #14: The City will not issue final certificates of occupancy for more than fifty percent (50%) of the market rate units in any phase of development until final certificates of occupancy are issued for all of the affordable units in that phase.

When Required: First Construction Related Permit Application and Ongoing

Initial Approval: Housing and Community Development Department and Ongoing

Ongoing Monitoring and Inspections: Housing and Community Development, Housing Development Services Division

**20. Density Transfer Deed Restriction and Other Legal Mechanisms**

Requirement: The applicant shall submit to the City for review and approval by the City Attorney's Office and the Planning Director an agreement, and any other City required documents (such as a Notice of Limitation of Use and/or deed restriction), restricting the development of residential facilities on the proposed Parcel One (as shown on TPM10922) referred to as 2250 Broadway/80 Grand by 114 residential dwelling units, which were transferred to Parcel Two (Commercial Development does not need to be restricted). Furthermore, this agreement to allow the Transfer of Development Rights for residential density from Parcel One to Parcel Two, is contingent upon the development of the entitlements under this Planning Approval.

When Required: Approval and Recordation prior to issuance of a Building Permit

Initial Approval: Bureau of Planning and City Attorney's Office

Monitoring/Inspection: Bureau of Planning and City Attorney's Office

**21. Recorded Easement Restricting Use of Private Project Driveway for the Exclusive Benefit of the Owners of 88 Grand**

Requirement: The project applicant shall enter into and record an easement agreement with the owners of 2250 Broadway securing exclusive use of the 11-foot-wide private project driveway identified on the approved plans at Sheet C2.0, entitled Proposed Boundary & Site Plan by BKF Engineers. Said recorded access easement agreement shall be for the exclusive benefit of the owners of 88 Grand and shall be subject to review and approval by the Bureau of Planning and the City Attorney's Office prior to execution and recordation.

When Required: Approval and Recordation prior to issuance of a Building Permit

Initial Approval: Bureau of Planning and City Attorney's Office

Monitoring/Inspection: Bureau of Planning and City Attorney's Office

**Applicant Statement**

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

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Name of Project Applicant

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Signature of Project Applicant

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Date

## Attachment C

### Standard Conditions of Approval and Mitigation Monitoring Reporting Program

#### A. Mitigation Measures

The following Broadway Valdez District Specific Plan Environmental Impact Report Mitigation Measures would be required of the project to ensure that any impacts to the environment are to remain less than significant.

Mitigation Measure
<b>Aesthetics, Shadow and Wind</b>
<b>Mitigation Measure AES-5: Wind Analysis.</b> Project sponsors proposing buildings 100 feet tall or taller within the portion of the Plan Area designated Central Business District shall conduct detailed wind studies to evaluate the effects of the proposed project. If the wind study determines that the proposed project would create winds exceeding 36 mph for more than one hour during daylight hours during the year, the project sponsor shall develop and implement a wind reduction plan and incorporate measures to reduce such potential effects, as necessary, until a revised wind analysis demonstrates that the proposed project would not create winds in excess of this threshold. Examples of measures that such projects may incorporate, depending on the site-specific conditions, include structural and landscape design features and modified tower designs: wind protective structures or other apparatus to redirect downwash winds from tall buildings, tree plantings or dense bamboo plantings, arbors, canopies, lattice fencing, etc.

#### B. Standard Conditions of Approval

This Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) is based on the CEQA Analysis prepared for the 88 Grand Avenue project.

The City of Oakland's Uniformly Applied Development Standards adopted as Standard Conditions of Approval (Standard Conditions of Approval, or SCAs) were originally adopted by the City in 2008 (Ordinance No. 12899 C.M.S.) pursuant to Public Resources Code section 21083.3) and have been incrementally updated over time. The SCAs incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, Green Building Ordinance, historic/Landmark status, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects.

These SCAs are incorporated into projects as conditions of approval, regardless of the determination of a project's environmental impacts. As applicable, the SCAs are adopted

as requirements of an individual project when it is approved by the City, and are designed to, and will, avoid or substantially reduce a project's environmental effects.

In reviewing project applications, the City of Oakland determines which SCAs apply based upon the zoning district, community plan, and the type of permits/approvals required for the project. The City of Oakland also will determine which SCAs apply to a specific project based on the specific project type and/or project site characteristics. Because these SCAs are mandatory City requirements imposed on a city-wide basis, environmental analyses assume these SCAs will be implemented by the project, and these SCAs are not imposed as mitigation measures under CEQA.

All SCAs identified in the CEQA document are included herein. To the extent that any SCA identified in the CEQA document was inadvertently omitted, it is automatically incorporated herein by reference.

- The first column identifies the SCA applicable to that topic in the CEQA document.
- The second column identifies the monitoring schedule or timing applicable to the project.
- The third column names the party responsible for monitoring the required action for the project.

In addition to the SCAs identified and discussed in the CEQA document, other SCAs that are applicable to the project are included herein.

The project sponsor is responsible for compliance with any recommendations in approved technical reports and with all SCAs set forth herein at its sole cost and expense, unless otherwise expressly provided in a specific SCA, and subject to the review and approval of the City of Oakland. Overall monitoring and compliance with the SCAs will be the responsibility of the Planning and Zoning Division. Prior to the issuance of a demolition, grading, and/or construction permit, the project sponsor shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<b>Aesthetics, Shadow and Wind</b>			
SCA-AES-1: <i>Lighting (#19)</i> . Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.	Prior to building permit final	N/A	Bureau of Building
SCA-AES-2: <i>Trash and Blight Removal (#16)</i> . The project applicant and his/her successors shall maintain the property free of blight, as defined in chapter 8.24 of the Oakland Municipal Code. For nonresidential and multi-family residential projects, the project applicant shall install and maintain trash receptacles near public entryways as needed to provide sufficient capacity for building users.	Ongoing	N/A	Bureau of Building
SCA-AES-3: <i>Graffiti Control (#17)</i> . a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation: i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces. ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces. iii. Use of paint with anti-graffiti coating. iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED). v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement. b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following: i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system. ii. Covering with new paint to match the color of the surrounding surface. iii. Replacing with new surfacing (with City permits if required).	Ongoing	N/A	Bureau of Buildings
SCA-AES-4: <i>Landscape Plan (#18)</i> . a. <i>Landscape Plan Required</i> • The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape	Prior to approval of construction-related permit	Bureau of Planning	N/A

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/Inspection
<p>Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code. Proposed plants shall be predominantly drought-tolerant. Specification of any street trees shall comply with the Master Street Tree List and Tree Planting Guidelines (which can be viewed at <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf</a> and <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf</a>, respectively), and with any applicable streetscape plan.</p>			
<p><b>b. Landscape Installation</b></p> <ul style="list-style-type: none"> <li>The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.</li> </ul>	Prior to building permit final	Bureau of Planning	Bureau of Building
<p><b>c. Landscape Maintenance</b></p> <ul style="list-style-type: none"> <li>All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.</li> </ul>	Ongoing	N/A	Bureau of Buildings
<p><b>SCA-AES-5: Public Art for Private Development (#20).</b> The project is subject to the City's Public Art Requirements for Private Development, adopted by Ordinance No. 13275 C.M.S. ("Ordinance"). The public art contribution requirements are equivalent to one-half percent (0.5%) for the "residential" building development costs, and one percent (1.0%) for the "non-residential" building development costs.</p> <p>The contribution requirement can be met through: 1) the installation of freely accessible art at the site; 2) the installation of freely accessible art within one-quarter mile of the site; or 3) satisfaction of alternative compliance methods described in the Ordinance, including, but not limited to, payment of an in-lieu fee contribution. The applicant shall provide proof of full payment of the in-lieu contribution and/or provide plans, for review and approval by the Planning Director, showing the installation or improvements required by the Ordinance prior to issuance of a building permit.</p> <p>Proof of installation of artwork, or other alternative requirement, is required prior to the City's issuance of a</p>	Payment of in-lieu fees and/or plans showing fulfillment of public art requirement - Prior to issuance of Building permit	Bureau of Planning	Bureau of Planning

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/Inspection
final certificate of occupancy for each phase of a project unless a separate, legal binding instrument is executed ensuring compliance within a timely manner subject to City approval.			
<b>Air Quality</b>			
<p><b>SCA-AIR-1: Dust Controls - Construction Related (#21).</b> The project applicant shall implement all of the following applicable dust control measures during construction of the project:</p> <ul style="list-style-type: none"> <li>a. Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible.</li> <li>b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).</li> <li>c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li> <li>d. Limit vehicle speeds on unpaved roads to 15 miles per hour.</li> <li>e. All demolition activities (if any) shall be suspended when average wind speeds exceed 20 mph.</li> <li>f. All trucks and equipment, including tires, shall be washed off prior to leaving the site.</li> <li>g. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.</li> <li>h. Apply and maintain vegetative ground cover (e.g., hydroseed) or non-toxic soil stabilizers to disturbed areas of soil that will be inactive for more than one month. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).</li> <li>i. Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.</li> <li>j. When working at a site, install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of the site, to minimize wind-blown dust. Windbreaks must have a maximum 50 percent air porosity.</li> <li>k. Post a publicly visible large on-site sign that includes the contact name and phone number for the project complaint manager responsible for responding to dust complaints and the telephone numbers of the City's Code Enforcement unit and the Bay Area Air Quality</li> </ul>	During construction	N/A	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/Inspection
<p>Management District: When contacted, the project complaint manager shall respond and take corrective action within 48 hours.</p> <p>i. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</p>			
<p><b>SCA-AIR-2: Criteria Air Pollutants – Construction Related (#22)</b></p> <p>The project applicant shall implement all of the following applicable basic control measure for criteria pollutants during construction of the project as applicable:</p> <p>a. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time of two minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clean signage to this effect shall be provided for construction workers at all access points.</p> <p>b. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to two minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations").</p> <p>c. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Equipment check documentation should be kept at the construction site and be available for review by the City and the Bay Area Air Quality District as needed.</p> <p>d. Portable equipment shall be powered by grid electricity if available. If electricity is not available, propane or natural gas generators shall be used if feasible. Diesel engines shall only be used if grid electricity is not available and propane or natural gas generators cannot meet the electrical demand.</p> <p>e. Low VOC (i.e., ROG) coatings shall be used that comply with BAAQMD Regulation 8, Rule 3: Architectural Coatings.</p> <p>f. All equipment to be used on the construction site shall comply with the requirements of Title 13, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations") and upon request by the City (and the Air District if specifically requested), the project applicant shall provide written documentation that fleet requirements have been met.</p>	During construction	N/A	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p><b>SCA-AIR-3: Diesel Particulate Matter Controls - Construction Related (#23).</b></p> <p><b>a. Diesel Particulate Matter Reduction Measures</b></p> <p>The project applicant shall implement appropriate measures during construction to reduce potential health risks to sensitive receptors due to exposure to diesel particulate matter (DPM) from construction emissions. The project applicant shall choose <u>one</u> of the following methods:</p> <p>i. The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with current guidance from the California Air Resources Board (CARB) and Office of Environmental Health and Hazard Assessment to determine the health risk to sensitive receptors exposed to DPM from project construction emissions. The HRA shall be submitted to the City (and the Air District if specifically requested) for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then DPM reduction measures are not required. If the HRA concludes that the health risk exceeds acceptable levels, DPM reduction measures shall be identified to reduce the health risk to acceptable levels as set forth under subsection b below. Identified DPM reduction measures shall be submitted to the City for review and approval prior to the issuance of building permits and the approved DPM reduction measures shall be implemented during construction.</p> <p>-or-</p> <p>ii. All off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by CARB. The equipment shall be properly maintained and tuned in accordance with manufacturer specifications. This shall be verified through an equipment inventory submittal and Certification Statement that the Contractor agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of contract.</p>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
<p><b>b. Construction Emissions Minimization Plan (if required by a above)</b></p> <p>The project applicant shall prepare a Construction Emissions Minimization Plan (Emissions Plan) for all identified DPM reduction measures (if any). The Emissions Plan shall be submitted to the City (and the Bay Area Air Quality District if specifically requested) for review and approval prior to the issuance of building permits. The Emissions Plan shall include the following:</p> <p>i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number,</p>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/Inspection
<p>engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.</p> <p>ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract.</p>			
<p><b>SCA-AIR-4: Stationary Sources of Air Pollution (Toxic Air Contaminants) (#25).</b> The project applicant shall incorporate appropriate measures into the project design in order to reduce the potential health risk due to on-site stationary sources of toxic air contaminants. The project applicant shall choose <u>one</u> of the following methods:</p> <p>a. The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with California Air Resources Board (CARB) and Office of Environmental Health and Hazard Assessment requirements to determine the health risk associated with proposed stationary sources of pollution in the project. The HRA shall be submitted to the City for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then health risk reduction measures are not required. If the HRA concludes the health risk exceeds acceptable levels, health risk reduction measures shall be identified to reduce the health risk to acceptable levels. Identified risk reduction measures shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City.</p> <p>- or -</p> <p>b. The project applicant shall incorporate the following health risk reduction measures into the project. These features shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City:</p> <p>i. Installation of non-diesel fueled generators, if feasible, or;</p> <p>ii. Installation of diesel generators with an EPA-certified Tier 4 engine or engines that are retrofitted with a CARB Level 3 Verified Diesel Emissions Control Strategy, if feasible.</p>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
<p><b>SCA-AIR-5: Asbestos in Structures (#27).</b> The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health</p>	Prior to approval of construction-related permit	Applicable regulatory agency with jurisdiction	Applicable regulatory agency with jurisdiction

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and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.			
<b>Biological Resources</b>			
<b>SCA-BIO-1: Tree Removal during Bird Breeding Season (#30).</b> To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of birds shall not occur during the bird breeding season of February 1 to August 15 (or during December 15 to August 15 for trees located in or near marsh, wetland, or aquatic habitats). If tree removal must occur during the bird breeding season, all trees to be removed shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to the start of work and shall be submitted to the City for review and approval. If the survey indicates the potential presence of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the California Department of Fish and Wildlife, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.	Prior to removal of trees	Bureau of Planning	Bureau of Building
<b>SCA-BIO-2: Tree Permit (#31).</b> <b>a. Tree Permit Required</b> Pursuant to the City's Tree Protection Ordinance (OMC chapter 12.36), the project applicant shall obtain a tree permit and abide by the conditions of that permit.	Prior to approval of construction-related permit	Permit approval by Public Works Department, Tree Division; evidence of approval submitted to Bureau of Building	Bureau of Building
<b>b. Tree Protection During Construction</b> Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist: <b>i.</b> Before the start of any clearing, excavation, construction, or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the project's consulting arborist. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established	During construction	Public Works Department, Tree Division	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p>for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.</p> <p>ii. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filling, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the project's consulting arborist from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.</p> <p>iii. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the project's consulting arborist from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the project's consulting arborist. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.</p> <p>iv. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.</p> <p>v. If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Department and the project's consulting arborist shall make a recommendation to the City Tree Reviewer as to whether the damaged tree can be preserved. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.</p> <p>vi. All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.</p>			

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<p><b>c. Tree Replacement Plantings</b> Replacement plantings shall be required for tree removals for the purposes of erosion control, groundwater replenishment, visual screening, wildlife habitat, and preventing excessive loss of shade, in accordance with the following criteria:</p> <ul style="list-style-type: none"> <li>i. No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.</li> <li>ii. Replacement tree species shall consist of Sequoia sempervirens (Coast Redwood), Quercus agrifolia (Coast Live Oak), Arbutus menziesii (Madrone), Aesculus californica (California Buckeye), Umbellularia californica (California Bay Laurel), or other tree species acceptable to the Tree Division.</li> <li>iii. Replacement trees shall be at least twenty-four (24) inch box size, unless a smaller size is recommended by the arborist, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate.</li> <li>iv. Minimum planting areas must be available on site as follows: <ul style="list-style-type: none"> <li>• For Sequoia sempervirens, three hundred fifteen (315) square feet per tree;</li> <li>• For other species listed, seven hundred (700) square feet per tree.</li> </ul> </li> <li>v. In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee in accordance with the City's Master Fee Schedule may be substituted for required replacement plantings, with all such revenues applied toward tree planting in city parks, streets and medians.</li> <li>vi. The project applicant shall install the plantings and maintain the plantings until established. The Tree Reviewer of the Tree Division of the Public Works Department may require a landscape plan showing the replacement plantings and the method of irrigation. Any replacement plantings which fail to become established within one year of planting shall be replanted at the project applicant's expense.</li> </ul>	Prior to building permit final	Public Works Department, Tree Division	Bureau of Building
<b>Cultural Resources</b>			
<p><b>SCA-CUL-1: Archaeological and Paleontological Resources - Discovery During Construction (#33).</b> Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of</p>	During construction	N/A	Bureau of Building

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	When Required	Initial Approval	Monitoring/Inspection
<p>paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.</p> <p>In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.</p> <p>In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.</p>			
<p><b>SCA-CUL-2: Human Remains - Discovery During Construction (#35).</b> Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains</p>	During construction	N/A	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.			
<b>Geology, Soils and Geohazards:</b>			
<b>SCA-GEO-1: Construction-Related Permit(s) (#37).</b> The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
<b>SCA-GEO-2: Soils Report (#38).</b> The project applicant shall submit a soils report prepared by a registered geotechnical engineer for City review and approval. The soils report shall contain, at a minimum, field test results and observations regarding the nature, distribution and strength of existing soils, and recommendations for appropriate grading practices and project design. The project applicant shall implement the recommendations contained in the approved report during project design and construction.	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
<b>Hazards and Hazardous Materials:</b>			
<b>SCA-HAZ-1: Hazardous Materials Related to Construction (#43).</b> The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following: <ul style="list-style-type: none"> <li>a. Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction;</li> <li>b. Avoid overtopping construction equipment fuel gas tanks;</li> <li>c. During routine maintenance of construction equipment, properly contain and remove grease and oils;</li> <li>d. Properly dispose of discarded containers of fuels and other chemicals;</li> <li>e. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and</li> <li>f. If soil, groundwater, or other environmental medium with suspected contamination is encountered</li> </ul>	During construction	N/A	Bureau of Building

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	When Required	Initial Approval	Monitoring/Inspection
<p>unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City and applicable regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.</p>			
<p><b>SCA-HAZ-2: Hazardous Building Materials and Site Contamination (#44).</b> <b>a. Hazardous Building Materials Assessment</b> The project applicant shall submit a comprehensive assessment report to the Bureau of Building, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACMs), lead-based paint, polychlorinated biphenyls (PCBs), and any other building materials or stored materials classified as hazardous materials by State or federal law. If lead-based paint, ACMs, PCBs, or any other building materials or stored materials classified as hazardous materials are present, the project applicant shall submit specifications prepared and signed by a qualified environmental professional, for the stabilization and/or removal of the identified hazardous materials in accordance with all applicable laws and regulations. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency.</p>	Prior to approval of demolition, grading, or building permits	Bureau of Building	Bureau of Building
<p><b>b. Environmental Site Assessment Required</b> The project applicant shall submit a Phase I Environmental Site Assessment report, and Phase II Environmental Site Assessment report if warranted by the Phase I report, for the project site for review and approval by the City. The report(s) shall be prepared by a qualified environmental assessment professional and include recommendations for remedial action, as appropriate, for hazardous materials. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency.</p>	Prior to approval of construction-related permit.	Applicable regulatory agency with jurisdiction	Applicable regulatory agency with jurisdiction

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p><b>c. Health and Safety Plan Required</b> The project applicant shall submit a Health and Safety Plan for the review and approval by the City in order to protect project construction workers from risks associated with hazardous materials. The project applicant shall implement the approved Plan.</p>	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
<p><b>d. Best Management Practices (BMPs) Required for Contaminated Sites</b> The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential soil and groundwater hazards. These shall include the following:</p> <ul style="list-style-type: none"> <li>i. Soil generated by construction activities shall be stockpiled on-site in a secure and safe manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state, and federal requirements.</li> <li>ii. Groundwater pumped from the subsurface shall be contained on-site in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building.</li> </ul>	During construction	N/A	Bureau of Building
<b>Hydrology and Water Quality</b>			
<p><b>SCA-HYD-1: Erosion and Sedimentation Control Plan for Construction (#48).</b> The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.</p>	During construction-	N/A	Bureau of Building
<p><b>SCA-HYD-2: NPDES C.3 Stormwater Requirements for Regulated Projects (#54).</b> <b>a. Post-Construction Stormwater Management Plan Required</b> The project applicant shall comply with the requirements of Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES). The project applicant shall submit a Post-Construction Stormwater Management Plan to the City for review and approval with the project drawings submitted for site improvements, and shall implement the approved Plan during construction. The Post-Construction Stormwater Management Plan shall include and identify the following:</p>	Prior to approval of construction-related permit	Bureau of Planning; Bureau of Building	Bureau of Building

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	When Required	Initial Approval	Monitoring/Inspection
<p>i. Location and size of new and replaced impervious surface;</p> <p>ii. Directional surface flow of stormwater runoff;</p> <p>iii. Location of proposed on-site storm drain lines;</p> <p>iv. Site design measures to reduce the amount of impervious surface area;</p> <p>v. Source control measures to limit stormwater pollution;</p> <p>vi. Stormwater treatment measures to remove pollutants from stormwater runoff, including the method used to hydraulically size the treatment measures; and</p> <p>vii. Hydromodification management measures, if required by Provision C.3, so that post-project stormwater runoff flow and duration match pre-project runoff.</p>			
<p><b>a. Maintenance Agreement Required</b></p> <p>The project applicant shall enter into a maintenance agreement with the City, based on the Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement, in accordance with Provision C.3, which provides, in part, for the following:</p> <p>i. The project applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and</p> <p>ii. Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary.</p> <p>The maintenance agreement shall be recorded at the County Recorder's Office at the applicant's expense.</p>	Prior to building permit final	Bureau of Building	Bureau of Building
<b>Noise</b>			
<p><b>SCA-NOI-1: Construction Days/Hours (#62).</b> The project applicant shall comply with the following restrictions concerning construction days and hours:</p> <p>a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.</p> <p>b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.</p>	During construction	N/A	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p>c. No construction is allowed on Sunday or federal holidays.</p> <p>Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.</p> <p>Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.</p>			
<p><b>SCA-NOI-2: Construction Noise (#63).</b> The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:</p> <p>a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.</p> <p>b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.</p> <p>c. Applicant shall use temporary power poles instead of generators where feasible.</p> <p>d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures</p>	During construction	N/A	Bureau of Building

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<p>as determined by the City to provide equivalent noise reduction.</p> <p>e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.</p>			
<p><b>SCA-NOI-3: Extreme Construction Noise (#64).</b></p> <p><b>a. Construction Noise Management Plan Required</b> Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:</p> <p>a. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;</p> <p>b. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;</p> <p>c. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;</p> <p>d. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and</p> <p>e. Monitor the effectiveness of noise attenuation measures by taking noise measurements.</p>	<p>Prior to approval of construction-related permit</p>	<p>Bureau of Building</p>	<p>Bureau of Building</p>
<p><b>b. Public Notification Required</b> The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.</p>	<p>During construction</p>	<p>Bureau of Building</p>	<p>Bureau of Building</p>

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	When Required	Initial Approval	Monitoring/ Inspection
<p><b>SCA-NOI-4: Construction Noise Complaints (#66).</b> The project applicant shall submit to the City for review and approval a set of procedures for responding to and tracking complaints received pertaining to construction noise, and shall implement the procedures during construction. At a minimum, the procedures shall include:</p> <ul style="list-style-type: none"> <li>a. Designation of an on-site construction complaint and enforcement manager for the project;</li> <li>b. A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project complaint manager and City Code Enforcement unit;</li> <li>c. Protocols for receiving, responding to, and tracking received complaints; and</li> <li>d. Maintenance of a complaint log that records received complaints and how complaints were addressed, which shall be submitted to the City for review upon the City's request.</li> </ul>	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
<p><b>SCA-NOI-5: Exposure to Community Noise (#67).</b> The project applicant shall submit a Noise Reduction Plan prepared by a qualified acoustical engineer for City review and approval that contains noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level in accordance with the land use compatibility guidelines of the Noise Element of the Oakland General Plan. The applicant shall implement the approved Plan during construction. To the maximum extent practicable, interior noise levels shall not exceed the following:</p> <ul style="list-style-type: none"> <li>a. 45 dBA: Residential activities, civic activities, hotels</li> <li>b. 50 dBA: Administrative offices; group assembly activities</li> <li>c. 55 dBA: Commercial activities</li> <li>d. 65 dBA: Industrial activities</li> </ul>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
<p><b>SCA-NOI-6: Operational Noise (#68).</b> Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.</p>	Ongoing	N/A	Bureau of Building
<b>Transportation and Circulation</b>			
<p><b>SCA-TRANS-1: Construction Activity in the Public Right-of-Way (#76).</b></p> <p><b>a. Obstruction Permit Required</b></p> <p>The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-</p>	Prior to Approval of Construction Related Permit	Department of Transportation	Department of Transportation

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related obstruction in the public right-of-way, including City streets, sidewalks, bicycle facilities, and bus stops.			
<p><b>b. Traffic Control Plan Required</b></p> <p>In the event of obstructions to vehicle or bicycle travel lanes, bus stops, or sidewalks, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian accommodations (or detours, if accommodations are not feasible), including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The Traffic Control Plan shall be in conformance with the City's Supplemental Design Guidance for Accommodating Pedestrians, Bicyclists, and Bus Facilities in Construction Zones.</p>	The project applicant shall implement the approved Plan during construction.	Department of Transportation	Department of Transportation
<p><b>c. Repair of City Streets</b></p> <p>The project applicant shall repair any damage to the public right-of way, including streets and sidewalks, caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.</p>	Prior to building permit final	N/A	Department of Transportation
<p><b>SCA-TRANS-2: Bicycle Parking (#77).</b> The project applicant shall comply with the City of Oakland Bicycle Parking Requirements (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall demonstrate compliance with the requirements.</p>	Prior to Approval of Construction Related Permit	Bureau of Planning	Bureau of Building
<p><b>SCA-TRANS-3: Transportation Improvements (#78).</b> The project applicant shall implement the recommended on- and off-site transportation-related improvements contained within the Transportation Impact Review for the project (e.g., signal timing adjustments, restriping, signalization, traffic control devices, roadway reconfigurations, transportation demand management measures, and transit, pedestrian, and bicyclist amenities). The project applicant is responsible for funding and installing the improvements, and shall obtain all necessary permits and approvals from the City and/or other applicable regulatory agencies such as, but not limited to; Caltrans (for improvements related to Caltrans facilities) and the California Public Utilities Commission (for improvements related to railroad crossings), prior to installing the improvements. To implement this measure for intersection modifications, the project applicant shall submit Plans, Specifications, and Estimates (PS&amp;E) to the City for review and approval. All elements shall be designed to applicable City standards in</p>	Prior to building permit final or as otherwise specified	Bureau of Building; Department of Transportation	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p>effect at the time of construction and all new or upgraded signals shall include these enhancements as required by the City. All other facilities supporting vehicle travel and alternative modes through the intersection shall be brought up to both City standards and ADA standards (according to Federal and State Access Board guidelines) at the time of construction. Current City Standards call for, among other items, the elements listed below:</p> <ol style="list-style-type: none"> <li>a. 2070L Type Controller with cabinet accessory</li> <li>b. GPS communication (clock)</li> <li>c. Accessible pedestrian crosswalks according to Federal and State Access Board guidelines with signals (audible and tactile)</li> <li>d. Countdown pedestrian head module switch out</li> <li>e. City Standard ADA wheelchair ramps</li> <li>f. Video detection on existing (or new, if required)</li> <li>g. Mast arm poles, full activation (where applicable)</li> <li>h. Polara Push buttons (full activation)</li> <li>i. Bicycle detection (full activation)</li> <li>j. Pull boxes</li> <li>k. Signal Interconnect and communication with trenching (where applicable), or through existing conduit (where applicable), 600 feet maximum</li> <li>l. Conduit replacement contingency</li> <li>m. Fiber switch</li> <li>n. PTZ camera (where applicable)</li> <li>o. Transit Signal Priority (TSP) equipment consistent with other signals along corridor</li> <li>p. Signal timing plans for the signals in the coordination group</li> <li>q. Bi-directional curb ramps (where feasible, and if project is on a street corner)</li> <li>r. Upgrade ramps on receiving curb (where feasible, and if project is on a street corner)</li> </ol>			
<p><b>SCA-TRANS-4: Transportation and Parking Demand Management (#79).</b></p> <p><b>a. Transportation and Parking Demand Management (TDM) Plan Required</b></p> <p>The project applicant shall submit a Transportation and Parking Demand Management (TDM) Plan for review and approval by the City.</p> <ol style="list-style-type: none"> <li>i. The goals of the TDM Plan shall be the following: <ul style="list-style-type: none"> <li>• Reduce vehicle traffic and parking demand generated by the project to the maximum extent practicable.</li> <li>• Achieve the following project vehicle trip reductions (VTR):</li> </ul> </li> </ol>	Prior to approval of construction-related permit	Bureau of Planning	N/A

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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<ul style="list-style-type: none"> <li>o Projects generating 50-99 net new a.m. or p.m. peak hour vehicle trips: 10 percent VTR</li> <li>o Projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips: 20 percent VTR</li> <li>• Increase pedestrian, bicycle, transit, and carpool/vanpool modes of travel. All four modes of travel shall be considered, as appropriate.</li> <li>• Enhance the City's transportation system, consistent with City policies and programs.</li> </ul> <p>ii. The TDM Plan should include the following:</p> <ul style="list-style-type: none"> <li>• Baseline existing conditions of parking and curbside regulations within the surrounding neighborhood that could affect the effectiveness of TDM strategies, including inventory of parking spaces and occupancy if applicable.</li> <li>• Proposed TDM strategies to achieve VTR goals (see below).</li> </ul> <p>iii. For employers with 100 or more employees at the subject site, the TDM Plan shall also comply with the requirements of Oakland Municipal Code Chapter 10.68 Employer-Based Trip Reduction Program.</p> <p>iv. The following TDM strategies <b>must</b> be incorporated into a TDM Plan based on a project location or other characteristics. When required, these mandatory strategies should be identified as a credit toward a project's VTR. <i>[See additional table below]</i></p> <p>v. Other TDM strategies to consider include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Inclusion of additional long-term and short-term bicycle parking that meets the design standards set forth in chapter five of the Bicycle Master Plan and the Bicycle Parking Ordinance (chapter 17.117 of the Oakland Planning Code), and shower and locker facilities in commercial developments that exceed the requirement.</li> <li>• Construction of and/or access to bikeways per the Bicycle Master Plan; construction of priority bikeways, on-site signage and bike lane striping.</li> <li>• Installation of safety elements per the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.) to encourage convenient and safe crossing at arterials, in addition to safety elements required to address safety impacts of the project.</li> <li>• Installation of amenities such as lighting, street trees, and trash receptacles per the Pedestrian Master Plan, the Master Street Tree List and Tree Planting Guidelines (which can be viewed at <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf</a> and <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf</a>, respectively)</li> </ul>			

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p>and any applicable streetscape plan.</p> <ul style="list-style-type: none"> <li>• Construction and development of transit stops/shelters, pedestrian access, way finding signage, and lighting around transit stops per transit agency plans or negotiated improvements.</li> <li>• Direct on-site sales of transit passes purchased and sold at a bulk group rate (through programs such as AC Transit Easy Pass or a similar program through another transit agency).</li> <li>• Provision of a transit subsidy to employees or residents, determined by the project applicant and subject to review by the City, if employees or residents use transit or commute by other alternative modes.</li> <li>• Provision of an ongoing contribution to transit service to the area between the project and nearest mass transit station prioritized as follows: 1) Contribution to AC Transit bus service; 2) Contribution to an existing area shuttle service; and 3) Establishment of new shuttle service. The amount of contribution (for any of the above scenarios) would be based upon the cost of establishing new shuttle service (Scenario 3).</li> <li>• Guaranteed ride home program for employees, either through 511.org or through separate program.</li> <li>• Pre-tax commuter benefits (commuter checks) for employees.</li> <li>• Free designated parking spaces for on-site car-sharing program (such as City Car Share, Zip Car, etc.) and/or car-share membership for employees or tenants.</li> <li>• On-site carpooling and/or vanpool program that includes preferential (discounted or free) parking for carpools and vanpools.</li> <li>• Distribution of information concerning alternative transportation options.</li> <li>• Parking spaces sold/leased separately for residential units. Charge employees for parking, or provide a cash incentive or transit pass alternative to a free parking space in commercial properties.</li> <li>• Parking management strategies including attendant/valet parking and shared parking spaces.</li> <li>• Requiring tenants to provide opportunities and the ability to work off-site.</li> <li>• Allow employees or residents to adjust their work schedule in order to complete the basic work requirement of five eight-hour workdays by adjusting their schedule to reduce vehicle trips to the worksite (e.g., working four, ten-hour days; allowing employees to work from home two days per week).</li> <li>• Provide or require tenants to provide employees with staggered work hours involving a shift in the set work hours of all employees at the workplace</li> </ul>			

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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<p>or flexible work hours involving individually determined work hours.</p> <p>The TDM Plan shall indicate the estimated VTR for each strategy, based on published research or guidelines where feasible. For TDM Plans containing ongoing operational VTR strategies, the Plan shall include an ongoing monitoring and enforcement program to ensure the Plan is implemented on an ongoing basis during project operation. If an annual compliance report is required, as explained below, the TDM Plan shall also specify the topics to be addressed in the annual report.</p>			
<p><b>b. TDM Implementation – Physical Improvements</b></p> <p>For VTR strategies involving physical improvements, the project applicant shall obtain the necessary permits/approvals from the City and install the improvements prior to the completion of the project.</p>	Prior to building permit final	Bureau of Building	Bureau of Building
<p><b>c. TDM Implementation – Operational Strategies</b></p> <p>For projects that generate 100 or more net new a.m. or p.m. peak hour vehicle trips and contain ongoing operational VTR strategies, the project applicant shall submit an annual compliance report for the first five years following completion of the project (or completion of each phase for phased projects) for review and approval by the City. The annual report shall document the status and effectiveness of the TDM program, including the actual VTR achieved by the project during operation. If deemed necessary, the City may elect to have a peer review consultant, paid for by the project applicant, review the annual report. If timely reports are not submitted and/or the annual reports indicate that the project applicant has failed to implement the TDM Plan, the project will be considered in violation of the Conditions of Approval and the City may initiate enforcement action as provided for in these Conditions of Approval. The project shall not be considered in violation of this Condition if the TDM Plan is implemented but the VTR goal is not achieved.</p>	Ongoing	Department of Transportation	Department of Transportation
<p><b>SCA-TRANS-5: Traffic Impact Fee (#80).</b></p> <p>The project applicant shall comply with the requirements of the City of Oakland Transportation Impact Fee Ordinance (chapter 15.74 of the Oakland Municipal Code).</p>	Prior to Issuance of a Building Permit	Bureau of Building	N/A
<p><b>SCA-TRANS-6: Plug-In Electric Vehicle (PEV) Charging Infrastructure (#83).</b></p> <p><b>a. PEV-Ready Parking Spaces</b></p> <p>The applicant shall submit, for review and approval of the Building Official and Zoning Manager, plans that show the location of parking spaces equipped with full electrical circuits designated for future PEV charging (i.e. "PEV-Ready") per the requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-Ready parking spaces.</p>	Prior to Issuance of a Building Permit	Bureau of Building	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
	When Required	Initial Approval	Monitoring/ Inspection
<p><b>b. PEV-Capable Parking Spaces</b> The applicant shall submit, for review and approval of the Building Official, plans that show the location of inaccessible conduit to supply PEV-capable parking spaces per the requirements of Chapter 15.04 of the Oakland Municipal Code. Building electrical plans shall indicate sufficient electrical capacity to supply the required PEV-capable parking spaces.</p>	Prior to Issuance of a Building Permit	Bureau of Building	Bureau of Building
<p><b>c. ADA-Accessible Spaces</b> The applicant shall submit, for review and approval of the Building Official, plans that show the location of future accessible EV parking spaces as required under Title 24 Chapter 11B Table 11B-228.3.2.1, and specify plans to construct all future accessible EV parking spaces with appropriate grade, vertical clearance, and accessible path of travel to allow installation of accessible EV charging station(s).</p>	Prior to Issuance of a Building Permit	Bureau of Building	Bureau of Building
<b>Utilities and Service Systems</b>			
<p><b>SCA-UTIL-1: Sanitary Sewer System (#89).</b> The project applicant shall prepare and submit a Sanitary Sewer Impact Analysis to the City for review and approval in accordance with the City of Oakland Sanitary Sewer Design Guidelines. The Impact Analysis shall include an estimate of pre-project and post-project wastewater flow from the project site. In the event that the Impact Analysis indicates that the net increase in project wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer system, the project applicant shall pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system.</p>	Prior to approval of construction-related permit	Public Works Department, Department of Engineering and Construction	N/A
<p><b>SCA-UTIL-2: Storm Drain System (#90).</b> The project storm drainage system shall be designed in accordance with the City of Oakland's Storm Drainage Design Guidelines. To the maximum extent practicable, peak stormwater runoff from the project site shall be reduced by at least 25 percent compared to the pre-project condition.</p>	Prior to approval of construction-related permit	Bureau of Building	Bureau of Building
<p><b>SCA-UTIL-3: Recycling Collection and Storage Space (#86).</b> The project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two (2) cubic feet of storage and collection space per residential unit is required, with a minimum of ten (10) cubic feet. For nonresidential projects, at least two (2) cubic feet of storage and collection space per 1,000 square feet of building floor area is required, with a minimum of ten (10) cubic feet.</p>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building
<p><b>SCA-UTIL-4: Construction and Demolition Waste Reduction and Recycling (#84).</b> The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the</p>	Prior to approval of construction-related permit	Public Works Department, Environmental	Public Works Department, Environmental

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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<p>Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at <a href="http://www.greenhalosystems.com">www.greenhalosystems.com</a> or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.</p>		Services Division	Services Division
<p><b>SCA-UTIL-5: <i>Underground Utilities (#85).</i></b> The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&amp;E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.</p>	During construction	N/A	Bureau of Building
<p><b>SCA-UTIL-6: <i>Green Building Requirements (#87).</i></b> <b>a. <i>Compliance with Green Building Requirements During Plan-Check</i></b></p> <p>The project applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the City of Oakland Green Building Ordinance (chapter 18.02 of the Oakland Municipal Code).</p> <p>i. The following information shall be submitted to the City for review and approval with the application for a building permit:</p> <ul style="list-style-type: none"> <li>• Documentation showing compliance with Title 24 of the current version of the California Building Energy Efficiency Standards.</li> <li>• Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.</li> <li>• Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.</li> <li>• Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (ii) below.</li> <li>• Copy of the signed statement by the Green Building Certifier approved during the review of the Planning</li> </ul>	Prior to approval of construction-related permit	Bureau of Building	N/A

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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<p>and Zoning permit that the project complied with the requirements of the Green Building Ordinance.</p> <ul style="list-style-type: none"> <li>Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.</li> <li>Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.</li> </ul> <p>ii. The set of plans in subsection (i) shall demonstrate compliance with the following:</p> <ul style="list-style-type: none"> <li>CALGreen mandatory measures.</li> <li>All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Bureau of Planning that shows the previously approved points that will be eliminated or substituted.</li> <li>The required green building point minimums in the appropriate credit categories.</li> </ul>			
<p><b>b. Compliance with Green Building Requirements During Construction</b></p> <p>The project applicant shall comply with the applicable requirements of CALGreen and the Oakland Green Building Ordinance during construction of the project.</p> <p>The following information shall be submitted to the City for review and approval:</p> <ol style="list-style-type: none"> <li>Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.</li> <li>Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.</li> <li>Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.</li> </ol>	During construction	N/A	Bureau of Building
<p><b>c. Compliance with Green Building Requirements After Construction</b></p> <p>Prior to the finalizing the Building Permit, the Green Building Certifier shall submit the appropriate documentation to City staff and attain the minimum required point level.</p>	Prior to Final Approval	Bureau of Planning	Bureau of Building
<p><b>SCA-UTIL-7: Water Efficient Landscape Ordinance (WELO) (#92).</b></p> <p>The project applicant shall comply with California's Water Efficient Landscape Ordinance (WELO) in order to reduce landscape water usage. For any landscape project with an</p>	Prior to approval of construction-related permit	Bureau of Planning	Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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<p>aggregate (total noncontiguous) landscape area equal to 2,500 sq. ft. or less. The project applicant may implement either the Prescriptive Measures or the Performance Measures, of, and in accordance with the California's Model Water Efficient Landscape Ordinance. For any landscape project with an aggregate (total noncontiguous) landscape area over 2,500 sq. ft., the project applicant shall implement the Performance Measures in accordance with the WELO.</p> <p>Prescriptive Measures: Prior to construction, the project applicant shall submit documentation showing compliance with Appendix D of California's Model Water Efficient Landscape Ordinance (see website below starting on page 23):</p> <p><a href="http://www.water.ca.gov/wateruseefficiency/landscapeordinance/docs/Title%203%20extract%20-%20Official%20CCR%20pages.pdf">http://www.water.ca.gov/wateruseefficiency/landscapeordinance/docs/Title%203%20extract%20-%20Official%20CCR%20pages.pdf</a></p> <p>Performance Measures: Prior to construction, the project applicant shall prepare and submit a Landscape Documentation Package for review and approval, which includes the following:</p> <p>a. Project</p> <ol style="list-style-type: none"> <li>i. Date,</li> <li>ii. Applicant and property owner name,</li> <li>iii. Project address,</li> <li>iv. Total landscape area,</li> <li>v. Project type (new, rehabilitated, cemetery, or home owner installed),</li> <li>vi. Water supply type and water purveyor,</li> <li>vii. Checklist of documents in the package, and,</li> <li>viii. Applicant signature and date with the statement: "I agree to comply with the requirements of the water efficient landscape ordinance and submit a complete Landscape Documentation Package."</li> </ol> <p>b. Water Efficient Landscape Worksheet</p> <ol style="list-style-type: none"> <li>i. Hydrozone Information Table</li> <li>ii. Water Budget Calculations with Maximum Applied Water Allowance (MAWA) and Estimated Total Water Use</li> </ol> <p>c. Soil Management Report</p> <p>d. Landscape Design Plan</p> <p>e. Irrigation Design Plan, and</p> <p>f. Grading Plan</p> <p>Upon installation of the landscaping and irrigation systems, the Project applicant shall submit a Certificate of Completion and landscape and irrigation maintenance schedule for review and approval by the City. The Certificate of Compliance shall also be submitted to the local water purveyor and property owner or his or her designee.</p>			

Standard Conditions of Approval/Mitigation Measures	Implementation/Monitoring		
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For the specific requirements within the Water Efficient Landscape Worksheet, Soil Management Report, Landscape Design Plan, Irrigation Design Plan and Grading Plan, see the link below. <a href="http://www.water.ca.gov/wateruseefficiency/landscapeordnance/docs/Title%2023%20extract%20-%20Official%20CCR%20pages.pdf">http://www.water.ca.gov/wateruseefficiency/landscapeordnance/docs/Title%2023%20extract%20-%20Official%20CCR%20pages.pdf</a>			

Provided below is the table for SCA-TRANS-1: Transportation and Parking Demand Management (#80), section a. Transportation and Parking Demand Management (TDM) Plan Required, subsection iv.

Improvement	Required by code or when...
Bus boarding bulbs or islands	<ul style="list-style-type: none"> <li>A bus boarding bulb or island does not already exist and a bus stop is located along the project frontage; and/or</li> <li>A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb.</li> </ul>
Bus shelter	<ul style="list-style-type: none"> <li>A stop with no shelter is located within the project frontage, or</li> <li>The project is located within 0.10 miles of a flag stop with 25 or more boardings per day.</li> </ul>
Concrete bus pad	<ul style="list-style-type: none"> <li>A bus stop is located along the project frontage and a concrete bus pad does not already exist.</li> </ul>
Curb extensions or bulb-outs	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis.</li> </ul>
Implementation of a corridor-level bikeway improvement	<ul style="list-style-type: none"> <li>A buffered Class II or Class IV bikeway facility is in a local or county adopted plan within 0.10 miles of the project location; and</li> <li>The project would generate 500 or more daily bicycle trips.</li> </ul>
Implementation of a corridor-level transit capital improvement	<ul style="list-style-type: none"> <li>A high-quality transit facility is in a local or county adopted plan within 0.25 miles of the project location; and</li> <li>The project would generate 400 or more peak period transit trips.</li> </ul>
Installation of amenities such as lighting; pedestrian-oriented green infrastructure, trees, or other greening landscape; and trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan.	<ul style="list-style-type: none"> <li>Always required.</li> </ul>
Installation of safety improvements identified in the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.)	<ul style="list-style-type: none"> <li>When improvements are identified in the Pedestrian Master Plan along project frontage or at an adjacent intersection.</li> </ul>

Improvement	Required by code or when...
In-street bicycle corral	<ul style="list-style-type: none"> <li>A project includes more than 10,000 square feet of ground floor retail, is located along a Tier 1 bikeway, and on-street vehicle parking is provided along the project frontages.</li> </ul>
Intersection Improvements <sup>1</sup>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis.</li> </ul>
New sidewalk, curb ramps, curb and gutter meeting current City and ADA standards	<ul style="list-style-type: none"> <li>Always required.</li> </ul>
No monthly permits and establish minimum price floor for public parking <sup>2</sup>	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1000 sf. (commercial).</li> </ul>
Parking garage is designed with retrofit capability	<ul style="list-style-type: none"> <li>Optional if proposed parking ratio exceeds 1:1.25 (residential) or 1:1000 sf. (commercial).</li> </ul>
Parking space reserved for car share	<ul style="list-style-type: none"> <li>If a project is providing parking and a project is located within downtown. One car share space reserved for buildings between 50 – 200 units, then one car share space per 200 units.</li> </ul>
Paving, lane striping or restriping (vehicle and bicycle), and signs to midpoint of street section	<ul style="list-style-type: none"> <li>Typically required.</li> </ul>
Pedestrian crossing improvements	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis.</li> </ul>
Pedestrian-supportive signal changes <sup>3</sup>	<ul style="list-style-type: none"> <li>Identified as an improvement within operations analysis.</li> </ul>
Real-time transit information system	<ul style="list-style-type: none"> <li>A project frontage block includes a bus stop or BART station and is along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better.</li> </ul>
Relocating bus stops to far side	<ul style="list-style-type: none"> <li>A project is located within 0.10 mile of any active bus stop that is currently near-side.</li> </ul>
Signal upgrades <sup>4</sup>	<ul style="list-style-type: none"> <li>Project size exceeds 100 residential units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage abuts an intersection with signal infrastructure older than 15 years.</li> </ul>
Transit queue jumps	<ul style="list-style-type: none"> <li>Identified as a needed improvement within operations analysis of a project with frontage along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better.</li> </ul>
Trenching and placement of conduit for providing traffic signal interconnect	<ul style="list-style-type: none"> <li>Project size exceeds 100 units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage block is identified for signal interconnect improvements as part of a planned ITS improvement; and</li> <li>A major transit improvement is identified within operations analysis requiring traffic signal interconnect.</li> </ul>
Unbundled parking	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1.25 (residential).</li> </ul>

<sup>1</sup> Including but not limited to visibility improvements, shortening corner radii, pedestrian safety islands, accounting for pedestrian desire lines.

<sup>2</sup> May also provide a cash incentive or transit pass alternative to a free parking space in commercial properties.

<sup>3</sup> Including but not limited to reducing signal cycle lengths to less than 90 seconds to avoid pedestrian crossings against the signal, providing a leading pedestrian interval, provide a "scramble" signal phase where appropriate.

<sup>4</sup> Including typical traffic lights, pedestrian signals, bike actuated signals, transit-only signals

DUDLEY DECLARATION

**EXHIBIT B**

**From:** [Vollmann, Peterson](#)  
**To:** [Sara F. Dudley](#)  
**Cc:** [Payne, Catherine](#)  
**Subject:** RE: PLN 18-406  
**Date:** Monday, March 2, 2020 12:19:28 PM

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If you want the content in the links printed into the packet that goes to the Planning Commission then you need to provide a hard copy, otherwise they will be provided with the link citation as submitted with your appeal.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

---

**From:** Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]  
**Sent:** Monday, March 2, 2020 10:45 AM  
**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Cc:** Payne, Catherine <[CPayne@oaklandca.gov](mailto:CPayne@oaklandca.gov)>  
**Subject:** RE: PLN 18-406

Correct. At issue are documents which are identified by URL - weblinks to supporting documents, that are cited by ourselves and our experts. We typically put this sort of material on a flash drive or CD. Our comment letter and expert reports, and any exhibits to those, would be in print. I'm also available to discuss by phone if you would like.

Yours,  
Sara Dudley

---

**From:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Sent:** Monday, March 2, 2020 10:40 AM  
**To:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Cc:** Payne, Catherine <[CPayne@oaklandca.gov](mailto:CPayne@oaklandca.gov)>  
**Subject:** RE: PLN 18-406

When you are referring to links are you talking about sources of information that you are citing versus documents that you have had prepared?

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

---

**From:** Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]  
**Sent:** Monday, March 2, 2020 10:37 AM

**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Cc:** Payne, Catherine <[CPayne@oaklandca.gov](mailto:CPayne@oaklandca.gov)>  
**Subject:** RE: PLN 18-406

Thank you for the quick response. With all documents at the links attached, it would be over 500 pages. Also, our prior filed comments contained links as well, which are in the record and we had not planned on reattaching in print. Let us know if you would like those prior documents in hard copy.

Yours,  
Sara

---

**From:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Sent:** Monday, March 2, 2020 10:31 AM  
**To:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Cc:** Payne, Catherine <[CPayne@oaklandca.gov](mailto:CPayne@oaklandca.gov)>  
**Subject:** RE: PLN 18-406

Typically we get everything in a hard copy so we can reproduce it for the Planning Commission exactly as filed, and we also like to have everything including the appeal application on a thumb drive/CD as well so we can upload the electronic version. How many pages are we talking about?

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

---

**From:** Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]  
**Sent:** Monday, March 2, 2020 10:16 AM  
**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Subject:** PLN 18-406

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Mr. Vollmann,

With regard to appeals of planning decisions, would the City accept voluminous attachments and exhibits on a CD or flash drive, or must all attachments be provided in printed copies when delivered to your office? Please let us know as soon as possible.

Thank you.

Yours,  
Sara Dudley

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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DUDLEY DECLARATION

# EXHIBIT C

**From:** Sara F. Dudley  
**To:** [socialorders](#); David Garcia  
**Cc:** Sara F. Dudley; Lorrie J. LeLe  
**Subject:** 88 Grand Avenue filing today  
**Date:** Monday, March 2, 2020 12:42:00 PM  
**Attachments:** [Appeal Form Signed.pdf](#)  
[EXHIBIT B - 3-2-20.pdf](#)  
[EXHIBIT C - 3-2-20.pdf](#)  
[EXHIBIT D - 3-2-20.pdf](#)  
[EXHIBIT E - 3-2-20.pdf](#)  
[SUPPORTING MATERIALS CITED IN WEBLINKS.docx](#)

---

We are finalizing our letter, and Exhibit A, but in the meantime, please prepare the following which will need to be printed, 2 copies. Please note that it must be delivered by **4pm**. Call me directly if you have any issues. Please try to be there as soon as possible.

Attached to the Appeal Letter:

1. Appeal Form, attached
2. Check for \$1622.57 made out the City of Oakland, Department of Planning & Building ***you informed us that you can cut this check and bill us.***
3. Exhibit B, attached, January 6, 2020 Comment Letter and all expert reports & exhibits
4. Exhibit C, attached, Email from P. Vollmann
5. Exhibit D, Design Review Application
6. Exhibit E, Tier 4 specifications
7. "Supporting Materials..." This is a cover sheet. ***The supporting materials themselves are being sent in a separate email because they are large files, and I did not want this email to bounce.***

Please call if you have any questions.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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DUDLEY DECLARATION

# EXHIBIT D

**From:** [Sara F. Dudley](#)  
**To:** [John Jacques](#); [socalorders](#); [David Garcia](#)  
**Cc:** [Sara F. Dudley](#)  
**Subject:** Final documents for 88 Grand  
**Date:** Monday, March 2, 2020 1:51:36 PM  
**Attachments:** [4728-008j - Appeal Cover Letter.pdf](#)  
[EXHIBIT A - 3-2-20 .pdf](#)  
[4782-007j - Appeal - 88 Grand - Oakland \(3-2-20\).pdf](#)

---

Attached is:

1. Cover letter – print in color. This is the first document.
2. Appeal letter – print in color
3. Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful. Call me with questions. **Due at 4pm.** Thank you.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

---

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**From:** Sara F. Dudley  
**To:** John Jacques; socialorders; David Garcia  
**Cc:** Lorrie J. LeLe  
**Subject:** RE: Emailing: 88 Grand Supporting Dox.zip  
**Date:** Monday, March 2, 2020 1:11:00 PM

---

We are finalizing the letter itself and Exh. A now. In the meantime, you can start copying everything else and cut the check. Thank you!

-----Original Message-----

From: John Jacques <jjacques@countylegalsvc.com>  
Sent: Monday, March 2, 2020 1:10 PM  
To: Sara F. Dudley <sdudley@adamsbroadwell.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Yes - I got it Sarah..

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [mailto:sdudley@adamsbroadwell.com]  
Sent: Monday, March 2, 2020 1:09 PM  
To: John Jacques <jjacques@countylegalsvc.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Plus our prior email. Do you have it?

-----Original Message-----

From: John Jacques <jjacques@countylegalsvc.com>  
Sent: Monday, March 2, 2020 1:06 PM  
To: Sara F. Dudley <sdudley@adamsbroadwell.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Sara - is this everything?

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017

(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [mailto:[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)]  
Sent: Monday, March 2, 2020 1:04 PM  
To: socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
Cc: Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>; Lorrie J. LeLe <[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)>  
Subject: FW: Emailing: 88 Grand Supporting Dox.zip

Our email was rejected as undeliverable. I have created a shared folder for you on OneDrive with this material (OneDrive is like Dropbox). Please click here to access - <https://adamsbroadwell-my.sharepoint.com/:f/p/dweber/En5nTyh2P6dMoLlfMFjIN2oBKy4BYBcXbXVC35e0jNVbZw?e=VxcMnR>

Please let me know ASAP if you are having difficulty. Deadline to file is 4pm.

Thank you.

Sara

-----Original Message-----

From: Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
Sent: Monday, March 2, 2020 12:49 PM  
To: socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
Cc: Lorrie J. LeLe <[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)>; Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
Subject: Emailing: 88 Grand Supporting Dox.zip

Attached are the supporting documents, referenced in our immediately prior email.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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DUDLEY DECLARATION

**EXHIBIT E**

**From:** [Lorrie J. LeLe](mailto:Lorrie.J.LeLe)  
**To:** [Vollmann, Peterson; jmyres.oakplanningcommission@gmail.com; ifearnopc@gmail.com; NHegdeOPC@gmail.com; amandamonchamp@gmail.com; cmanusopc@gmail.com; tlimon.opc@gmail.com; SShiraziOPC@gmail.com; cpayne@oaklandca.gov; wgilchrist@oaklandnet.com; rmerkamp@oaklandca.gov](mailto:Vollmann.Peterson;jmyres.oakplanningcommission@gmail.com; ifearnopc@gmail.com; NHegdeOPC@gmail.com; amandamonchamp@gmail.com; cmanusopc@gmail.com; tlimon.opc@gmail.com; SShiraziOPC@gmail.com; cpayne@oaklandca.gov; wgilchrist@oaklandnet.com; rmerkamp@oaklandca.gov)  
**Cc:** [Sara F. Dudley](mailto:Sara.F.Dudley)  
**Subject:** Appeal of Zoning Manager Approval - 88 Grand Avenue Project (PLN 18-406) 4782  
**Date:** Monday, March 2, 2020 3:32:38 PM  
**Attachments:** [4728-008j - Appeal Cover Letter.pdf](#)  
[Appeal Form Signed.pdf](#)  
[4782-007j - Appeal - 88 Grand - Oakland \(3-2-20\).pdf](#)  
[EXHIBIT A - 3-2-20 .pdf](#)  
[EXHIBIT B - 3-2-20.pdf](#)  
[EXHIBIT C - 3-2-20.pdf](#)  
[EXHIBIT D - 3-2-20.pdf](#)  
[EXHIBIT E - 3-2-20.pdf](#)

---

On behalf of East Bay Residents for Responsible Development (also known as Oakland Residents for Responsible Development), attached please find:

1. Cover letter;
2. Appeal Form;
3. Appeal letter;
4. Exhibits A through E and their attachments.

Via hand delivery today, the Planning and Building Department will also receive three (3) printed copies of the attached, along with a check for \$1622.57, as well as additional documents under the cover of "Supporting Documents." The file size of the supporting documents is too large to attach to this email. Please let us know if you would like us to mail you a copy of the supporting documents on CD or flash drive, in addition to the printed copies that you will receive today.

If you have any questions, please contact Sara F. Dudley directly at [sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com), (916) 444-6201.

*Lorrie LeLe*

Legal Assistant

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Sacramento, CA 95814

[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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DUDLEY DECLARATION

**EXHIBIT F**

**From:** [Merkamp, Robert](#)  
**To:** [Lorrie J. LeLe](#)  
**Subject:** Read: Appeal of Zoning Manager Approval - 88 Grand Avenue Project (PLN 18-406) 4782  
**Date:** Tuesday, March 3, 2020 12:01:51 PM

---

Your message

To: Merkamp, Robert  
Subject: Appeal of Zoning Manager Approval - 88 Grand Avenue Project (PLN 18-406) 4782  
Sent: Monday, March 2, 2020 3:32:24 PM (UTC-08:00) Pacific Time (US & Canada)  
was read on Monday, March 2, 2020 3:40:05 PM (UTC-08:00) Pacific Time (US & Canada).

DUDLEY DECLARATION

**EXHIBIT G**

**From:** [Sara F. Dudley](#)  
**To:** [John Jacques](#); [socalorders](#)  
**Cc:** [Christina Caro](#)  
**Subject:** Re: Final documents for 88 Grand  
**Date:** Monday, March 2, 2020 9:06:31 PM

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I'm confirming our conversation from 6:30 tonight, that a runner hand-deliver the documents, including the check, at 8 AM, which is when the office opens, according to their website. Please note the appeal form has an area for the document to be file stamped. Since you have multiple copies of the appeal form, please see if they will file stamp a copy to you to return to us.

Also, please have your office to call me promptly when filed.

Before 9 AM I am available by cell phone, 415-307-4921.

Yours,  
Sara  
Get [Outlook for iOS](#)

---

**From:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Sent:** Monday, March 2, 2020 1:51:28 PM  
**To:** John Jacques <[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)>; [socalorders](#) <[socalorders@countylegalsvc.com](mailto:socalorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** Final documents for 88 Grand

Attached is:

1. Cover letter – print in color. This is the first document.
2. Appeal letter – print in color
3. Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful. Call me with questions. **Due at 4pm.** Thank you.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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are not the intended recipient, please contact the sender and delete all copies.

DUDLEY DECLARATION

**EXHIBIT H**

**From:** [Vollmann, Peterson](#)  
**To:** [Lorrie J. LeLe](#); [jmyres.oakplanningcommission@gmail.com](#); [jfearnopc@gmail.com](#); [NHegdeOPC@gmail.com](#); [amandamonchamp@gmail.com](#); [cmanusopc@gmail.com](#); [tlimon.opc@gmail.com](#); [SShiraziOPC@gmail.com](#); [Payne, Catherine](#); [Gilchrist, William](#); [Merkamp, Robert](#); [Manasse, Edward](#)  
**Cc:** [Sara F. Dudley](#); [Janet M. Laurain](#)  
**Subject:** RE: Appeal of Zoning Manager Approval - 88 Grand Avenue Project (PLN 18-406) 4782  
**Date:** Tuesday, March 3, 2020 9:03:24 AM  
**Attachments:** [RE 88 Grand Avenue Project - Request for copy of decision letter via email on day decision is released.msg](#)

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Lorrie-

I regret to inform you that the appeal was not officially filed before the 4pm deadline yesterday. A courier just arrived this morning and we informed him that the filing deadline was 4pm yesterday so we could not accept the filing. He stated that he had come at 10 til 5pm (4:50PM) yesterday afternoon, but the office was closed. This is why we clearly state the 4pm deadline on the last date to file in the decision letter since that is when our office closes to the public. Please find the attached e-mail that I had sent to Janet Laurain in your office with the decision letter attached. This was sent on the date of the decision as requested, and the decision letter clearly states the date and time that an appeal is required to be filed, which was March 2, 2020 by 4PM.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

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**From:** Lorrie J. LeLe [mailto:[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)]  
**Sent:** Monday, March 2, 2020 3:32 PM  
**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>; [jmyres.oakplanningcommission@gmail.com](mailto:jmyres.oakplanningcommission@gmail.com); [jfearnopc@gmail.com](mailto:jfearnopc@gmail.com); [NHegdeOPC@gmail.com](mailto:NHegdeOPC@gmail.com); [amandamonchamp@gmail.com](mailto:amandamonchamp@gmail.com); [cmanusopc@gmail.com](mailto:cmanusopc@gmail.com); [tlimon.opc@gmail.com](mailto:tlimon.opc@gmail.com); [SShiraziOPC@gmail.com](mailto:SShiraziOPC@gmail.com); [Payne, Catherine <CPayne@oaklandca.gov>](mailto:CPayne@oaklandca.gov); [Gilchrist, William <WGilchrist@oaklandca.gov>](mailto:WGilchrist@oaklandca.gov); [Merkamp, Robert <RMerkamp@oaklandca.gov>](mailto:RMerkamp@oaklandca.gov)  
**Cc:** [Sara F. Dudley <sdudley@adamsbroadwell.com>](mailto:sdudley@adamsbroadwell.com)  
**Subject:** Appeal of Zoning Manager Approval - 88 Grand Avenue Project (PLN 18-406) 4782

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

On behalf of East Bay Residents for Responsible Development (also known as Oakland Residents for Responsible Development), attached please find:

1. Cover letter;
2. Appeal Form;
3. Appeal letter;
4. Exhibits A through E and their attachments.

Via hand delivery today, the Planning and Building Department will also receive three (3) printed copies of the attached, along with a check for \$1622.57, as well as additional documents under the cover of "Supporting Documents." The file size of the supporting documents is too large to attach to this email. Please let us know if you would like us to mail you a copy of the supporting documents on CD or flash drive, in addition to the printed copies that you will receive today.

If you have any questions, please contact Sara F. Dudley directly at [sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com), (916) 444-6201.

*Louie LeLe*

Legal Assistant

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Sacramento, CA 95814

[lilele@adamsbroadwell.com](mailto:lilele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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# EXHIBIT 2

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**Declaration of Joe ("John") Jacques**

I, Joe ("John") Jacques, hereby declare:

1. I am employed by County Legal Services, in Los Angeles, California. I have personal knowledge of the information contained herein, and if called to testify, I could and would do so as set forth herein.

2. On March 2, 2020, at approximately 12:43 p.m., received an email that had been sent to County Legal ([socalorders@countylegal.com](mailto:socalorders@countylegal.com) and David Garcia, [dgarcia@countylegal.com](mailto:dgarcia@countylegal.com)) from Ms. Sara F. Dudley, an attorney at Adams Broadwell Joseph & Cardozo, representing East Bay Residents for Responsible Development ("EBRRD"). This email, without attachments, is attached hereto as **Exhibit A**. I receive emails at [socalorders@countylegal.com](mailto:socalorders@countylegal.com).

3. Ms. Dudley's email stated that she needed documents delivered to the City of Oakland that day ("Appeal" and related documents). Ms. Dudley's email at Exhibit A included a copy of the Appeal Form and Exhibits B to E of the Appeal. The email also asked County Legal to prepare a check for the Appeal filing fees. The email stated that the supporting documents were not attached, as they were voluminous (the "Supporting Materials"). The email stated "Please note that it must be delivered by **4pm**. Call me directly if you have any issues. Please try to be there as soon as possible." (Exhibit A, emphasis in original).

4. On March 2, 2020 at 1:04 pm, I received another email from Ms. Dudley, with a link to the Supporting Materials. I responded to that email at 1:06 pm and again at 1:10 pm, confirming that I had received everything sent by Ms. Dudley. This email exchange is attached hereto as **Exhibit B**.

5. Between 1:23 and 2:05pm, I emailed our local Oakland contractor, Ace Legal Services ("Ace"), to informing them of Ms. Dudley's delivery order, and attaching the documents to be printed and delivered. My email to Ace stated "It must be completed by **4:00 pm**." This email exchange is attached as **Exhibit C**.

6. At approximately 1:51 pm, I received a final email from Ms. Dudley attaching the remainder of the Appeal documents. This email stated, "Call me with questions. **Due at 4pm**." This email, without its attachments, is attached hereto as **Exhibit D**. I did not respond to this email.

DECLARATION OF JOE JACQUES

1       7. At approximately 3:00 pm on March 2, 2020, Ms. Dudley called me to inquire about the  
2 status of the document delivery. I told her that the documents were being printed at County Legal's  
3 Oakland office, by which I meant Ace. I told her that "everything was fine."

4       8. I recall that immediately *after* my phone call with Ms. Dudley, Mr. Rodriguez of Ace called  
5 me. He informed me that his office was having difficulty printing the documents. He informed me  
6 that he was concerned that he would not make the 4pm deadline. I informed him that he should do  
7 what he could, and that all documents needed to be delivered. I gave him permission to deliver  
8 after 4:00 pm, if necessary, to print all of the documents.

9       9. I did not inform Ms. Dudley of my phone call with Ace on March 2, 2020. I did not inform  
10 Ms. Dudley prior to the deadline that Ace was concerned about its ability to complete the print job  
11 on time. I did not inform Ms. Dudley that Ace might not make the 4pm deadline. I did not ask Ms.  
12 Dudley for alternate instructions, nor did I take any other steps to confirm my belief that the  
13 documents could be delivered after 4pm, even though this ran counter to Ms. Dudley's instructions.

14       10. At approximately 3:30 pm on March 2, 2020, Ms. Dudley called me again, to inquire about  
15 the status of the delivery. I recall that she asked if the runner in the Oakland Office had left to  
16 deliver the documents. I stated that I believed that the runner had just left.

17       11. A few minutes before 5pm, Ace called me and told me that they were at the City, but that  
18 the office was closed. At approximately 5:25 pm on March 2, 2020, I spoke with Ms. Dudley. I  
19 informed her that the documents had not been delivered. At approximately 6:30 pm on March 2,  
20 2020, I again spoke to Ms. Dudley. I clarified that the runner had arrived at the City at  
21 approximately 4:50 pm.

22       12. Ms. Dudley called me again at approximately 6:50 pm. She instructed me to have County  
23 Legal / Ace hand deliver the Appeal and related documents the next morning, March 3, 2020, as  
24 soon as the City offices opened at 8:00 am. She sent me an email reiterating these instructions. This  
25 email is attached hereto as **Exhibit E**. At approximately 7:03 pm, I sent an email to Ace, asking  
26 them to re-file the Appeal and related documents the next morning, at 8:00 am. This email is  
27 attached hereto as **Exhibit F**.

28  
DECLARATION OF JOE JACQUES

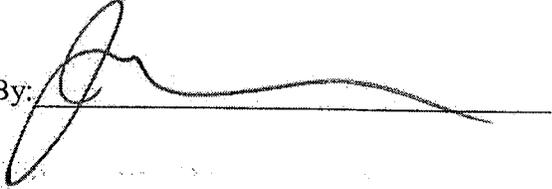
1 13. On March 3, 2020 at 9:30 am Ms. Dudley called me to discuss what had occurred on March  
2 2, 2020. The client's instructions to me were clear and precise, stating that documents had to be  
3 filed by 04:00pm. I told Ace to try their best to be there by 04:00pm., but to get there as soon as  
4 they could, in the hope the 04:00pm was not a hard deadline and that the facility was open later.  
5 On the March 3 telephone call, I also told Ms. Dudley about my conversation with Ace, in which I  
6 had authorized Ace to deliver the documents to the City after 4pm.

7 14. I was very busy on March 2, 2020, and do not recall why I made this mistake. I also do not  
8 recall why I told Ms. Dudley that Ace would make the 4pm deadline, when, in fact, I had reason to  
9 believe to that Ace might miss the deadline. I did not communicate this to her until the following  
10 day, March 3, 2020. I also did not ask Ms. Dudley for updated instructions regarding the delivery  
11 in light of Ace's concern that it would not meet the 4:00 pm deadline.

12 I declare under penalty of perjury under the laws of the State of California, that the  
13 foregoing is true and correct.

14 Executed in Los Angeles, California.

15  
16 Dated: 3-11-20

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19 By:  \_\_\_\_\_  
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DECLARATION OF JOE JACQUES

Jacques Declaration

# **EXHIBIT A**

**From:** Sara F. Dudley  
**To:** [socalorders](#); David Garcia  
**Cc:** Sara F. Dudley; Lorrie J. LeLe  
**Subject:** 88 Grand Avenue filing today  
**Date:** Monday, March 2, 2020 12:42:00 PM  
**Attachments:** [Appeal Form Signed.pdf](#)  
[EXHIBIT B - 3-2-20.pdf](#)  
[EXHIBIT C - 3-2-20.pdf](#)  
[EXHIBIT D - 3-2-20.pdf](#)  
[EXHIBIT E - 3-2-20.pdf](#)  
[SUPPORTING MATERIALS CITED IN WEBLINKS.docx](#)

---

We are finalizing our letter, and Exhibit A, but in the meantime, please prepare the following which will need to be printed, 2 copies. Please note that it must be delivered by **4pm**. Call me directly if you have any issues. Please try to be there as soon as possible.

Attached to the Appeal Letter:

1. Appeal Form, attached
2. Check for \$1622.57 made out the City of Oakland, Department of Planning & Building ***you informed us that you can cut this check and bill us.***
3. Exhibit B, attached, January 6, 2020 Comment Letter and all expert reports & exhibits
4. Exhibit C, attached, Email from P. Vollmann
5. Exhibit D, Design Review Application
6. Exhibit E, Tier 4 specifications
7. "Supporting Materials..." This is a cover sheet. ***The supporting materials themselves are being sent in a separate email because they are large files, and I did not want this email to bounce.***

Please call if you have any questions.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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Jacques Declaration

# **EXHIBIT B**

**From:** Sara F. Dudley  
**To:** John Jacques; socialorders; David Garcia  
**Cc:** Lorrie J. LeLe  
**Subject:** RE: Emailing: 88 Grand Supporting Dox.zip  
**Date:** Monday, March 2, 2020 1:11:00 PM

---

We are finalizing the letter itself and Exh. A now. In the meantime, you can start copying everything else and cut the check. Thank you!

-----Original Message-----

From: John Jacques <jjacques@countylegalsvc.com>  
Sent: Monday, March 2, 2020 1:10 PM  
To: Sara F. Dudley <sdudley@adamsbroadwell.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Yes - I got it Sarah..

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [mailto:sdudley@adamsbroadwell.com]  
Sent: Monday, March 2, 2020 1:09 PM  
To: John Jacques <jjacques@countylegalsvc.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Plus our prior email. Do you have it?

-----Original Message-----

From: John Jacques <jjacques@countylegalsvc.com>  
Sent: Monday, March 2, 2020 1:06 PM  
To: Sara F. Dudley <sdudley@adamsbroadwell.com>; socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Lorrie J. LeLe <ljlele@adamsbroadwell.com>  
Subject: RE: Emailing: 88 Grand Supporting Dox.zip

Sara - is this everything?

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017

(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [mailto:[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)]  
Sent: Monday, March 2, 2020 1:04 PM  
To: socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
Cc: Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>; Lorrie J. LeLe <[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)>  
Subject: FW: Emailing: 88 Grand Supporting Dox.zip

Our email was rejected as undeliverable. I have created a shared folder for you on OneDrive with this material (OneDrive is like Dropbox). Please click here to access - <https://adamsbroadwell-my.sharepoint.com/:f/p/dweber/En5nTyh2P6dMoLlfMFjIN2oBKv4BYBcXbXVC35e0jNVbZw?e=VxcMnR>

Please let me know ASAP if you are having difficulty. Deadline to file is 4pm.

Thank you.

Sara

-----Original Message-----

From: Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
Sent: Monday, March 2, 2020 12:49 PM  
To: socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
Cc: Lorrie J. LeLe <[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)>; Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
Subject: Emailing: 88 Grand Supporting Dox.zip

Attached are the supporting documents, referenced in our immediately prior email.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

---

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Jacques Declaration

# EXHIBIT C

---

From: John Jacques  
Sent: Monday, March 2, 2020 1:23 PM  
To: ACE Attorney Service-Bay Area <sf@acelegal.com>  
Subject: FW: Emailing: 88 Grand Supporting Dox.zip

2nd e-mail - see link below..

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]  
Sent: Monday, March 2, 2020 1:04 PM  
To: socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Sara F. Dudley <sdudley@adamsbroadwell.com>; Lorrie J. LeLe <ljele@adamsbroadwell.com>  
Subject: FW: Emailing: 88 Grand Supporting Dox.zip

Our email was rejected as undeliverable. I have created a shared folder for you on OneDrive with this material (OneDrive is like Dropbox). Please click here to access - <https://adamsbroadwell-my.sharepoint.com/:f:/p/dweber/En5nTyh2P6dMoLIfMFjIN2oBKy4BYBcXbXVC35e0jNVbZw?e=VxcMnR>

---

Please let me know ASAP if you are having difficulty. Deadline to file is 4pm.

Thank you.

Sara

-----Original Message-----

From: Sara F. Dudley <sdudley@adamsbroadwell.com>

Sent: Monday, March 2, 2020 12:49 PM

ontain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

**From:** [John Jacques](#)  
**To:** [Sara F. Dudley](#)  
**Subject:** FW: 88 Grand Avenue filing today  
**Date:** Monday, March 9, 2020 1:33:07 PM  
**Attachments:** [image001.png](#)  
[Appeal Form Signed.pdf](#)  
[EXHIBIT B - 3-2-20.pdf](#)  
[EXHIBIT C - 3-2-20.pdf](#)  
[EXHIBIT D - 3-2-20.pdf](#)  
[EXHIBIT E - 3-2-20.pdf](#)  
[SUPPORTING MATERIALS CITED IN WEBLINKS.docx](#)  
[SKM\\_65420030214450.pdf](#)

---

See below



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

---

**From:** John Jacques  
**Sent:** Monday, March 2, 2020 1:22 PM  
**To:** ACE Attorney Service-Bay Area <[sf@acelegal.com](mailto:sf@acelegal.com)>  
**Subject:** FW: 88 Grand Avenue filing today

This is the 1<sup>st</sup> of 3 x e-mails

Please read the instructions below

It must be completed by 04:00pm

Our form is attached..



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017

(213) 327-0014

[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

---

**From:** Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]

**Sent:** Monday, March 2, 2020 12:43 PM

**To:** socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>

**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>; Lorrie J. LeLe <[ljllele@adamsbroadwell.com](mailto:ljllele@adamsbroadwell.com)>

**Subject:** 88 Grand Avenue filing today

We are finalizing our letter, and Exhibit A, but in the meantime, please prepare the following which will need to be printed, 2 copies. Please note that it must be delivered by **4pm**. Call me directly if you have any issues. Please try to be there as soon as possible.

Attached to the Appeal Letter:

1. Appeal Form, attached
2. Check for \$1622.57 made out the City of Oakland, Department of Planning & Building ***you informed us that you can cut this check and bill us.***
3. Exhibit B, attached, January 6, 2020 Comment Letter and all expert reports & exhibits
4. Exhibit C, attached, Email from P. Vollmann
5. Exhibit D, Design Review Application
6. Exhibit E, Tier 4 specifications
7. "Supporting Materials..." This is a cover sheet. ***The supporting materials themselves are being sent in a separate email because they are large files, and I did not want this email to bounce.***

Please call if you have any questions.

Sara F. Dudley

Associate

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Tel: (916) 444-6201, ext. 17

Fax: (916) 444-6209

[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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**From:** [John Jacques](#)  
**To:** [Sara F. Dudley](#)  
**Subject:** FW: Final documents for 88 Grand  
**Date:** Monday, March 9, 2020 1:33:30 PM  
**Attachments:** [image001.png](#)  
[4728-008i - Appeal Cover Letter.pdf](#)  
[EXHIBIT A - 3-2-20 .pdf](#)  
[4782-007j - Appeal - 88 Grand - Oakland \(3-2-20\).pdf](#)

---

See below



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

---

**From:** John Jacques  
**Sent:** Monday, March 2, 2020 2:05 PM  
**To:** ACE Attorney Service-Bay Area <[sf@acelegal.com](mailto:sf@acelegal.com)>  
**Subject:** FW: Final documents for 88 Grand

Here the finale e-mail – which needs to be printed in color..

Joe



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

---

Attached is:

- 1) Cover letter – print in color. This is the first document.
- 2) Appeal letter – print in color
- 3) Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful.  
Call me with questions. **Due at 4pm.** Thank you.

Jacques Declaration

# EXHIBIT D

**From:** [Sara F. Dudley](#)  
**To:** [John Jacques](#); [socialorders](#); [David Garcia](#)  
**Cc:** [Sara F. Dudley](#)  
**Subject:** Final documents for 88 Grand  
**Date:** Monday, March 2, 2020 1:51:36 PM  
**Attachments:** [4728-008i - Appeal Cover Letter.pdf](#)  
[EXHIBIT A - 3-2-20 .pdf](#)  
[4782-007j - Appeal - 88 Grand - Oakland \(3-2-20\).pdf](#)

---

Attached is:

1. Cover letter – print in color. This is the first document.
2. Appeal letter – print in color
3. Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful. Call me with questions. **Due at 4pm.** Thank you.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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Jacques Declaration

# EXHIBIT E

**From:** [Sara F. Dudley](#)  
**To:** [John Jacques](#); [socalorders](#)  
**Cc:** [Christina Caro](#)  
**Subject:** Re: Final documents for 88 Grand  
**Date:** Monday, March 2, 2020 9:06:31 PM

---

I'm confirming our conversation from 6:30 tonight, that a runner hand-deliver the documents, including the check, at 8 AM, which is when the office opens, according to their website. Please note the appeal form has an area for the document to be file stamped. Since you have multiple copies of the appeal form, please see if they will file stamp a copy to you to return to us.

Also, please have your office to call me promptly when filed.

Before 9 AM I am available by cell phone, 415-307-4921.

Yours,  
Sara  
Get [Outlook for iOS](#)

---

**From:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Sent:** Monday, March 2, 2020 1:51:28 PM  
**To:** John Jacques <[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)>; [socalorders](#) <[socalorders@countylegalsvc.com](mailto:socalorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** Final documents for 88 Grand

Attached is:

1. Cover letter – print in color. This is the first document.
2. Appeal letter – print in color
3. Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful. Call me with questions. **Due at 4pm.** Thank you.

Sara F. Dudley  
Associate  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Tel: (916) 444-6201, ext. 17  
Fax: (916) 444-6209  
[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

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are not the intended recipient, please contact the sender and delete all copies.

Jacques Declaration

# EXHIBIT F

**From:** John Jacques  
**Sent:** Monday, March 2, 2020 7:03 PM  
**To:** ACE-Los Angeles <dtla@acelegal.com>  
**Subject:** Re: 1835564

The above job number is a filing at the City of Oakland – it was supposed to be filed by 04:00pm today, but because of how voluminous the documents were your Oakland office was unable to get there in time.

I have sent them a message to the effect that they need to be there when this office opens at 08:00am.

If there is way that you can follow up and make sure this happens, it would pretty much save the day.

It is very important to this client, if someone could get in touch with the runner and make sure he is there at 08:00am sharp.

Thanks again - Joe



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**

**County Legal Attorney Service**

816 S. Figueroa Street, #100

Los Angeles, CA 90017

(213) 327-0014

[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

# EXHIBIT 3

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**Declaration of Alan Rodriguez**

I, Alan Rodriguez, hereby declare:

1. I am employed by Ace Attorney Service ("Ace") in Oakland, California. I have personal knowledge of the information contained herein, and if called to testify, I could and would do so as set forth herein.

2. On March 2, 2020, between 1:23 and 2:05pm, I received emails from Joe Jacques at County Legal Services ("County Legal"). The emails informed me that an attorney from County Legal's client, Adams Broadwell Joseph & Cardozo ("ABJC"), needed documents delivered to the City of Oakland's Planning and Building Department that day. The emails from County Legal attached the Appeal and related documents prepared by ABJC on behalf of their client, East Bay Residents for Responsible Development. The documents included approximately about 2328 pages of supporting material ("Supporting Documents"). We were instructed to prepare three copies of the documents for delivery to the City. The emails stated that the delivery deadline was 4pm. This email exchange is attached as **Exhibit A**.

3. At approximately 3:00 pm, I called Mr. Jacques. I informed him that Ace was having difficulty printing the documents due to the voluminous Supporting Documents. I informed him that my printer gives an estimated completion time, and based on the time shown on the printer, I did not think I would not make the 4pm deadline. I asked him what I should do. Mr. Jacques told me to do what I could, and that all documents needed to be delivered. Mr. Jacques then gave me approval to deliver the documents by 5pm at the latest.

4. I did not contact Ms. Dudley directly at any time on March 2, 2020. Mr. Jacques of County Legal was my point of contact for this job.

5. A few minutes before 5pm on March 2, 2020, I called Mr. Jacques and told him that my runner, Mr. Michael Scott McKim, was at the building, but that the Planning and Building office was closed. At approximately 7 pm, I received an email from Mr. Jacques, asking that I attempt to refile at 8:00 am on March 3, 2020. This email exchange is attached hereto as **Exhibit B**.

DECLARATION OF ALAN RODRIGUEZ

1       6. On March 3, 2020, at approximately 8:20 am , Mr. McKim returned to the Oakland  
2 Planning and Building Department to redeliver the Appeal documents. Upon arrival, City staff  
3 rejected the delivery.

4       7. On March 3, 2020 at approximately 10:45 am, I spoke with Ms. Dudley. I informed her that  
5 I understood that her instructions were that the Appeal had to be delivered to the City by 4pm. The  
6 Ace runner who attempted delivery at the City on March 2, 2020 was Michael Scott McKim. I  
7 observed Mr. McKim leaving our office at 4:50 pm. Our office is a few blocks from City Hall.  
8 Mr. McKim arrived at the City shortly before 5pm. I told Ms. Dudley that I did not know why Mr.  
9 Jacques, and later the County Legal dispatcher, told her that the runner was out for delivery at 3:30  
10 and again at 4:15 pm, when in fact, Mr. Kim was still in the office during those times.

11       I declare under penalty of perjury under the laws of the State of California, that the foregoing is  
12 true and correct.

13                       Executed in Oakland, California.

14  
15                       Dated: 3/11/20

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17  
18                       By: Alan Rodriguez  
19                                       Alan Rodriguez

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Rodriguez Declaration

# EXHIBIT A

---

From: John Jacques  
Sent: Monday, March 2, 2020 1:23 PM  
To: ACE Attorney Service-Bay Area <sf@acelegal.com>  
Subject: FW: Emailing: 88 Grand Supporting Dox.zip

2nd e-mail - see link below..

Joe (John) Jacques  
County Legal Attorney Service  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
jjacques@countylegalsvc.com

-----Original Message-----

From: Sara F. Dudley [mailto:[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)]  
Sent: Monday, March 2, 2020 1:04 PM  
To: socialorders <socialorders@countylegalsvc.com>; David Garcia <dgarcia@countylegalsvc.com>  
Cc: Sara F. Dudley <sdudley@adamsbroadwell.com>; Lorrie J. LeLe <ljlle@adamsbroadwell.com> Subject:  
FW: Emailing: 88 Grand Supporting Dox.zip

Our email was rejected as undeliverable. I have created a shared folder for you on OneDrive with this material (OneDrive is like Dropbox). Please click here to access - <https://adamsbroadwell-my.sharepoint.com/:f/p/dweber/En5nTyh2P6dMoLlfMFjIN2oBKy4BYBcXbXVC35e0jNVbZw?e=VxcMnR>

---

Please let me know ASAP if you are having difficulty. Deadline to file is 4pm.

Thank you.

Sara

-----Original Message-----

From: Sara F. Dudley <sdudley@adamsbroadwell.com>

Sent: Monday, March 2, 2020 12:49 PM

ontain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

**From:** [John Jacques](#)  
**To:** [Sara F. Dudley](#)  
**Subject:** FW: 88 Grand Avenue filing today  
**Date:** Monday, March 9, 2020 1:33:07 PM  
**Attachments:** [image001.png](#)  
[Appeal Form Signed.pdf](#)  
[EXHIBIT B - 3-2-20.pdf](#)  
[EXHIBIT C - 3-2-20.pdf](#)  
[EXHIBIT D - 3-2-20.pdf](#)  
[EXHIBIT E - 3-2-20.pdf](#)  
[SUPPORTING MATERIALS CITED IN WEBLINKS.docx](#)  
[SKM\\_65420030214450.pdf](#)

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See below



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**

**County Legal Attorney Service**

816 S. Figueroa Street, #100

Los Angeles, CA 90017

(213) 327-0014

[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

-

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**From:** John Jacques

**Sent:** Monday, March 2, 2020 1:22 PM

**To:** ACE Attorney Service-Bay Area <[sf@acelegal.com](mailto:sf@acelegal.com)>

**Subject:** FW: 88 Grand Avenue filing today

This is the 1<sup>st</sup> of 3 x e-mails

Please read the instructions below

It must be completed by 04:00pm

Our form is attached..



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

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Los Angeles, CA 90017

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---

**From:** Sara F. Dudley [<mailto:sdudley@adamsbroadwell.com>]

**Sent:** Monday, March 2, 2020 12:43 PM

**To:** socialorders <[socialorders@countylegalsvc.com](mailto:socialorders@countylegalsvc.com)>; David Garcia <[dgarcia@countylegalsvc.com](mailto:dgarcia@countylegalsvc.com)>

**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>; Lorrie J. LeLe <[ljele@adamsbroadwell.com](mailto:ljele@adamsbroadwell.com)>

**Subject:** 88 Grand Avenue filing today

We are finalizing our letter, and Exhibit A, but in the meantime, please prepare the following which will need to be printed, 2 copies. Please note that it must be delivered by **4pm**. Call me directly if you have any issues. Please try to be there as soon as possible.

Attached to the Appeal Letter:

1. Appeal Form, attached
2. Check for \$1622.57 made out the City of Oakland, Department of Planning & Building ***you informed us that you can cut this check and bill us.***
3. Exhibit B, attached, January 6, 2020 Comment Letter and all expert reports & exhibits
4. Exhibit C, attached, Email from P. Vollmann
5. Exhibit D, Design Review Application
6. Exhibit E, Tier 4 specifications
7. "Supporting Materials..." This is a cover sheet. ***The supporting materials themselves are being sent in a separate email because they are large files, and I did not want this email to bounce.***

Please call if you have any questions.

Sara F. Dudley

Associate

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Tel: (916) 444-6201, ext. 17

Fax: (916) 444-6209

[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)

---

This e-mail may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

**From:** [John Jacques](#)  
**To:** [Sara F. Dudley](#)  
**Subject:** FW: Final documents for 88 Grand  
**Date:** Monday, March 9, 2020 1:33:30 PM  
**Attachments:** [image001.png](#)  
[4728-008i - Appeal Cover Letter.pdf](#)  
[EXHIBIT A - 3-2-20 .pdf](#)  
[4782-007j - Appeal - 88 Grand - Oakland \(3-2-20\).pdf](#)

---

See below



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

-

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**From:** John Jacques  
**Sent:** Monday, March 2, 2020 2:05 PM  
**To:** ACE Attorney Service-Bay Area <[sf@acelegal.com](mailto:sf@acelegal.com)>  
**Subject:** FW: Final documents for 88 Grand

Here the finale e-mail – which needs to be printed in color..

Joe



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**  
**County Legal Attorney Service**  
816 S. Figueroa Street, #100  
Los Angeles, CA 90017  
(213) 327-0014  
[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

-

Attached is:

- 1) Cover letter – print in color. This is the first document.
- 2) Appeal letter – print in color
- 3) Exhibit A – print the letter itself in color, the attachments can be B&W

The Cover Letter lists the major categories of files, so should be helpful. Call me with questions. **Due at 4pm.** Thank you.

Rodriguez Declaration

# **EXHIBIT B**

**From:** John Jacques  
**Sent:** Monday, March 2, 2020 7:03 PM  
**To:** ACE-Los Angeles <dtla@acelegal.com>  
**Subject:** Re: 1835564

The above job number is a filing at the City of Oakland – it was supposed to be filed by 04:00pm today, but because of how voluminous the documents were your Oakland office was unable to get there in time.

I have sent them a message to the effect that they need to be there when this office opens at 08:00am.

If there is way that you can follow up and make sure this happens, it would pretty much save the day.

It is very important to this client, if someone could get in touch with the runner and make sure he is there at 08:00am sharp.

Thanks again - Joe



**COUNTY LEGAL**  
ATTORNEY SERVICE

---

**Joe (John) Jacques**

**County Legal Attorney Service**

816 S. Figueroa Street, #100

Los Angeles, CA 90017

(213) 327-0014

[jjacques@countylegalsvc.com](mailto:jjacques@countylegalsvc.com)

# EXHIBIT 4



**CITY OF OAKLAND  
APPEAL FORM  
FOR DECISION TO PLANNING COMMISSION, CITY  
COUNCIL OR HEARING OFFICER**

**PROJECT INFORMATION**

Case No. of Appealed Project: PLN 18-406  
 Project Address of Appealed Project: 88 Grand Avenue, Oakland CA  
 Assigned Case Planner/City Staff: Peterson Vollmann

**APPELLANT INFORMATION:**

Printed Name: Sara Dudley Phone Number: 916 444-6201  
 Mailing Address: 520 Capitol Mall, # 350 Alternate Contact Number: 650 589 1660  
 City/Zip Code Sacramento CA 95814 Representing: East Bay residents for Reg. Dev. / Oakland Residents for Reg. Dev.  
 Email: sdudley@adamsbroadwell.com

An appeal is hereby submitted on:

**AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

**YOU MUST INDICATE ALL THAT APPLY:**

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) \_\_\_\_\_

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) CEQA Exempting Addendum

(Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**     Granting an application to:    **OR**     Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) \_\_\_\_\_

---

**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

*See attached.*

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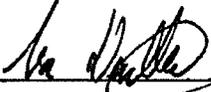


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**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)

  
\_\_\_\_\_  
Signature of Appellant or Representative of  
Appealing Organization

3/2/2020  
\_\_\_\_\_  
Date

**TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE**

APPEAL FEE: \$ \_\_\_\_\_

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

**Below For Staff Use Only**

Cashier's Receipt Stamp Below:



ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
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SO. SAN FRANCISCO OFFICE

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TEL: (650) 589-1660  
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DANIEL L. CARDOZO  
CHRISTINA M. CARO  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
AARON M. MESSING  
WILLIAM C. MUMBY  
CAMILLE G. STOUGH

MARC D. JOSEPH  
Of Counsel

\*Admitted in Colorado

March 2, 2020

**VIA HAND DELIVERY AND EMAIL**

Mr. Peterson Vollmann, Planner V  
Planning and Zoning Division of the  
Community and Economic  
Development Agency  
City of Oakland Bureau of Planning  
– Zoning Division  
250 Frank H. Ogawa Plaza, Suite  
2114  
Oakland, CA 94612-2031  
Email: [Pvollmann@oaklandca.gov](mailto:Pvollmann@oaklandca.gov)

Chair Jahmese Myres  
Members of the Planning Commission  
c/o City Clerk  
City of Oakland  
1 Frank H. Ogawa Plaza, 1st & 2nd Floors  
Oakland, CA 94612

**Email:**

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[SShiraziOPC@gmail.com](mailto:SShiraziOPC@gmail.com)

**VIA EMAIL ONLY**

Ms. Catherine Payne, Acting Dev. Planning Manager ([cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov))  
Mr. William Gilchrist, Director of City Planning ([WGilchrist@oaklandnet.com](mailto:WGilchrist@oaklandnet.com))  
Mr. Robert Merkamp, Zoning Manager ([Rmerkamp@oaklandca.gov](mailto:Rmerkamp@oaklandca.gov))

**VIA EMAIL ONLY**

Ms. Catherine Payne, Acting Dev. Planning Manager ([cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov))  
Mr. William Gilchrist, Director of City Planning ([WGilchrist@oaklandnet.com](mailto:WGilchrist@oaklandnet.com))  
Mr. Robert Merkamp, Zoning Manager ([Rmerkamp@oaklandca.gov](mailto:Rmerkamp@oaklandca.gov))

Re: **Appeal of Zoning Manager Approval, 88 Grand Avenue Project  
(PLN 18-406)**

Dear Mr. Vollmann, Commissioners, Ms. Payne, Mr. Gilchrist, Mr. Merkamp:  
Attached are the following:

4728-008j

March 2, 2020  
Page 2

1. Appeal form;
2. Check in the amount of \$1622.57;
3. Appeal Letter;
4. Exhibits A to E; and
5. Supporting Documentation.

With the exception of the check, three copies of these materials are attached. Please contact me with any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Dudley", written in a cursive style.

Sara Dudley

SFD:ljl

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

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ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
AARON M. MESSING  
WILLIAM C. MUMBY  
CAMILLE G. STOUGH

MARC D. JOSEPH  
Of Counsel

\*Admitted in Colorado

March 2, 2020

**VIA HAND DELIVERY AND EMAIL**

Mr. Peterson Vollmann, Planner V  
Planning and Zoning Division of the  
Community and Economic  
Development Agency  
City of Oakland Bureau of Planning  
– Zoning Division  
250 Frank H. Ogawa Plaza, Suite  
2114  
Oakland, CA 94612-2031  
Email: [Pvollmann@oaklandca.gov](mailto:Pvollmann@oaklandca.gov)

Chair Jahmese Myres  
Members of the Planning Commission  
c/o City Clerk  
City of Oakland  
1 Frank H. Ogawa Plaza, 1st & 2nd Floors  
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[amandamonchamp@gmail.com](mailto:amandamonchamp@gmail.com);

[cmanusopc@gmail.com](mailto:cmanusopc@gmail.com);

[tlimon.opc@gmail.com](mailto:tlimon.opc@gmail.com);

[SShiraziOPC@gmail.com](mailto:SShiraziOPC@gmail.com)

**VIA EMAIL ONLY**

Ms. Catherine Payne, Acting Dev. Planning Manager ([cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov))  
Mr. William Gilchrist, Director of City Planning ([WGilchrist@oaklandnet.com](mailto:WGilchrist@oaklandnet.com))  
Mr. Robert Merkamp, Zoning Manager ([Rmerkamp@oaklandca.gov](mailto:Rmerkamp@oaklandca.gov))

**Re: Appeal of Zoning Manager Approval, 88 Grand Avenue Project  
(PLN 18-406)**

Dear Mr. Vollmann, Commissioners, Ms. Payne, Mr. Gilchrist, Mr. Merkamp:

We are writing on behalf of East Bay Residents for Responsible Development (“EBRRD”), which is also known as Oakland Residents for Responsible Development (“Oakland Residents”) to appeal<sup>1</sup> the February 20, 2020 decision<sup>2</sup> by

<sup>1</sup> “Appeal.”

<sup>2</sup> “Letter of Decision.”

March 2, 2020

Page 2

the City of Oakland's Director of Planning<sup>3</sup> to approve the development at 88 Grand Avenue in Oakland, California ("City") proposed by KTG Architecture, 80 Grand MC, LLC (listed as Owner) and/or Seagate Properties.<sup>4</sup> This Appeal is taken from the following Director actions: 1) approval of Regular (Residential) Design Review; 2) approval of a Minor Conditional Use Permit for a Transfer of Development Rights;<sup>5</sup> 3) approval of Tentative Parcel Map;<sup>6</sup> 4) consideration and/or approval of a density bonus under State density bonus law, waiver for building height and parking concession; and 5) approval of an addendum to a previously certified EIR, and findings made for an exemption from further environmental review under the California Environmental Quality Act.<sup>7</sup> These actions are collectively referred to herein as the "Project."

This Appeal is made pursuant to the Oakland Planning Code,<sup>8</sup> Sections 17.136.080 (Design Review) and 17.134.060 (Minor CUP); 17.158.220 (Certain Environmental Determinations); the Oakland Municipal Code,<sup>9</sup> Section 16.04.100 (TPM),<sup>10</sup> and the CEQA Guidelines, Section 15185 (Administrative Appeals). Pursuant to the 2019-2020 Oakland Master Fee schedule and instructions provided

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<sup>3</sup> "Director." We note that the Zoning Manager's Public Notice for the Project states that the decision maker is the Zoning Manager, and it is our understanding that the Zoning Manager is Robert Merkamp. But, the Oakland Planning Code and Oakland Municipal Code provide that the decision maker for Regular Design Review and a Minor Conditional Use Permit is the Director of Planning, and it is our understanding that that person is William Gilchrist (see OPC, 17.136.80, directing appeals of regular design review decisions to the Planning Commission "after the date of the initial decision by the Director of City Planning" and OPC, § 17.134.060, stating same, with regard to appeal of a decision to grant a Minor Conditional Use Permit. Decisions on a Tentative Parcel Map are made by the Advisory Agency, under OMC, § 16.04.100). We further note that the Letter of Decision was signed by Acting Development Planning Manager, Catherine Payne. This Appeal is therefore taken from the individual and/or collective decisions of all of these City Staff members, collectively referred to as "Director," to approve the Project.

<sup>4</sup> Collectively, "Applicants."

<sup>5</sup> "Minor CUP" and "TDR."

<sup>6</sup> "TPM."

<sup>7</sup> Pub. Resources Code, § 21000 et seq. ("CEQA"); Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq. ("CEQA Guidelines").

<sup>8</sup> "OPC."

<sup>9</sup> "OMC."

<sup>10</sup> The *City of Oakland Appeal Form for Decision to Planning Commission, City Council or Hearing Officer* cites to OMC 16.304.100 concerning appeals of a decision relating to a TPM; however, the OMC does not contain such a provision. OMC, Section 16.04.100 concerns appeals of decisions under Title 16, Subdivisions, which title also contains the provisions concerning TPMs.

March 2, 2020

Page 3

in the Letter of Decision (“LOD”), enclosed are EBRRDs’ check in the amount of \$1622.57 and the appeal form provided by the City.

The Appeal incorporates our January 6, 2020 comments and expert comments on the Project,<sup>11</sup> which identified substantial deficiencies in the City’s 88 *Grand Avenue CEQA Analysis*<sup>12</sup> with regard to the City’s analysis of the Project’s air quality, public health, greenhouse gas (“GHG”), noise, traffic and transit impacts, and in the City’s analysis of the Project’s consistency with applicable land use plans and policies. We also prepared this Appeal with the assistance of air quality and greenhouse gas expert Paul E. Rosenfeld, Ph.D. of Soil Water Air Protection Enterprises, whose comments, CV and exhibits are incorporated by reference and attached hereto as **Exhibit A** (“February 2020 SWAPE Report”).

The Letter of Decision fails entirely to respond to EBRRD’s comments, and fails to correct any of the legal and factual deficiencies identified by EBRRD and its experts. For the reasons stated herein and in our prior comments, EBRRD urges the Planning Commission to grant this Appeal and remand the Project to City Staff to prepare an environmental impact report<sup>13</sup> for the Project. The Project should not be scheduled for a public hearing until these issues have been fully addressed.

## I. INTRODUCTION

### A. Project Description

The Applicants propose to develop a 35-story, 374-foot-high residential building (411 feet to the top of the mechanical structures) with 275 residential units, 1,000-square feet of ground-floor retail, and below-ground parking. The proposed Project would also include a diesel-powered emergency generator. The proposed Project would be located within the plan area for the Broadway Valdez District Specific Plan<sup>14</sup> in the D-BV-2 Broadway Valdez District Retail – 2 Commercial Zone.<sup>15</sup> The Addendum purports to evaluate the Project’s potential environmental impacts and consistency with an Environmental Impact Report prepared for the BVDSP.<sup>16</sup>

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<sup>11</sup> “January 2020 Comment Letter,” attached hereto as **Exhibit B**.

<sup>12</sup> “Addendum” or “CEQA Analysis.”

<sup>13</sup> “EIR.”

<sup>14</sup> “BVDSP.”

<sup>15</sup> “D-BV-2.”

<sup>16</sup> “BVDSP EIR.”

Per OPC, Section 17.101C.050 and Table 17.101C.04, zoning for the D-BV-2 area is restricted to “a maximum of 24 stories and 250 feet in height” with “a residential density of one dwelling unit per 90 square feet of lot area.”<sup>17</sup> The City concedes that, under this zoning, only 103 residential units would be permitted at the Project site.<sup>18</sup> However, the Applicants propose to develop the significantly larger and taller project described above.

Five percent (5%) of the Project’s residential units are proposed to be reserved for Very Low-Income Housing.<sup>19</sup> The Applicants are seeking a density bonus under State Density Bonus law for including VLI housing. The density bonus would qualify the Applicants to receive one development waiver and one concession.<sup>20</sup> Consequently, the Applicants hope to receive a State density bonus in order to construct 20% more units, a waiver for building height, and a concession to reduce the number of required parking spaces.<sup>21</sup>

The Applicants are also requesting a Minor CUP to transfer development rights from 80 Grand Avenue (an existing office building) to 60 Grand Avenue (a parking lot). 80 Grand Avenue is a 12,926 square-foot parcel.<sup>22</sup> 60 Grand Avenue is a 9,256 square-foot parcel.<sup>23</sup> The 60 Grand Avenue parking lot would become the 88 Grand Avenue residential tower.<sup>24</sup> The parcels would be merged and re-subdivided with approval of the Tentative Parcel Map. The proposed Project would then have the residential development potential of a 22,182 square-foot lot.<sup>25</sup>

Thus, without the Minor CUP, TPM, and subsequent density bonus and waiver, the total permitted number of residential units at 60 Grand Avenue / 88 Grand Avenue under existing zoning would be 103 units, with a maximum building height of 250 feet. With the approvals proposed for the Project, the Applicants

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<sup>17</sup> Oakland City Planning Commission, January 30, 2019 Design Review Committee Staff Report (“January 2019 Staff Report”), p. 3; see also *id.* pp. 3-4 (Zoning Analysis; Density Bonus for Affordable Housing).

<sup>18</sup> Addendum, p. 8 and Table II-1, p. 17 and Table II-2, p. 18.

<sup>19</sup> “VLI.”

<sup>20</sup> See generally, Addendum, pp. 8-18.

<sup>21</sup> See generally, Addendum, pp. 8-18.

<sup>22</sup> Addendum, p. 17.

<sup>23</sup> Addendum, p. 5.

<sup>24</sup> Addendum, pp. 1 -18, (describing TDR, density bonus, and including illustrative figures).

<sup>25</sup> Addendum, p. 17.

March 2, 2020

Page 5

would be permitted to build 275 residential units in a 35-story building, at a height of 374-feet / 411 feet.

## B. Environmental Review and Proceedings Below

The City asserts that the Project qualifies for CEQA streamlining exemptions for urban infill development and consistency with an adopted community plan (the BVDSP EIR) under CEQA Guidelines, Sections 15183 and 15183.3, also described in Public Resources Code, Sections 21094.5 and 21083.3 (collectively, the "Infill Streamlining Exemption"). The City's environmental review proceeded as a Checklist under those provisions. In the alternative, the City proposes to approve the Project by preparing an addendum to the BVDSP EIR, pursuant to CEQA Guidelines, Section 15164.

We previously submitted a comment letter to the Director on January 6, 2020 with attached expert reports.<sup>26</sup> Our comments on air quality, public health and GHG emissions were prepared with the assistance of air quality and GHG expert Paul E. Rosenfeld, Ph.D. of Soil Water Air Protection Enterprises.<sup>27</sup> Our comments on traffic and transportation were prepared with the assistance of Daniel T. Smith, Jr., P.E., principal at Smith Engineering & Management.<sup>28</sup> Our comments on noise impacts were prepared with the assistance of Derek Watry, acoustics, noise and vibration expert of Wilson Ihrig.<sup>29</sup> The January 2020 Comment Letter and attached expert reports are attached hereto as **Exhibit B** and incorporated by reference into this Appeal, as if fully set forth herein, and must be included as part of the administrative record for this Project. The January 2020 Comment Letter was timely filed and accepted on January 6, 2020.<sup>30</sup>

This Appeal and attachments raise each and every issue that is contested, and addresses "issues and/or evidence" that was previously presented to the Director prior to approval of the Project, as specified in the OPC, Sections

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<sup>26</sup> "January 2020 Comment Letter."

<sup>27</sup> "SWAPE Report," attached as Exhibit A to the January 6, 2020 Comment Letter.

<sup>28</sup> "Smith Report," attached as Exhibit B to the January 6, 2020 Comment Letter.

<sup>29</sup> "Watry Report," attached as Exhibit C to the January 6, 2020 Comment Letter.

<sup>30</sup> Email from P. Vollmann to L. LeLe et al. at Adams Broadwell Joseph & Cardozo, RE: Comments – 88 Grand Avenue Project (Jan. 7, 2020) (stating that comments were received as filed on Jan. 6, 2020), attached hereto as **Exhibit C**.

March 2, 2020

Page 6

17.134.060 and 17.136.080 and allowed pursuant to CEQA.<sup>31</sup> EBRRD reserves the right to submit supplemental comments at any later hearings and proceedings related to the Project.<sup>32</sup>

## II. INTEREST OF APPELLANT

EBRRD (“Oakland Residents”) is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of Oakland residents; the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, The International Association of Sheet Metal, Air, Rail and Transportation Workers, SMW Local No. 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County, including Michael Capps, Kahlil Larn and Jennifer Choi.

Individual members of Oakland Residents, and its affiliated labor organizations live, work, recreate and raise their families in the County of Alameda, City of Oakland, and surrounding areas. These members would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has a strong interest in enforcing the State’s environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by causing building moratoriums or restrictions, making it more difficult and more expensive for business and industry to expand in the region, and making it less desirable for businesses to locate and for people to live there.

Oakland Residents actively and fully participated in the administrative process for this proceeding before the Director.

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<sup>31</sup> OPC, §§ 17.134.060; 17.136.080; Pub. Resources Code, § 21177(a) (allowing members of the public to submit additional evidence to the lead agency regarding a project’s CEQA compliance “until the close of the final hearing on the Project”).

<sup>32</sup> Gov. Code, § 65009(b); Pub. Resources Code, § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (“*Bakersfield*”) (2004) 124 Cal.App.4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

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### III. GROUNDS FOR APPEAL

As explained in detail below, the CEQA Addendum fails to disclose, analyze and mitigate new and more severe impacts on air quality, public health, GHG, noise, and traffic that will occur during the Project's construction and operational phases than were analyzed in the BVDSP EIR, and fails to disclose, analyze and mitigate the Project's new, significant, and more severe impacts on public transit which are likely to occur, and potentially escalate, throughout the life of the Project. Substantially new and different mitigation measures than those approved in the BVDSP EIR will be required to lessen or avoid these impacts. The Director failed to resolve these deficiencies in the Letter of Decision. The Director therefore lacked substantial evidence to support the decision to approve the Project and adopt the CEQA findings.

The Planning Commission should vacate the Director's approvals and remand the Project to Staff to prepare a legally adequate EIR. Because an EIR is required, the Project must also be submitted to the Planning Commission as a request for a Major Conditional Use Permit, and should not have been submitted to the Director of Planning for approval of a Minor Conditional Use Permit.<sup>33</sup>

The Director abused their discretion and made findings that were not supported by substantial evidence in approving the Project and exempting it from further CEQA review in the following ways:<sup>34</sup>

1. the Project is inconsistent with the density and height requirements in the community plan (the BVDSP) and Oakland's zoning ordinance for the

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<sup>33</sup> Pub. Resources Code, § 21094.5(a) (agency required to prepare CEQA document to examine impacts not analyzed in prior EIR); 21166 (requirement for subsequent environmental review); CEQA Guidelines, § 15183.3(d)(2)(E) (agency required to prepare an infill EIR where a project would create impacts not previously examined); see *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

<sup>34</sup> This list is provided pursuant to OMC, Section 16.04.100, which requires that "[t]he appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Advisory Agency or wherein its decision is not supported by evidence in the record." OPC, Section 17.136.080, further requires that "[t]he appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record." Finally, OPC, Section 17.134.06, requires that appeals of a Minor CUP an appeal "shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record."

D-BV-2 zone, and therefore does not qualify for streamlined CEQA review under the Infill Streamlining Exemptions;

2. the Project is likely to have unmitigated, adverse impacts on public health and safety which require the City to deny the Applicants' requested density bonus, waiver for building height, and parking concession;
3. substantial changes are proposed in the Project from the projects that were contemplated on a programmatic level in the BVDSP EIR that are likely to result in new and more severe environmental effects than previously analyzed. Therefore, the City was required to prepare an EIR for the Project which discloses, analyzes, and mitigates these impacts;
4. significant changes have occurred with respect to the circumstances under which the Project would be undertaken that are likely to result in new and more severe impacts to public transit than previously analyzed. Therefore, the City was required to prepare an EIR for the Project which discloses, analyzes, and mitigates these impacts;
5. there is substantial evidence demonstrating that the proposed Project is likely to result in potentially significant impacts to air quality and public health, GHG, traffic, transit, and noise which were not disclosed, analyzed, or mitigated in the BVDSP EIR. Therefore, the City was required to prepare an EIR for the Project which discloses, analyzes, and mitigates these impacts;
6. the Project requires a Major CUP pursuant to OPC, Section 17.134.020(A)(3)(a), and cannot be approved with a Minor CUP, because the City is required to prepare an EIR for the Project; and
7. the City cannot make the required findings under the OPC to issue Design Review Approval, a Minor CUP, or a TPM.

#### IV. LEGAL STANDARD UNDER CEQA

CEQA has two basic purposes, neither of which is satisfied by the Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the

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environment.<sup>35</sup> The EIR is the “heart” of this requirement.<sup>36</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>37</sup>

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>38</sup> An adequate EIR must contain facts and analysis, not just an agency’s conclusions.<sup>39</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>40</sup>

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.<sup>41</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>42</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>43</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>44</sup> A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been

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<sup>35</sup> CEQA Guidelines, § 15002(a)(1); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>36</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>37</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>38</sup> CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>39</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>40</sup> Pub. Resources Code, § 21100(b)(1); CEQA Guidelines, § 15126.2(a).

<sup>41</sup> CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

<sup>42</sup> Pub. Resources Code, §§ 21002.1(a), 21100(b)(3).

<sup>43</sup> Pub. Resources Code, §§ 21002-21002.1.

<sup>44</sup> CEQA Guidelines, § 15126.4(a)(2).

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resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>45</sup> This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”<sup>46</sup>

#### A. Subsequent or Supplemental Environmental Review

When an EIR has been prepared for a previously approved project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur, per Public Resources Code, Section 21166:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) **Substantial changes occur with respect to the circumstances** under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) **New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.**<sup>47</sup>

CEQA Guidelines, Section 15162 further provides that in assessing the need for subsequent or supplemental environmental review, the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events have occurred:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major

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<sup>45</sup> *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

<sup>46</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>47</sup> Pub. Resources Code, § 21166(a)-(c), emphasis added; see also CEQA Guidelines, § 15162(a) (same).

revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

This Guidelines provision also elaborates on the meaning of “new information of substantial importance,” stating:

- (3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
- (A) The project **will have one or more significant effects not discussed in the previous EIR** or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) **Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment**, but the project proponents decline to adopt the mitigation measure or alternative.<sup>48</sup>

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum, or no further documentation.<sup>49</sup> The City’s decision not prepare a subsequent or supplemental EIR must be supported by substantial evidence.<sup>50</sup>

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<sup>48</sup> CEQA Guidelines, § 15162(a)(3)(A)-(D), emphasis added.

<sup>49</sup> CEQA Guidelines, § 15162(b).

<sup>50</sup> CEQA Guidelines, §§ 15162(a), 15164(e).

## B. Addendums

The Public Resources Code does not provide for addendums, but they are discussed briefly in the CEQA Guidelines, Section 15164:

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.<sup>51</sup>

The City's decision to prepare an addendum must be supported by substantial evidence.<sup>52</sup>

## C. CEQA's Infill Streamlining Exemption

The City seeks to rely on the Infill Streamlining Exemption at Public Resources Code, Sections 21083.3 and 21094.5, also discussed at CEQA Guidelines Sections 15183 and 15183.3.<sup>53</sup> This CEQA streamlining provision allows approval of projects without an EIR, but only in very narrow circumstances. In addition, the Addendum cites in its analysis of GHG impacts the residential streamlining provision, at Public Resources Code, Section 21167.58, discussed below.<sup>54</sup> Both exemptions are inapplicable.

To qualify under the Infill Streamlining Exemption, the project must be consistent with site's density and land use intensity, as defined by its zoning,

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<sup>51</sup> CEQA Guidelines, § 15164(a), (b). Moreover, the Natural Resources Agency, which drafts the CEQA Guidelines, has described the purpose of an addendum as a method for making "minor changes" to an EIR. *Save Our Heritage Organization v. City of San Diego*, 28 Cal.App.5th 656, 664–665 (citing the Natural Resources Agency).

<sup>52</sup> CEQA Guidelines, § 15164(e).

<sup>53</sup> Addendum, p. 27 (citing exemptions) and Zoning Manager Public Notice (same); Letter of Decision, pp. 1, 9 (same).

<sup>54</sup> Addendum, p. 63.

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community plan, or general plan policies for which an EIR was certified, as follows:<sup>55</sup>

- CEQA Guidelines, § 15183(d)(1)(2) states that a project must be consistent with the community plan adopted as part of a general plan or a “zoning action which zoned or designated the parcel on which the project would be located to **accommodate a particular density** of development;”
- CEQA Guidelines, § 15183.3 (b)(3) states that “[t]o be eligible for the streamlining procedures prescribed in this section, an infill project must. ... [b]e consistent with the ... **density**” specified in the plan;
- Public Resources Code, § 21083.3(a) states that “[i]f a parcel has been **zoned to accommodate a particular density**” or such density has been designated in the adopted plan, then the project may qualify for CEQA streamlining;
- Public Resources Code, § 21094 states that later projects may use tiering based on reports previously prepared and certified where none of the conditions warranting supplemental review under Public Resources Code, § 21166 are present and where the proposal is “[c]**onsistent with applicable local land use plans and zoning** of the city.”

Public Resources Code, § 21159.28 is a GHG streamlining provision which allows an EIR or addenda to exclude an analysis of the GHG impacts of cars and light-duty trucks for qualified residential or mixed-used projects. A project qualifies where it “is consistent with the ... density” specified in a sustainable communities strategy<sup>56</sup> or alternative planning strategy. Public Resources Code, § 21159.28(d) further provides that GHG streamlining is applicable to projects that satisfy the criteria of Public Resources Codes, § 21155, for transit priority projects. This provision also requires that the density be consistent with the density specified in a SCS or alternative planning strategy. In order to qualify under Pub. Resources

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<sup>55</sup> CEQA Guidelines, §§ 15183(d)(1)(2), 15183.3 (b)(3); Pub. Resources Code, §§ 21083.3(a), 21094, emphasis added.

<sup>56</sup> “SCS.”

Code, § 21159.28, the environmental review document must incorporate all mitigation measures pertaining to GHG from the SCS.

*Only if* a project meets all of these criteria can it be further analyzed under the Infill Streamlining Exemption and the GHG streamlining provision. A lead agency's decision to rely on the Infill Streamlining Exemption or GHG streamlining exemption must be supported by substantial evidence.<sup>57</sup>

As discussed below, the proposed Project does not qualify for either the Infill Streamlining Exemption or the GHG streamlining exemption because its density is not consistent with the parcel's zoning. Moreover, there is substantial evidence in the record demonstrating that the BVDSP EIR did not disclose, analyze, or mitigate the proposed Project's potentially significant impacts to human health or the environment. A project-level EIR is required which analyzes these impacts and considers environmentally-superior alternatives. The Director's decision to approve the Project absent supplemental or subsequent review was not supported by evidence and was an abuse of discretion.

**IV. THE PROJECT DOES NOT QUALIFY FOR THE INFILL STREAMLINING EXEMPTION BECAUSE THE PROJECT IS INCONSISTENT WITH THE DENSITY ESTABLISHED BY EXISTING ZONING AND THE ENVIRONMENTAL IMPACTS OF A PROJECT AT THIS DENSITY WERE NOT ANALYZED IN THE BVDSP EIR.**

The 60 Grand Avenue parcel is in the D-BV-2 zone, which is zoned for a density of development that would permit 90 units per acre, with a height limit of 250 feet.<sup>58</sup> The Applicants are requesting a TDR and associated discretionary permits in order to develop in order construct 275 units in 35-story building (up to 375 / 411 feet).

Under the legal standard described above, to qualify for the Infill Streamlining Exemption, CEQA requires that the project be consistent with the site's *existing zoning*.<sup>59</sup> In this case, the Addendum and Director's findings of

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<sup>57</sup> Pub. Resources Code, § 21094.5(a).

<sup>58</sup> OPC, Table 17.101C.04.

<sup>59</sup> CEQA Guidelines, §§ 15183(a), (d)(1)(B), 15182(b)(1)(C); Pub. Resources Code, §§ 21083.3(a), 21094.5(c)(1)(A).

consistency under the Infill Streamlining Exemption rely on the assumption that the City will grant a density bonus to the Project, consistent with State Density Bonus Law and the OPC.<sup>60</sup> The BVDSP does not authorize the Project's requested density and building height, and the BVDSP EIR did *not* analyze a project at this density or height at this site. Thus, the Project is inconsistent with existing zoning requirements, and a project of this type was not analyzed in any prior EIR, both of which are mandatory prerequisites for relying on the Infill Streamlining Exemption.<sup>61</sup> The City's reliance on future density bonus approvals violates these key elements of the Infill Streamlining Exemption, and does not render the Project factually "consistent" with the BVDSP EIR.

The Addendum concedes this lack of consistency in Attachment C (*Project Consistency with Community Plan or Zoning, Per CEQA Guidelines Section 15183*)<sup>62</sup> and Attachment D (*Infill Performance Standards, Per CEQA Guidelines Section 15183.3*).<sup>63</sup> Attachment C acknowledges that the proposed Project's height and density are not consistent with the applicable zoning. The City bases its finding that the Project is consistent under CEQA Guidelines, Section 15183 because the Applicants anticipate receiving the State density bonus waiver described above.<sup>64</sup> Of course, the Minor CUP and related approvals would also be required. Attachment D reiterates the findings in Attachment C.<sup>65</sup> The Director's Letter of Decision merely reiterates the findings in the Addendum, including Attachments C and D, and concludes, without support, that the Project is consistent with the applicable zoning density.<sup>66</sup>

Nor does the BVDSP authorize a TDR for the purpose of transferring density from an office building to a proposed residential project in order to maintain consistency with the BVDSP. The only reference to a TDR in the BVDSP is Policy IMP-5.1. However, Policy IMP-5.1 discusses potential revisions to the OPC in order to adaptively reuse historic buildings.<sup>67</sup> The 60 Grand Avenue parking lot is not an historic structure, so Policy IMP-5.1 is inapplicable.

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<sup>60</sup> Gov. Code, § 65915; OPC Chapter 17.107 (Density Bonus and Incentive Procedure).

<sup>61</sup> CEQA Guidelines, § 15183(d)(1), (2).

<sup>62</sup> Addendum, pp. C-1 to C-2.

<sup>63</sup> Addendum, pp. D-1 to D-5.

<sup>64</sup> Addendum, p. C-2.

<sup>65</sup> Addendum, p. D-5.

<sup>66</sup> Letter of Decision, pp. 9-10.

<sup>67</sup> BVDSP, pp. 87, 266.

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CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.<sup>68</sup> CEQA also requires lead agency to analyze the ‘whole’ of the project – this includes all foreseeable discretionary approvals.<sup>69</sup>

For example, in *Laurel Heights Improvement Association v. Regents of University of California*<sup>70</sup> the California Supreme Court rejected an EIR where the agency failed to consider the whole of the project. The agency defined the project as involving “only the acquisition and operation of an existing facility and negligible or no expansion of use of existing use at that facility.”<sup>71</sup> However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental effects.<sup>72</sup> Here, approval of the Project’s requested density bonus is a reasonably foreseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus and waiver for building height.

When the project is viewed as a whole, there is no dispute that the Project exceeds the applicable zoning, density and height requirements. By ignoring the Project’s facial inconsistency with these requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has both failed to comply with its CEQA obligations to disclose the nature and severity of the Project’s impacts, and the Director lacked substantial evidence to support findings that the Project’s height waiver and density bonus units would not have a specific adverse impact upon public health and safety or the physical environment.<sup>73</sup>

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<sup>68</sup> CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).

<sup>69</sup> Pub. Resources Code, § 21082.2(a) (“The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record”); CEQA Guidelines, § 15003(h) (“The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect” and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 (“*Laurel Heights I*”)

<sup>70</sup> *Laurel Heights I, supra*, 47 Cal.3d 376.

<sup>71</sup> *Id.* at p. 388.

<sup>72</sup> *Id.* at p. 396.

<sup>73</sup> Gov. Code, § 65589.5(d)(2); see also OPC, §§ 17.107.100.B; 17.107.095.A.1.

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In addition, the Supreme Court, as well as the Courts of Appeal, have held that CEQA exemptions must be narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.”<sup>74</sup> The Supreme Court has also consistently held that CEQA exemptions are not to be implied,<sup>75</sup> and that other statutes do not implicitly preempt CEQA or exempt proposed projects from CEQA review – even if the other statute has environmental safeguards of its own. Instead, CEQA must be harmonized with other statutes and a proposed project must comply with both CEQA and any other applicable statute.<sup>76</sup> While the legislature created the streamlining provisions for “Qualified In-Fill Development Projects,” there is no such CEQA exemption or streamlining provision for “Density Bonus Projects.” The Director abused his discretion in finding or implying such an exemption here.

Finally, in approving the Project in this manner, the City may be attempting to rely on *Wollmer v. City of Berkeley* to base its consistency finding on the Project’s pre-density bonus “base units” rather than on the actual size of the Project.<sup>77</sup> If so, this reliance is misplaced.

The *Wollmer* court found that the applicable plan was the City of Berkeley’s general plan, which did not contain a density restriction that would conflict with the proposed project. The court explained that “[t]he City’s zoning ordinance does not specify a maximum density for the [district applicable to the proposed project] .... However, the land use element of the general plan specifies a maximum density of 44 to 88 persons (20 to 40 dwelling units) per acre for the area within the land use classification that includes the [applicable] District....”<sup>78</sup> The court went on to explain that “the City does not apply the general plan density standards to specific parcels. Instead, it applies the standards to larger areas of a land use classification surrounding a proposed project.”<sup>79</sup> As opposed to a general plan, “[a]llowable densities and uses in each zoning district are established in the more detailed and specific Zoning ordinance.”<sup>80</sup> Using this approach, the *Wollmer* court found that the project was consistent with applicable plan - the general plan - because the project

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<sup>74</sup> *Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal.4th 105, 125 (“*Mountain Lion*”).

<sup>75</sup> *Wildlife Alive v. Chickering*, 18 Cal.3d at 195-198, 202.

<sup>76</sup> *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 274.

<sup>77</sup> *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 (“*Wollmer*”).

<sup>78</sup> *Ibid.* at p. 1345.

<sup>79</sup> *Ibid.* at p. 1345.

<sup>80</sup> *Ibid.*, citing the Berkeley General Plan.

would create a density of “approximately 19 units per acre, which is well below the general plan standard of 40 units per acre.”<sup>81</sup>

While *Wollmer* may support a proposition that CEQA review may be streamlined if the Project complies with general qualitative general plan and zoning requirements, the *Wollmer* court did not authorize agencies to rely on the Infill Streamlining Exemption (or the categorical exemption for infill development) for projects that exceed specific, detailed general plan and zoning designations as a result of a density bonus waiver.

Here, the City has a detailed zoning ordinance which applies to the specific parcel where the proposed Project would be located, and the Project is inconsistent with it. The development standards in the OPC dictate that the height and density for proposed projects in the D-BV-2 zone is 250 feet, with a density of 103 dwelling units for a parcel of this size.<sup>82</sup> By contrast, the proposed Project would be a 35-story, 374-foot-high residential building with 275 residential units, 1,000-square feet of ground-floor retail, and below-ground parking. The Project’s size and density substantially exceed these specific, numeric limits imposed by the zoning ordinance. The requested density bonus waiver does not change that fact. Therefore, the Project cannot be found to be consistent with density based solely on pre-density bonus units.

The Addendum and Letter of Decision disregard these clear and mandatory requirements of the OPC. The Addendum erroneously contends that the Project’s zoning inconsistencies would be remedied by the density bonus because “the project sponsor is anticipating receiving a development waiver ... that would allow the project to exceed this limit in order to accommodate additional under the California State Density Bonus Law.”<sup>83</sup> The Letter of Decision fails to correct this error.

The Addendum and Letter of Decision provide no evidence to support the purported finding that the Project is “consistent” with applicable density so as to rely on the Infill Streamlining Exemption. Rather, there is substantial evidence in the record demonstrating that a project at this height and density was neither contemplated nor analyzed in the BVDSF EIR. Consequently, the City must

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<sup>81</sup> *Wollmer, supra*, 193 Cal.App.4th at p. 1345.

<sup>82</sup> OPC, Table 17.101C.04.

<sup>83</sup> Addendum, pp. C-2, D-5; Letter of Decision, pp. 9-10.

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withdraw the Addendum and direct staff to prepare an EIR which discloses, analyzes, and mitigates the proposed Project's impacts, and considers environmentally-superior alternatives.

**V. THE CITY SHOULD DENY THE REQUESTED DENSITY BONUS AND WAIVER.**

The City should deny the requested density and waiver on two grounds: 1) the proposed Project will have significant, unmitigated adverse impacts to the public health and safety and the environment; and 2) the Applicant has not made the required submittals under Oakland's Density Bonus Ordinance, per OPC, Section 17.107.030.

First, the State Density Bonus Law authorizes the City to deny requested density bonus units and incentives, concessions, and waivers where the resulting project would have a "specific adverse impact" on public health and safety or the physical environment<sup>84</sup> unless the approving agency is able to find that "there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households."<sup>85</sup>

A denial is warranted here because the Addendum fails to disclose and mitigate several potentially significant, unmitigated environmental impacts that are likely to be caused or exacerbated by the Project. As discussed below, there is substantial evidence demonstrating that the Project is likely to have significant and unmitigated impacts on public health from excess construction TAC emissions and noise, as well as significant environmental impacts on air quality, from GHGs, and on traffic and transit during Project operation. Because the City failed to prepare an EIR for the Project, these impacts have not been fully disclosed or mitigated, as required by CEQA.<sup>86</sup> Therefore, the City lacks substantial evidence to support a finding that there is "no feasible method" of mitigating these impacts without rendering the Project's affordability component infeasible. As a result, the City cannot make the requisite findings to approve a density bonus in the face of the Project's significant public health and environmental impacts.

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<sup>84</sup> See OPC, §§ 17.107.100(B); 17.107.095(A)(1).

<sup>85</sup> See OPC, § 17.107.100(B).

<sup>86</sup> Pub. Resource Code, §§ 21002.1(a), 21100(b)(3).

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Each of the below-described impacts provides the City with substantial evidence supporting a denial or the requested density bonus unless and until the City prepares an EIR to fully disclose and mitigate these impacts to the greatest extent feasible.<sup>87</sup>

Second, it appears that the Applicant has not made the required submittals under Oakland's Density Bonus Ordinance, per OPC, Section 17.107.030. OPC, Section 17.107.030 describes the application review process under Project Oakland's inclusionary housing ordinance. It states that the application for this approval may be included as part of the design review process, but also lists specific information required by the applicant. This information includes:

B. A project financial report (pro forma), as required justifying the granting of any incentive(s) and/or concession(s) in addition to the density bonus;

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C. Information demonstrating that any requested incentive(s), concession(s) and/or waiver(s) are necessary to make the units affordable, or available to seniors. Information could include: calculations of affordability, evidence that incentives and concessions provide "identifiable, financially sufficient, and actual cost reductions," and economic analyses to show that any waivers are required to make the project economically feasible.<sup>88</sup>

The Addendum was released for public review and comment on December 13, 2019. EBRRD submitted several Public Record Act Requests for all documents related to the Project, and referenced and relied upon in the Addendum. Our most recent requests occurred immediately prior to, and immediately after, the Addendum was released - December 6, 2019 and December 20, 2019. Our review of the documents provided by the City in response to these requests include the January 26, 2019 and June 26, 2019 Design Review Committee Staff Reports, which attached the current Design Review Submittal and the Basic Application for Development Review.<sup>89</sup> The Design Review Application is attached hereto as

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<sup>87</sup> OPC, § 17.107.100(B) (density bonus cannot be approved where it would release in an adverse impact, as defined by Gov. Code, § 65589.5(d).)

<sup>88</sup> OPC, Section 17.107.030(B), (C).

<sup>89</sup> "Design Review Application."

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**Exhibit D.** None of the information at OPC, Sections 17.107.030(B) and (C) was attached and incorporated into the Design Review Application or Staff Reports.

Without this information, the Director would have had no basis to conclude that the requested concessions and waivers are financially justified or necessary in order to include the affordable housing component. Thus, the Director's determination appears to have not been supported by evidence in the record.

**VI. THE CITY MUST PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR WHICH DISCLOSES, ANALYZES, AND MITIGATES THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS TO AIR QUALITY, PUBLIC HEALTH, GHG, NOISE AND TRAFFIC.**

As discussed in the January 2020 Comment Letter, attached expert reports, and February 2020 SWAPE Report, the proposed Project is likely to create significant adverse impacts to air quality, public health, from GHG emissions, noise, and transportation (including both traffic and public transit) that are peculiar to the Project, and more severe than previously analyzed in the BVDSP EIR. The Addendum also did not consider changes in circumstances since that document was certified in 2014 which are likely to result in more severe impacts than previously analyzed. The Standard Conditions of Approval<sup>90</sup> and project-specific conditions attached to the Letter of Decision will not substantially lessen or avoid these impacts, as required by CEQA. This is significant new information which was not addressed in either the CEQA Analysis or the Letter of Decision, and which triggers the City's duty to conduct further environmental review under CEQA.

The Director abused their discretion in approving the Project, exempting it from CEQA, and failing to support the City's findings with substantial evidence. The Planning Commission must withdraw the Addendum and approvals, and remand the Project to staff with instructions to prepare a project-level EIR which discloses, analyzes, and mitigates these impacts.

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<sup>90</sup> "SCA."

**A. There is Significant New Information of Substantial Importance that Impacts from GHG Emissions Will be Significant and Adverse.**

The Addendum concludes that impacts from the Project's operational GHG emissions will be equal-to or less-severe-than those described and analyzed in the BVDSP EIR. The December and February SWAPE Reports demonstrate that the City underestimated GHG emissions by using inaccurate input parameters, failed to include all operational land uses, relied on outdated and inapplicable GHG reduction targets, among other deficiencies. In addition, the Director improperly relied on the GHG Streamlining Exemption to exclude the impact of cars and light-duty trucks from its GHG emissions estimates.

Updated modelling performed by SWAPE demonstrates that GHG impacts are potentially significant, and additional mitigation measures are necessary in order to substantially lessen or avoid these impacts, as described in the February 2020 SWAPE Report at **Exhibit 1**.

This is significant new information of substantial importance which must be evaluated in a project-level EIR. The Letter of Decision failed to address or correct these errors. Therefore, the Director's finding that none of the events triggering supplemental review under Public Resources Code, Section 21166 is not supported by the evidence.<sup>91</sup>

*i. GHG impacts are incorrectly evaluated because the Addendum relies on inapplicable GHG reduction targets.*

The Addendum found that GHG emissions would not exceed the BAAQMD threshold of significance of 1,100 MT CO<sub>2</sub>e/year.<sup>92</sup> The Addendum then concludes that the proposed Project's GHG impact would equal-to or less-severe-than that analyzed in the EIR prepared for the BVDSP. In making these determinations, the City relies on the Project's purported consistency with the Statewide GHG reduction targets set in The Global Warming Solutions Act of 2006 ("AB 32") and the City of Oakland's 2020 Equitable Climate Action Plan ("ECAP") and other plans. AB 32

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<sup>91</sup> Letter of Decision, pp. 9-11.

<sup>92</sup> SWAPE Report, p. 11, citing Addendum, p. 63.

and ECAP reduction targets are not applicable to the Project.<sup>93</sup> Thus, the City's conclusions are not based on substantial evidence. The City must withdraw the Addendum and prepare a project-level EIR which analyzes the proposed Project's impacts against an applicable GHG reduction target.

AB 32 mandated that Statewide GHG emissions be reduced to 1990 levels by target year 2020. As the SWAPE Report explains, AB 32 is only applicable to projects that will be operational by target year 2020. As the Addendum states, construction will begin in 2020, and the Project would not become operational until 2022 – two years after the target date set in AB 32. Thus, the City is relying on outdated GHG reduction targets.<sup>94</sup>

For the same reason, the City cannot rely on the proposed Project's consistency with the ECAP to conclude that impacts will be less-than-significant.<sup>95</sup> As the Addendum states, the ECAP was adopted in 2013. Its goal was to reduce GHG emissions to 2005 levels by 2020.<sup>96</sup> Since the proposed Project would not become operational until 2022, meeting the ECAP's reduction targets is not a reliable indicator of the proposed Project's impact.<sup>97</sup>

AB 32 has been superseded by Senate Bill 32 ("SB 32"), passed by the Legislature in 2016. SB 32 codified Statewide GHG reduction targets to 40% below 1990 levels by 2030. In December 2017, the California Air Resources Board issued the 2017 CARB Scoping Plan. The 2017 CARB Scoping Plan outlined the Statewide strategy needed to achieve SB 32's goals. Yet, the City does not include an analysis of consistency with the 2017 CARB Scoping Plan.<sup>98</sup> The Planning Commission should withdraw the Addendum and remand the Project to Staff to analyze impacts against an applicable GHG reduction target plan.

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<sup>93</sup> SWAPE Report, pp. 11-13.

<sup>94</sup> SWAPE Report, pp. 11-12.

<sup>95</sup> SWAPE Report, pp. 12-13.

<sup>96</sup> SWAPE Report, p. 13, citing Addendum, p. 64.

<sup>97</sup> SWAPE Report, pp. 12-13.

<sup>98</sup> SWAPE Report, p. 12.

**ii. *The Addendum's GHG emissions analysis and data relied on incorrect and unsubstantiated input parameters and failed to model all operational land uses.***

The Addendum calculated GHG emissions using CalEEMod.2016.3.2. As the SWAPE Report demonstrates, the CalEEMod files incorrectly calculated the Project's land use size, used an unsubstantiated water-reduction measure to substantiate its findings, improperly excluded the impact of cars and light duty trucks from its analysis of GHG emissions, and relied on an outdated service population and service population efficiency threshold to calculate the Project's efficiency in reducing GHG emissions. Therefore, the Addendum underestimates GHG impacts from the proposed Project.

First, SWAPE's review of the Project's CalEEMod output files demonstrates that the parking garage was modelled using an underestimated floor surface area. The floor size given in the Addendum is 1,600 square feet, yet only the 460 square feet were modeled.<sup>99</sup> This discrepancy is not explained. As a result, the Addendum underestimates the proposed Project's construction and operational emissions.<sup>100</sup> The City's reliance on this information to conclude that impacts will be equal to or less-severe than impacts modelled in the EIR prepared for the BVDSP is not supported by substantial evidence.

Second, SWAPE's review of the Project's CalEEMod output files demonstrates that the City used an inaccurate Sunday trip rate to calculate mobile emissions. The Addendum assumes 973 daily trips from the proposed Project, but the Sunday trip rate was calculated at 839 daily trips. If the Sunday trip rate is lower than 973, then the City must support its decision to use that figure for all weekly calculations with substantial evidence. The Addendum contains no such information.<sup>101</sup>

Third, SWAPE's review of the Project's CalEEMod output files reveals that the model included an operational "Water Conservation Strategy," which the model purports would reduce water consumption by exactly 20%. The Addendum does not

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<sup>99</sup> SWAPE Report, p. 9.

<sup>100</sup> SWAPE Report, pp. 9-10.

<sup>101</sup> SWAPE Report, pp. 10-11.

otherwise define or describe this strategy.<sup>102</sup> The Addendum also states that it will comply with the CalGreen Code, which requires that indoor water use be reduced by 20%. As the SWAPE Report explains, reliance on building codes cannot guarantee that purported reductions will actually be achieved, particularly where, as here, the specifics required to achieve compliance have not been analyzed for accuracy or feasibility.<sup>103</sup>

Fourth, as described in detail above, the proposed Project consists of two parcels – the existing 80 Grand Avenue office building and the proposed 88 Grand Avenue residential tower. Under the proposed Project, the lots will be merged and subdivided, but until that occurs, the proposed office building should be considered as part of the Project. Therefore, the existing land use at 80 Grand Avenue, over 12,000 square feet, should have been modelled, but was omitted as the SWAPE Report explains.<sup>104</sup> This information must be included in an updated GHG analysis.

Fifth, as the February 2020 SWAPE Report describes, the Project improperly excluded the impact of cars and light-duty trucks from its analysis of GHG emissions. As discussed above, for qualified projects, the GHG streamlining provisions permits an agency to exclude the impact of cars and light-duty trucks from the analysis of GHG impacts in an EIR or addenda, for qualified residential or mixed-used projects. In order to utilize this provision, two criteria must be met, which are not satisfied in this case. First, a project qualifies where it “is consistent with the ... density” specified in a SCS.<sup>105</sup> Second, Public Resources Code, Section 21159.28 mandates that the environmental review document, here the Addendum, *must incorporate all mitigation measures pertaining to GHG from the SCS.*

The Addendum states that the Project qualifies for this exception because it is in Priority Development Area<sup>106</sup> specified in Plan Bay Area 2040, and provides a link to a “CEQA Streamlining Map” for that plan. The link provided does not work. And there is no other evidence cited in the Addendum or Letter of Decision that establishes that Plan Bay Area 2040 even provides a density designation for the

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<sup>102</sup> SWAPE Report, p. 11.

<sup>103</sup> SWAPE Report, p. 11; see e.g., *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-728 (an agency cannot rely on mitigation measures of uncertain efficacy or feasibility).

<sup>104</sup> SWAPE Report, p. 5.

<sup>105</sup> “SCS.”

<sup>106</sup> “PDA.”

project site. Perhaps to address this informational deficiency, the Addendum then goes on to state that “[f]urthermore, the project is ... consistent with the ... density ... envisioned for the site.”<sup>107</sup> It is undisputed, as described above, that the Project is *not* consistent with the density under Oakland’s zoning ordinance for the D-BV-2 zone.

Nor does the Project satisfy the second criteria of Public Resources Code, Section 21159.28, which requires the agency to adopt all GHG mitigation measures in the SCS in order to utilize the streamlining exemption. In fact, the Addendum does not include a single GHG mitigation measure from the Plan Bay Area, or any other plan, including the BVDSP EIR. As discussed below and in the February 2020 SWAPE Report, because GHG emissions will exceed the applicable threshold of significance, the City is required to include a GHG Reduction Plan pursuant to SCA #42 (City SCA F).

In addition, Public Resources Code, Section 21159.28(d) provides that GHG streamlining is applicable to projects that satisfy the criteria of Public Resources Codes, Section 21155, for transit priority projects. This provision also requires that the density be consistent with the density specified in a SCS. As noted above, there is no indication that the SCS provides a density target for this parcel that supersedes its zoning, as specified in the OPC.

Sixth, the GHG modelling relied on an incorrect service population and service population efficiency threshold. Thus, emissions are underestimated. As the February 2020 SWAPE Report explains, the Addendum averaged CO<sub>2</sub>e<sup>108</sup> emissions for a service population of 687. A service population is the number of residents and employees that will utilize a new development.<sup>109</sup> However, the Addendum’s analysis contains several errors. First, the Addendum should have used the service population provided in the BVDSP EIR, which relates to the Project. This number is the most accurate, as it pertains to the project site, and provides the most conservative estimate for CO<sub>2</sub>e emissions. Thus, using the population information provided in the BVDSP EIR would be most protective of the environment.<sup>110</sup> Second, the Addendum used BAAQMD’s 2020 service population efficiency

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<sup>107</sup> Addendum, p. 63.

<sup>108</sup> Carbon dioxide equivalents.

<sup>109</sup> February 2020 SWAPE Report, citing Addendum, p. 62.

<sup>110</sup> February 2020 SWAPE Report, p. 7.

threshold (4.6 MT CO<sub>2e</sub>/SP/yr) rather than relying on the current population efficiency target goal (2.6 MT CO<sub>2e</sub>/SP/year) for target year 2030, consistent with current guidance.<sup>111</sup>

*iii. Updated modeling reveals that GHG impacts will be significant and additional mitigation is required.*

The February 2020 SWAPE Report provides updated GHG modelling, which is attached to this Appeal, and is summarized below. The SWAPE analysis included cars and light-duty trucks, used the service population information provided in the BVDSR EIR, and the most current service population efficiency threshold.

As SWAPE demonstrates, updated modelling demonstrates that impacts from GHG emissions are significant:

<b>SWAPE Greenhouse Gas Emissions</b>	
<b>Project Phase</b>	<b>Proposed Project (MT CO<sub>2e</sub>/year)</b>
<b>Annual Emissions</b>	<b>1,384.5</b>
<b>Service Population</b>	<b>516</b>
<b>Service Population Efficiency</b>	<b>2.68</b>
<b>Threshold</b>	<b>2.60</b>
<b>Exceed?</b>	<b>Yes</b>

Because the Addendum concluded GHG emissions would not be significant, the City further concluded that no mitigation measures were required, including the SCA #42, a GHG Reduction Plan (City SCA F). This assertion is incorrect.

The Addendum includes a table comparing the Project with the three scenarios that would trigger the application of a GHG Reduction Plan:<sup>112</sup>

<sup>111</sup> February 2020 SWAPE Report, p. 7.

<sup>112</sup> Addendum, p. 65.

Scenario	Criterion (a)	Criterion (b)	Criterion (c)	Criterion (d)	Applied to Project?
Scenario A	Involve land use development	Exceed BAAQMD's screening criteria <sup>a</sup>	Exceed both of the City's applicable thresholds	--	No
	Yes (mixed use)	Yes (275 dwelling units and 1,000 sf commercial)	No (See Table V.F-3)	--	
Scenario B	Involve land use development	Exceed BAAQMD's screening criteria <sup>a</sup>	Exceed one of the City's applicable thresholds	Very Large Project	No
	Yes	Yes	No (See Table V.F-3)	No.	
Scenario C	Involve a stationary source	Exceed the City's applicable threshold	--	--	No
	Yes	No (see Table V.F-4)	--	--	

As SWAPE demonstrates, GHG emissions will exceed thresholds, satisfying Criterion (c) for Scenario A.<sup>113</sup> This exceedance triggers the requirement for a GHG Reduction Plan under SCA #42. The GHG Reduction Plan must be made an enforceable condition of approval for this Project, as part of supplemental or subsequent project-level EIR.

*iv. Conclusion*

The SWAPE Report and February 2020 SWAPE Report provide substantial evidence demonstrating that the Addendum relies on an incorrect target year for the Project, incorrect and unsubstantiated input parameters to generate its supporting data, and improperly excludes the impacts from cars and light-duty trucks from its emissions modelling, among other deficiencies. When accurately modelled, GHG impacts are significant and require mitigation. This is significant new information of substantial importance which triggers the requirement for additional CEQA review of the Project.

<sup>113</sup> February 2020 SWAPE Report, p. 8-9.

The City must withdraw the Addendum and direct Staff to prepare a project-level EIR which analyzes, discloses, and mitigates the proposed Project's GHG emissions, and which considers a reasonable range of environmentally-superior alternatives.

**B. There is Significant New Information of Substantial Importance that Air Quality Impacts and Risks to Human Health are Likely to be Significant and Adverse.**

The proposed Project is likely to result in potentially significant and unmitigated adverse impacts to air quality and public health during construction and operation of the proposed Project, including cumulative impacts. These impacts were not disclosed, analyzed, or mitigated in the BVDSP EIR. This is significant new information of substantial importance, which must be analyzed in a subsequent or supplemental EIR. As noted above, EBRRD reviewed the Addendum with the assistance of experts at SWAPE. The SWAPE Report and February 2020 SWAPE Report are attached hereto and summarized below.

***i. The analysis of operational health risks is incomplete and inadequate.***

As a threshold matter, the February 2020 SWAPE Report notes that the City did not conduct its own air quality modelling for the proposed Project, but rather relied on the modelling provided in the BVDSP EIR, stating that "[t]he BVDSP EIR does not require additional project-level for criteria pollutant emissions from construction and operation of an individual project within the Plan Area."<sup>114</sup> EBRRD identified this omission in our January 6, 2020 comment letter. The City failed to correct this error prior to issuance of the Letter of Decision.

The proposed Project includes a diesel-powered emergency generator, which emits diesel particulate matter,<sup>115</sup> a toxic air contaminant.<sup>116</sup> The Addendum discloses the health risk impacts from nearby receptors from the generator from routine testing and maintenance in a Health Risk Assessment.<sup>117</sup> The Addendum

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<sup>114</sup> February 2020 SWAPE Report, p. 1, citing Addendum, p. 39.

<sup>115</sup> "DPM."

<sup>116</sup> "TAC."

<sup>117</sup> "HRA."

states that this analysis was only included because it was required for all projects that include a diesel-powered generator.<sup>118</sup> The Addendum essentially ends its analysis of the Project's operational air pollutant emissions there.<sup>119</sup>

This analysis raises several concerns, as discussed in detail in the SWAPE Report and February 2020 SWAPE Report. First, the analysis only included one operational emissions source – the emergency generator. Per the CalEEMod User's Guide, the following emission sources should have been calculated: on-road mobile vehicle traffic, fugitive dust associated with roads, architectural coating activities, off-road equipment used during operation, landscaping equipment, emergency generators, fire pumps, process boilers, consumer products, parking lot degreasers, fertilizers/pesticides, cleaning supplies, wood stoves and hearth usage, electricity usage in buildings, electricity usage from lighting in parking lots and lighting, ventilation and elevators for parking, water usage, and solid waste disposal.<sup>120</sup> Thus, in order to accurately characterize the full health risk from Project operations, the City's HRA should have included an analysis of all operational sources, not just the generator.<sup>121</sup>

Second, the health risk from the generator was determined to result in an excess cancer risk from TACs of **exactly 10:1 million**, which is the applicable threshold of significance set by the Bay Area Air Quality Management District.<sup>122</sup> Any additional TAC emissions would therefore cause the threshold to be exceeded, creating a significant cancer risk to residents and the surrounding community.<sup>123</sup>

Third, the HRA failed to sum the cancer risk calculated for each age group, which is inconsistent with Office of Environmental Health Hazard Assessment<sup>124</sup> guidance that has been expressly adopted by BAAQMD. This omission is particularly glaring, as SWAPE's review of the data reveals that this information was gathered in the HRA, but not summed as recommended by OEHHA and BAAQMD.<sup>125</sup> The Addendum therefore lacks the necessary information to

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<sup>118</sup> Addendum, p. 40.

<sup>119</sup> Addendum, pp. 40-42.

<sup>120</sup> SWAPE Report, pp. 2-3; February 2020 SWAPE Report, p. 2.

<sup>121</sup> SWAPE Report, p. 3.

<sup>122</sup> "BAAQMD."

<sup>123</sup> SWAPE Report, pp. 1-2.

<sup>124</sup> "OEHHA."

<sup>125</sup> SWAPE Report, p. 4.

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determine the lifetime cancer risk posed by exposure to the Project's operational TAC emissions.

As a result of these omissions, the City's analysis of the Project's operational health risk remains incomplete and underestimated. Therefore, the Director's finding that the none of the events triggering supplemental review under Public Resources Code, Section 211666 was not supported by the evidence.<sup>126</sup>

***ii. The Addendum fails to analyze public health risks during construction of the proposed Project.***

The Addendum fails entirely to analyze the health risks from human exposure to TACs, including DPM, during construction of the proposed Project. EBRRD identified this omission in our January 6, 2020 comment letter. The City failed to correct this error prior to issuance of the Letter of Decision.

The SWAPE Reports provide expert evidence demonstrating that the Project's construction health risks are potentially significant and must be analyzed in a project-level EIR. As the SWAPE Report explains, the Addendum concludes that the proposed Project would have a less-than-significant impact on the health of nearby sensitive receptors during Project construction, without performing a construction HRA. The Addendum justifies this lack of analysis by stating that the BVDSPEIR analyzed this risk. However, the EIR prepared for the BVDSPEIR explains that it is a programmatic EIR, and as such, lacked the specific information necessary to reach a conclusion on the severity of the Project's construction (or operational) emissions and the subsequent health risk for specific projects that would be constructed under the BVDSPEIR. Therefore, the City cannot rely on this document to avoid project-level review of the proposed Project.<sup>127</sup> Rather, a construction HRA must be performed, which includes the Project's specific parameters.<sup>128</sup>

This is significant new information that is peculiar to the Project and the Project site, which must be analyzed in subsequent or supplemental environmental

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<sup>126</sup> Letter of Decision, pp. 9-11.

<sup>127</sup> SWAPE Report, pp. 2-3.

<sup>128</sup> The SWAPE Report also notes that failure to conduct a construction HRA is inconsistent with OEHHA guidance, SWAPE Report, p. 3.

review. Therefore, the Director's findings that the Project's public health impacts would be less than significant, and that none of the events triggering supplemental review under Public Resources Code, Section 21166 have occurred are not supported by substantial evidence.<sup>129</sup>

*iii. The Addendum underestimates cumulative impacts to air quality and human health.*

SWAPE concludes that the Addendum underestimates the proposed Project's cumulative health risks from construction and operation of the proposed Project.<sup>130</sup> The Addendum states, "in addition to existing TAC sources, there are ten proposed development projects that may be constructed within 1,000 feet of the [Maximally Exposed Individual Resident] location in the near future."<sup>131</sup> As the SWAPE Report explains, the Addendum therefore acknowledges that construction and operation of these 10 projects is likely to overlap, and claims to have conducted an analysis of the cumulative health risks.<sup>132</sup>

However, similar to the Project's operational HRA, the SWAPE Report further explains that the Addendum's cumulative HRA only analyzes TAC emissions from a single source for each identified project - emergency diesel generators - and fails to analyze TAC emissions from other sources, including diesel-powered mobile sources.<sup>133</sup> "As a result, the Addendum omits key sources of TAC emissions and underestimates the Project's cumulative health risk impact."<sup>134</sup> These impacts must be analyzed in an EIR to determine if they would exceed BAAQMD's cumulative health risk threshold of 100:1 million.<sup>135</sup>

This is significant new information which must be analyzed in a subsequent environmental review document. Absent the analysis of all sources of emissions, and their public health impacts, the Director's finding that none of the events

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<sup>129</sup> Letter of Decision, pp. 9-11.

<sup>130</sup> SWAPE Report, pp. 4-5.

<sup>131</sup> SWAPE Report, p. 4, citing Addendum, p. 45.

<sup>132</sup> SWAPE Report, pp. 4-5.

<sup>133</sup> SWAPE Report, p. 4, citing Addendum, pp. 45-48.

<sup>134</sup> SWAPE Report, p. 4.

<sup>135</sup> SWAPE Report, p. 5.

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triggering supplemental review under Public Resources Code, Section 21166 is not supported by the evidence.<sup>136</sup>

*iv. The Addendum incorrectly assumes the use of Tier 4 Final Engines in its analysis of air quality and GHG emissions.*

As the SWAPE Report and February 2020 SWAPE Report explain, in calculating the Project's impacts to both air quality and GHG, the Addendum applies mitigation measure SCA-AIR-3 to lessen or avoid impacts from construction-related DPM. However, the CEQA Addendum fails to adequately mitigate these risks because the City's reliance on the high-level Tier 4 Final construction equipment necessary to achieve the emissions reductions assumed in the Addendum is not expressly required by either SCA AIR-3 or Condition of Approval No. 13, the Construction Mitigation Plan ("CMP").<sup>137</sup>

SCA AIR-3 contains two separate tracks which allow a project applicant to select either preparation of an HRA (SCA AIR-3(a)(i)) or agree to use Verified Diesel Emission Control Strategies<sup>138</sup> for construction equipment, which may include, but does not require, Tier 4 engines (SCA AIR-3(a)(ii).) The City did not conduct an HRA, and so appears to have selected option SCA Air-3(a)(ii). However, SCA AIR-3(a)(ii)'s requirement to use VDECS does not bind the Applicant to the use of Tier 4 Final equipment. Rather, it simply offers the Applicant the opportunity to use the "most effective VDECS" available. As the February 2020 SWAPE explains, this wording of the SCA allows the Applicant, rather than the City, to determine whether available equipment could include certified equipment that does not meet the Tier 4 requirement.<sup>139</sup> Condition No. 13 similarly requires preparation of a CMP, but does not expressly require the use of Tier 4 equipment.

Tier 4 equipment is not the only type of VDECS available.<sup>140</sup> There are also two levels of Tier 4 equipment currently available on the construction market – Tier 4 Interim and Tier 4 Final. Tier 4 Final equipment includes reductions of emissions

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<sup>136</sup> Letter of Decision, pp. 9-11.

<sup>137</sup> Letter of Decision, p. 15 (describing the CMP).

<sup>138</sup> "VDECS."

<sup>139</sup> February SWAPE Report, p. 2.

<sup>140</sup> DieselNet.com, Nonroad Diesel Engines, <https://dieselnet.com/standards/us/nonroad.php> (last viewed March 2, 2020).

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of up to 93% during the construction phase (0.26 tons to 0.019 tons of DPM emitted), whereas Tier 4 interim equipment achieves emission reductions of 50% to 85% at best.<sup>141</sup> The Addendum assumes and models, with no supporting evidence, that the Project will use the most stringent Tier 4 Final equipment, assuming the highest level of emission reductions available when the VDECS required by SCA AIR-3 reflects a range of equipment of primarily lower efficiency. Tier 4 Final equipment also has limited availability and is harder to procure than other forms of VDECS.<sup>142</sup> As the December SWAPE Report discussed, in 2014, Tier 4 Final engines accounted for just 4% of the fleet of engines available. By contrast, Tier 4 Interim engines account for 18% of the available fleet.<sup>143</sup> The Addendum's air quality modeling assumed the use of 100% Tier 4 Final equipment without demonstrating that the Applicant could feasibly procure this equipment. The City must analyze the impacts from the Project's feasible engine mix in an EIR.<sup>144</sup>

SCA AIR-3(a)(ii) requires that the Applicant's commitment to use VDECS "shall be verified through an equipment Inventory submittal and Certification Statement that the Contractor agrees" to comply with.<sup>145</sup> However, neither the Addendum Letter of Decisions contain any such documentation.

The Addendum and Condition of Approval #13 fail to require Tier 4 engines, and the record fails to contain any evidence demonstrating that the Applicant will procure Tier 4 equipment for the Project. As a result, the City cannot rely on SCA AIR-3 or Condition of Approval #13 to conclude that the Project's construction health risk would be reduced to below levels of significance. As the February 2020 SWAPE Report states, "[a]s a result, the model may underestimate emissions and should not be relied upon to determine Project significance."<sup>146</sup>

The City's significance conclusions regarding health risk are unsupported, and the impact remains significant and unmitigated. Thus, the City's approach to its health risk analysis fails to ensure that the public health will be protected.

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<sup>141</sup> BREEZE. 2016. CALEEMOD. Appendix D, Default Data Tables. Table 3-5. OFFROAD Emission Factor Based on Engine Tier. Prepared for the California Air Pollution Control Offices Association. September, 2016, attached hereto as **Exhibit E**, excerpt.

<sup>142</sup> SWAPE Report, pp. 8-10 (discussing availability of Tier 4 Interim and Final equipment).

<sup>143</sup> SWAPE Report, p. 9, Fig. 4: 2014 Statewide All Fleet Sizes (Pieces of Equipment).

<sup>144</sup> SWAPE Report, p. 9.

<sup>145</sup> SCA AIR-3(a)(ii).

<sup>146</sup> February 2020 SWAPE Report, p. 2.

v. ***SWAPE's screening-level HRA indicates a potentially significant impact.***

SWAPE prepared a preliminary HRA of the Project's construction and operational health-related impacts to residential sensitive receptors using AERSCREEN, a screening level air quality dispersion model.<sup>147</sup> As SWAPE previously noted, the City's operational HRA underestimated Project emissions by incorrectly including the use of Tier 4 Final engines for construction equipment, using an underestimated land use size for the proposed parking garage, an underestimated Sunday trip rate, an unsubstantiated water-related mitigation measure, failing to model the existing building's operational emissions, and failing to include all operational sources of emissions. SWAPE also noted that the BVDSP EIR air quality modelling included cars and light-duty trucks (although this information was excluded from GHG emission projections).<sup>148</sup>

The City failed to correct these errors prior to issuing the Letter of Decision and failed to prepare an updated analysis of the Project's construction and operational health risks. Due to this omission, SWAPE prepared an independent health risk analysis which concludes that the Project will result in a significant health risk. As SWAPE explains, the Project's "excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately **360 in one million. The lifetime cancer risk exceeds the BAAQMD threshold of 10 in one million**, thus resulting in a significant impact not previously identified or addressed by the Addendum.<sup>149</sup> SWAPE's analysis constitutes substantial evidence demonstrating that the Project is likely to result in a significant health risk which is peculiar to the Project, and which was not previously analyzed in the BVDSP EIR. As SWAPE notes, "since our screening-level HRA indicates a potentially significant impact, the City should prepare an EIR with a revised HRA which makes a reasonable effort to update the Project's air quality model and the potential health risks posed to nearby receptors."<sup>150</sup>

vi. ***Conclusion***

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<sup>147</sup> February 2020 SWAPE Report, pp. 2-3.

<sup>148</sup> February 2020 SWAPE Report, pp. 2-3.

<sup>149</sup> February 2020 SWAPE Report, p. 6.

<sup>150</sup> February 2020 SWAPE Report, p. 6.

The SWAPE Report provides substantial evidence of potentially significant adverse impacts to air quality and human health, which were not analyzed in the programmatic EIR prepared for the BVDSP. The City must prepare a project-level EIR which discloses, analyzes, and mitigates these impacts to air quality and human health. Absent this analysis, the Director's finding that none of the events triggering supplemental review under Public Resources Code, Section 21166 is not supported by the evidence.<sup>151</sup>

**C. The Addendum Fails to Consider Changes in Circumstances and Significant New Information Related to Traffic Conditions and Public Transit Since the BVDSP EIR was Certified.**

As discussed above, an EIR is required when “[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.”<sup>152</sup> The Smith Report provides substantial evidence of changes in circumstances related to traffic conditions that have occurred since the BVDSP EIR was certified. This significant new information triggers the City's duty to prepare an EIR. The Letter of Decision failed to address or correct these errors. Thus, the Director's decision is not supported by substantial evidence in the record. The City must remand the Project to staff with instructions to prepare a project-level EIR.

***i. The Addendum does not consider changes in circumstances related to traffic conditions since the BVDSP EIR was certified.***

As the Smith Report explains, the traffic data in the BVDSP EIR was primarily collected from 2008 to 2010. This was during the period of the economic recession. The economic recession caused a decrease in traffic, as less people were commuting to work and fewer projects were being built.<sup>153</sup>

In 2012, the EIR for the BVDSP then updated weekday peak counts at three (3) of the 57 intersections analyzed from 2008 to 2010. This accounts for just 5% of

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<sup>151</sup> Letter of Decision, pp. 9-11.

<sup>152</sup> Pub. Resources Code, § 21166(b).

<sup>153</sup> Smith Report, p. 2.

the potentially impacted intersections.<sup>154</sup> Since 2012, the economy has experienced considerable growth and recovery.

As the Smith Report explains, the BVDSP EIR relied on California Department of Transportation<sup>155</sup> annual daily traffic volume counts for surrounding roadway networks from 2012 in its analysis. However, since 2012 “CalTrans has documented substantial increases” in annual daily traffic volumes.<sup>156</sup> These increases include a 6.67% increase from 2014 to 2015, an additional 2.62% increase in 2016, and further increases in 2017.<sup>157</sup> The City failed to consider this substantial change in circumstances in the Addendum.<sup>158</sup> Thus, as the Smith Report explains, most of the data relied upon in the BVDSP EIR was already out-of-date, the BVDSP failed to update 95% of this information, and since 2012, traffic has further increased.<sup>159</sup>

The City cannot rely on its lack of study and analysis to support its decision not to prepare an EIR. As the California Supreme Court concluded in *Sierra Club v. County of Fresno*, when an EIR’s description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is “not a substantial evidence question.”<sup>160</sup> Here, the Addendum is completely devoid of any recent data or analysis. The City has an obligation to fill this informational void by preparing a legally adequate EIR.

The economic recovery and further changes in traffic levels are significant changes in circumstances which may create a potentially significant impact to traffic congestion on local streets and highways. Traffic generated by the Project will exacerbate these conditions.<sup>161</sup> This is also significant new information concerning a more severe traffic impact than previously analyzed which must be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

**ii. *The Addendum fails to disclose, analyze, and mitigate cumulatively considerable impacts to public transit.***

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<sup>154</sup> Smith Report, pp. 2-3.

<sup>155</sup> “CalTrans.”

<sup>156</sup> Smith Report, p. 3.

<sup>157</sup> Smith Report, p. 3.

<sup>158</sup> Smith Report, p. 3.

<sup>159</sup> Smith Report, pp. 2-3.

<sup>160</sup> (2018) 6 Cal.5th 502, 519.

<sup>161</sup> See CEQA Guidelines, § 15064.

The proposed Project is located within 0.5 mile of the 19th Street BART station. The BART system is already overcrowded in this area, and the proposed Project is likely to cause cumulatively considerable impacts to public transit, particularly since the economic recovery. This is significant new information of substantial importance that must be disclosed, analyzed and mitigated in a subsequent or supplemental EIR.

First, as the Smith Report explains, the City's *Transportation Impact Review Guidelines* (April 2017) discusses the requirements for a transit review analysis for new projects. Although the BVDSP EIR contained a transit review analysis, it did not reflect the most current guidance in the *Transportation Impact Review Guidelines*. The *Transportation Impact Review Guidelines* provides that the analysis must include the total number of passengers that would be added per transit line, and the effect that additional passengers would have on available space.<sup>162</sup>

Second, the proposed Project is 64% taller than the zoned height limit analyzed in the BVDSP EIR. As the Smith Report explains, as a result, the BVDSP EIR is inadequate to assess public transit impacts from this much-larger proposed Project.<sup>163</sup>

Third, since the BVDSP EIR was certified, there have been significant changes in circumstances related to public transit.<sup>164</sup> Specifically, there has been a "substantial increase in BART ridership" and "deteriorated BART conditions" which "have arisen since the BVDSP EIR was certified."<sup>165</sup> Significant new evidence of substantial importance reflects that public transit, including BART has experienced serious overcrowding since the BVDSP EIR was certified.<sup>166</sup> As the Smith Report

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<sup>162</sup> Smith Report, pp. 3-4.

<sup>163</sup> Smith Report, p. 4.

<sup>164</sup> Smith Report, pp. 4-5.

<sup>165</sup> Smith Report, p. 4.

<sup>166</sup> E.g. <https://www.sfgate.com/bayarea/article/BART-offering-riders-perks-to-ease-overcrowding-9193738.php> (Bart offers perks for people to avoid peaks at overcrowded Embarcadero and Montgomery stations); <https://abc7news.com/traffic/bart-hopes-twitter-campaign-will-help-alleviate-overcrowding/5351041/> (BART is turning to Twitter, hoping commuters will convince elected leaders to fund a project aimed at reducing overcrowding on the system); <https://www.kqed.org/news/11287390/bart-survey-passenger-satisfaction-at-all-time-low> (Bart survey: Passenger satisfaction at all-time low), <https://www.sfweekly.com/topstories/will-we-ever-get->

explains, the *Transit Capacity and Quality of Service Manual* published by the Transit Cooperative Research Program establishes that 5.4 square-feet per passenger is the minimally allowable amount of comfortable space.<sup>167</sup> The Federal Transit Authority has also adopted this threshold.<sup>168</sup> During peak times, BART riders in the Transbay Corridor currently average only 5.2 feet of space.<sup>169</sup> And, the most crowded sections in the Transbay Corridor, between Embarcadero and the West Oakland BART station, only maintain 4.2 square-feet of passenger space.<sup>170</sup> As the Smith Report explains, the 19th Street BART Station is obviously situated within this already overcrowded corridor.<sup>171</sup> Yet, the Addendum “fails to disclose the number of BART riders that the Project will generate, fails to disclose the impact these riders will have on the public transit system, and fails to require any mitigation measures to address potentially significant impacts.”<sup>172</sup> Nor is this information contained in the BVDSP EIR.

The Letter of Decision failed to acknowledge EBRRD’s comments and failed to address or correct these errors. Therefore, the Director’s findings are not supported by evidence in the record.

***iii. The Addendum fails to consider changes in circumstances and indirect impacts the environment, public health and safety due to the deterioration of public transit facilities since the BVDSP EIR was certified.***

When evaluating the significance of a project’s impacts, CEQA requires an analysis of indirect environmental impacts. CEQA Guidelines, Section 15064, subdivision (d) provides:

- (d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect

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a-second-bart-tunnel-under-the-bay/ (need for a will we ever get a second BART tunnel under the Bay).

<sup>167</sup> Smith Report, p. 5.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

physical changes in the environment which may be caused by the project.

...

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

CEQA Guidelines, Section 15358 also defines “effects” as including indirect impacts, stating:

“Effects” and “impacts” as used in these guidelines are synonymous.

(a) Effects include:

(1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

In ignoring the impact of the deterioration of conditions on public transit, the City may be relying on the BVDSP EIR’s section on transit and the Office of Public Research’s<sup>173</sup> *Technical Advisory on Evaluating Transportation Impacts in CEQA* (December 2018) and the BVDSP EIR’s section on Transit. This reliance would be misplaced.

The *Technical Advisory on Evaluating Transportation Impacts in CEQA* states, “[w]hen evaluating impacts to multimodal transportation networks, lead agencies **generally** should not treat the addition of new transit users as an adverse

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<sup>173</sup> “OPR.”

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impact. An infill development may add riders to transit systems and the additional boarding and alighting may slow transit vehicles, but it also adds destinations, improving proximity and accessibility. Such development also improves regional vehicle flow by adding less vehicle travel onto the regional network."<sup>174</sup> The BVDSP EIR states "an increase in transit ridership is not identified as an adverse impact under CEQA because transit load is not part of the permanent physical environment and transit service changes over time due to a variety of factors."<sup>175</sup>

First, the term "generally" in the OPR guidance is not a prohibition on analyzing indirect impacts to this resource area, as required under CEQA. Here, there are significant, foreseeable indirect impacts to public health, safety and the environment, as a result of the Project which were not analyzed in the BVDSP EIR or the Addendum.

First, there is evidence that the close proximity to other passengers caused by overcrowding on public transit can spread infection and disease.<sup>176</sup> The recent outbreak of the coronavirus, which threatens to develop into a pandemic, with reported cases in the Bay Area, highlights this risk.<sup>177</sup>

Overcrowding also creates and exacerbates issues with personal safety increasing the risk of violent crime. Conditions on BART in this respect have deteriorated significantly *since the 2014 BVDSP EIR was certified* as this recent article which reviewed BART conditions over the last five years, describes:

**... [V]iolent crime on BART has doubled over the last four years, with aggravated assault, homicide, rape, and robbery incidents up 115 percent [since 2014].** And while the more victimless crimes like ripped-out seats and open drug use get their share of attention, a just-released five-part

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<sup>174</sup> Office of Public Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, p. 19 available at [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf).

<sup>175</sup> BVDSP EIR, p. 4.13-109; see also pp. 4.13-49, 4.13-110-113.

<sup>176</sup> BART News <https://www.bart.gov/news/articles/2015/news20150211> (exposure to measles on BART);

<sup>177</sup> Business Insider, Photos show what is it is like to travel around the world by train, bus, boat and plane in the age of coronavirus, available at <https://www.businessinsider.com/travel-during-spread-of-coronavirus-subway-train-plane-boat-2020-2>.

report from NBC Bay Area crunches the numbers and **declares BART “one of the most dangerous transportation systems in the country.”**<sup>178</sup>

Thefts in the Transbay Corridor are a particular threat, “[a] lot of these crimes are people getting their phones snatched by juveniles who sneak into the system, and then ride the train to San Francisco or Oakland, where they can disappear really quickly,” BART police union president Keith Garcia told the Chronicle.<sup>179</sup> It is sadly more-than foreseeable that new BART police facilities will be required to address these increasing, and increasingly dangerous, impacts to public safety on BART, which are exacerbated by overcrowding.<sup>180</sup>

In addition, the overcrowding has already fueled planning for a second BART Transbay crossing tunnel, a situation anticipated in CEQA Guidelines, Section 15064, subdivision (d) (an indirect impact due to the construction of new permanent facilities).<sup>181</sup> OPR recognizes this, stating that “[i]ncreased demand throughout a region may, however, cause a cumulative impact by requiring new or additional transit infrastructure” and this is an impact under CEQA.<sup>182</sup> OPR suggests impacts “may be adequately addressed through a fee program that fairly allocates the cost of improvements not just to projects that happen to locate near transit, but rather across a region to all projects that impose burdens on the entire transportation system, since transit can broadly improve the function of the transportation system.”<sup>183</sup> However, the Addendum has not analyzed the issues discussed above, and so has not assessed what the fair-share impact would be to mitigate them. And

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<sup>178</sup> SFist, Lengthy Expose Shows How Crime on BART Has Gone Off the Rails, <https://sfist.com/2019/11/18/lengthy-expose-shows-how-crime-on-bart-has-gone-off-the-rails/>,

<sup>179</sup> SFist, Violent Crime on BART has Skyrocketed 115% in the Last Five Years, <https://sfist.com/2019/06/25/report-violent-crime-on-bart-has-skyrocketed-115-in-the-last-five-years/>; see also [https://twitter.com/bart\\_crimes](https://twitter.com/bart_crimes) (Twitter account “BART Crimes”); and <https://www.bartcrimes.com/> (website for “BART Crimes” with daily updates).

<sup>180</sup> SFist, Lengthy Expose Shows How Crime on BART Has Gone Off the Rails, <https://sfist.com/2019/11/18/lengthy-expose-shows-how-crime-on-bart-has-gone-off-the-rails/>

<sup>181</sup> See Transbay Corridor Core Capacity Program, <https://www.bart.gov/sites/default/files/docs/BART%20Congested%20Corridors%20Application.pdf>.

<sup>182</sup> Office of Public Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, p. 19 available at [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf).

<sup>183</sup> Office of Public Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA* [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf), p. 19,

the Addendum does not require that a public transit impact fee necessarily be paid for this purpose.<sup>184</sup>

*iv. Conclusion*

The proposed Project's proximity to public transit is mentioned throughout the Addendum as a positive feature. Yet, as the Smith Report explains, if public transit is unable to handle the increased ridership, then the proximity to public transit is no longer an asset, but a significant adverse impact.<sup>185</sup> The Addendum fails to address these impacts, and the Letter of Decision does not address or correct these deficiencies. Therefore, the Director's findings are not supported by evidence in the record. A project-level EIR is required which discloses, analyzes, and mitigates the proposed Project's potentially significant impacts to public transit, and which considers changes in circumstances since 2012 which impact transit riders.

**D. There is Significant New Information of Substantial Importance Demonstrating that Impacts to Sensitive Receptors from Construction-Related Noise is Potentially Significant and Unmitigated.**

As the attached Watry Report demonstrates, there is significant new information of substantial importance that impacts to nearby sensitive receptors from construction-related noise is potentially significant and unmitigated, due to size of the proposed Project and its proximity to nearby sensitive receptors. This impact is peculiar to the Project, and will not be adequately mitigated by the mitigation measures proposed in the BVDSP EIR because those measures fail to lessen or avoid impacts during the noisiest phases of construction. The City should withdraw the Addendum and prepare a subsequent or supplemental EIR which discloses, analyzes, and mitigates this impact.

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<sup>184</sup> Addendum, pp. 100-101 (stating that the Applicant "may" pay an applicable fee).

<sup>185</sup> Smith Report, pp. 4-5.

***i. Noise impacts to sensitive receptors at the 100 Grand apartment building are potentially significant and unmitigated.***

As the Watry Report explains, the nearest sensitive receptor is The Grand apartment building, located at 100 Grand Avenue. OPC, Section 17.120.050.G states the City's construction noise standards. For longer-term construction noise (more than 10 business days), the OPC provides that noise at the receiving line for residential receptors should not exceed 65 decibels during the weekday and 55 decibels on weekends.<sup>186</sup>

The BVDSP EIR provided reference noise levels for construction equipment and typical average noise levels during various phases of construction. Table 2A in the Watry Report presents these noise levels in average decibels<sup>187</sup> at 50, 66, and 185 feet from The Grand.<sup>188</sup> Table 2B assumes that noise levels can be reduced by 10 decibels by using engine mufflers, consistent with Environmental Protection Agency guidance.<sup>189</sup> The Watry Report notes that these are average figures, and actual noise may be three to six decibels higher.<sup>190</sup> Moreover, these figures are provided with regard to a hypothetical project, as the BVDSP EIR is a programmatic EIR.

As the Watry Report concludes, and Table 2B demonstrates, "even with the use of modern mufflers, the noise levels at The Grand are expected to exceed Oakland's weekday, daytime noise limit of 65 dBA by 1 to 12 dB during the various phases of construction."<sup>191</sup> And, an "additional 12 dB of noise reduction will likely not be achieved by additional improvement of the mufflers."<sup>192</sup> As such, construction noise should be identified as a significant noise impact, which is more severe than that analyzed in the BVDSP EIR.<sup>193</sup> Thus, subsequent or supplemental environmental review is required.

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<sup>186</sup> Watry Report, pp. 2-3.

<sup>187</sup> Note that decibels are expressed as either "dBA" or "dB."

<sup>188</sup> Watry Report, p. 3; see also Langan, Geotechnical Report (2019).

<sup>189</sup> Watry Report, p. 4.

<sup>190</sup> Watry Report, p. 4.

<sup>191</sup> Watry Report, p. 4.

<sup>192</sup> Watry Report, p. 5.

<sup>193</sup> Watry Report, pp. 4-5.

Moreover, as the Watry Report explains, the proposed Project will be 64% larger than allowed under the current, applicable zoning and will take 29 months to construct. The impact of constructing a 411-foot structure were not analyzed in the BVDSP EIR. The noise impacts from a building this size is significant new information that was not analyzed in the BVDSP EIR.<sup>194</sup>

**ii. SCA-NOI-2 is insufficient to mitigate the proposed Project's potentially significant impacts from construction-related noise.**

As the Watry Report explains, the Addendum relies on SCA-NOI-2 (BVDSP SCA# 29) (Construction Noise) to mitigate the noise from the Project's most severe, noise-inducing construction activities. As the Watry Report concludes, the "City cannot rely on this measure to reduce noise impacts to nearby sensitive receptors because the *Addendum* does not provide sufficient information to determine if it will be enforceable or effective."<sup>195</sup>

Courts have imposed several parameters for the adequacy of mitigation measures. Importantly, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>196</sup> In addition, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments."<sup>197</sup> Additionally, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.<sup>198</sup> Finally, compliance with noise regulations does not guarantee that noise impacts will be less than significant.<sup>199</sup>

Here, SCA-NOI-2 provides: "The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City

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<sup>194</sup> Watry Report, p. 1.

<sup>195</sup> Watry Report, p. 5.

<sup>196</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

<sup>197</sup> CEQA Guidelines, § 15126.4(a)(2).

<sup>198</sup> *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

<sup>199</sup> *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

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determines an extension is necessary and all available noise reduction controls are implemented.”<sup>200</sup>

This measure is vague, unenforceable, and of uncertain efficacy as the Watry Report explains.<sup>201</sup> First, the Addendum does not provide the construction schedule for the Project and does not disclose the length of time that must occur between noisy periods. Second, this measure does not place any limitations on the nature or length of the proposed extensions that the City may authorize. Third, the mitigation measure does not define the criteria that the City will apply to determine if an extension is necessary. Thus, the measure is vague, unenforceable and of uncertain efficacy.<sup>202</sup>

For example, under this measure, the Applicants could engage in a 10-day period of extreme noise, followed by one day of no noise (for example, on a Sunday), followed by 10 more days of extreme noise. This pattern could continue for months or years. Moreover, if the City deems it “necessary,” and determines that the Applicants are already compiling with the other measures (including the use of mufflers, which will not reduce impacts to less-than-significant levels), then the Applicants would be permitted to generate extreme noise, entirely uninterrupted. Because “necessary” is undefined, it could include a finding by the City, that due to traffic considerations, it is necessary that the Applicants complete extremely loud excavation work on an expedited schedule. The City is not required to consider noise impacts to sensitive receptors in making such a finding under the terms of the mitigation measure.

And, as discussed above, the BVDSP EIR did not consider the size of the proposed Project - 64% larger than that allowed by the applicable zoning - in its discussion and mitigation of extreme noise events.<sup>203</sup> This is significant new information of substantial importance that may result in more severe noise impacts than analyzed in the BVDSP EIR which must be analyzed in a supplemental or subsequent EIR.

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<sup>200</sup> Watry Report, p. 5, citing SCA-NOI-2.

<sup>201</sup> Watry Report, p. 5

<sup>202</sup> Watry Report, p. 5

<sup>203</sup> Watry Report, p. 5.

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The Watry Report explains that the Addendum's proposed mitigation is inadequate to reduce the Project's potentially significant noise impact to less than significant levels. Because the use of mufflers and SCA-NOI-2 will not be effective in reducing impacts to less-than-significant levels, Mr. Watry concludes that additional noise mitigation is required. The Watry Report recommends that, in addition to SCA-NOI-2, the City should require that the Applicants deploy a noise monitoring system on the lower balcony-levels of the 100 Grand building. This system would alert site management when levels are exceeded. Work should cease when this occurs.<sup>204</sup>

This mitigation measure is considerably different from any measure proposed or adopted in the BVDSP EIR. Thus, supplemental or subsequent review is required.<sup>205</sup>

***iii. Construction of the Project will contribute to a semi-permanent state of noise in the neighborhood.***

The Watry Report explains that local residents will be subjected to semi-permanent levels of construction noise as a result of the proposed Project, in conjunction with other projects under the BVDSP, as they are constructed.<sup>206</sup> This potentially significant impact should be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

The City noise ordinance defines short-term noise impacts as those lasting up to 10 working days (approximately two weeks); after that, impacts are considered long-term. Here, construction is proposed to last at least 29 months. This is 63 times longer than the period that the City considers to be short-term. And, the 88 Grand Avenue Project is only one of many proposed and under-construction projects within the BVDSP plan area.<sup>207</sup>

As the Watry Report explains, living with the noise of continuous construction has already impacted the lives of local Oakland residents, including those in close proximity to the proposed Project.<sup>208</sup>

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<sup>204</sup> Watry Report, p. 4.

<sup>205</sup> CEQA Guidelines, § 15162(a)(3)(D).

<sup>206</sup> Watry Report, pp. 6-7.

<sup>207</sup> Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan*.

<sup>208</sup> Watry Report, pp. 6-7.

And here, “as of July 30, 2018 residents of The Grand are either experiencing or have recently finished experiencing construction noise from a multi-use development at 2315 Valdez and will soon experience construction noise from permitted projects at 2270 Broadway and 2305 Webster. These Oakland residents can therefore expect to be exposed to construction noise for many years to come, as the Broadway Valdez District is transformed to fulfill the vision expressed by the Specific Plan.”<sup>209</sup>

This is a significant impact which was not considered in the BVDSP EIR. The City should address the noise impact to sensitive receptors from creating a semi-permanent state of construction in the local community in order to build the proposed Project and other projects in the BVDSP.<sup>210</sup>

#### *iv. Conclusion*

There is significant new information of substantial importance demonstrating that noise impacts, which are peculiar to the Project and its proximity to local residents, will be more severe than disclosed, analyzed, and mitigated in the BVDSP EIR. In addition, the key mitigation measure proposed under the BVDSP to reduce impacts from the noisiest phases of construction is insufficient. Thus, the City’s conclusion that construction noise impacts will be the same-as or less-severe-than those analyzed in the BVDSP EIR is not supported by substantial evidence. The Letter of Decision failed to address or correct these issues; therefore, the Director’s findings are unsupported. A supplemental or subsequent EIR required to analyze, disclose, and mitigate the proposed Project’s potentially significant impacts to sensitive noise receptors.

### **VII. A MAJOR CONDITIONAL USE PERMIT IS REQUIRED FOR THE PROJECT.**

The City seeks to approve the proposed Project with a Minor CUP, per OPC, Sections 17.134.020(B). Because the City must prepare an EIR in order to approve the proposed Project, a *Major* CUP is required<sup>211</sup>.

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<sup>209</sup> Watry Report, p. 6.

<sup>210</sup> Watry Report, pp. 6-7.

<sup>211</sup> January 2020 Comment Letter, pp. 34-35.

OPC, Section 17.134.020 defines and differentiates between a Major and Minor CUP. A Major CUP is required when projects cross a defined threshold of size or density in identified zones,<sup>212</sup> when specified uses are proposed,<sup>213</sup> and, as relevant here, when there are “special situations.”<sup>214</sup> The first special situation cited is when an EIR is required.<sup>215</sup> Only if *none* of the above-listed situations apply to a proposed project is a Minor CUP permitted.<sup>216</sup>

A Minor CUP is approved by the Director of City Planning and no hearing is required.<sup>217</sup> Decisions are appealable to the Planning Commission.<sup>218</sup> In contrast, a Major CUP is reviewed at noticed public hearing before Planning Commission. Planning Commission decisions are appealable to the City Council.<sup>219</sup>

As discussed in detail in the January 2020 Comment Letter and attached expert reports, the proposed Project would create potentially significant impacts to air quality and public health, GHG, traffic, and noise. An EIR is required which discloses, analyzes, and mitigates these impacts. Therefore, a Major CUP is required in order to approve the proposed Project. The application for a Minor CUP should be withdrawn, and the Applicant should be directed to apply for a Major CUP. The Major CUP can only be considered after an EIR has been prepared, circulated for public comment, and certified by the City.

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<sup>212</sup> OPC, § 17.134.020(A)(1).

<sup>213</sup> OPC, § 17.134.020(A)(2).

<sup>214</sup> OPC, § 17.134.020(A)(3).

<sup>215</sup> OPC, § 17.134.020(A)(3)(a).

<sup>216</sup> OPC, § 17.134.020(B).

<sup>217</sup> The City's failure to conduct a public hearing in conjunction with its proposed approval of the Project also violates the public hearing requirements of the Infill Exemption. See 14 Cal. Code Regs. § 15183(e)(2) (a public hearing is required for lead agency to determine whether significant environmental effects will be mitigated to the greatest extent feasible).

<sup>218</sup> OPC, § 17.134.040(B).

<sup>219</sup> OPC, § 17.134.040(A).

**VIII. THE CITY'S FINDINGS CONCERNING RESIDENTIAL DESIGN REVIEW, THE MINOR CONDITIONAL USE PERMIT, AND THE TENTATIVE PARCEL MAP ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.**

Even if the City could approve the proposed Project using a Minor CUP, which it cannot, the City's findings under Residential Design Review, Minor CUP, and TTM criteria are not supported by evidence in the record.

**A. Legal Background**

The Minor CUP criteria are set forth at OPC, Section 17.134.050:

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

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

....

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at **Section 17.136.050**;

E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, **district plan** or development control map which has been adopted by the Planning Commission or City Council.<sup>220</sup>

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<sup>220</sup> OMC, § 17.134.050(A)-(B) and (D)-(E), emphasis added.

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The Residential Design Review criteria, referenced in the Minor CUP standards, are set forth in OPC, Section 17.136.050(A):

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, **height**, materials, and textures;
2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;
- ....
5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any **applicable design review guidelines or criteria, district plan**, or development control map which have been adopted by the Planning Commission or City Council.<sup>221</sup>

The Tentative Parcel Map criteria are set forth in OMC, Section 16.08.030:

The Advisory Agency shall not act on any tentative map until it receives a report thereon from the City Engineer, unless more than twenty-three (23) days have elapsed since the tentative map was filed with the Advisory Agency.

The Advisory Agency shall deny approval of a tentative map if it makes any of the following findings:

- A. That the proposed map is not consistent with applicable general and specific plans;
- B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans;
- C. That the site is not physically suitable for the type of development;

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<sup>221</sup> OMC, § 17.136.050(A)(1)-(2), (5), emphasis added.

D. That the site is not physically suitable for the **proposed density** of development;

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

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

G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public;

H. That the design of the subdivision does not provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating and cooling opportunities include subdivision design which permits orientation of a structure in an east-west alignment for southern exposure and subdivision design which permits orientation of a structure to take advantage of shade and prevailing breezes.

The proposed Project does not meet these criteria because its height, density and form are inconsistent with the BVDSP and zoning controls, and the Project is likely to cause serious and unmitigated impacts to the environment and public health. The Director's findings to the contrary are not supported by substantial evidence.

**B. The City's Findings Concerning Residential Design Review, The Minor Conditional Use Permit, and Tentative Parcel Map are Not Supported by Evidence in the Record.**

As will be described in detail below, the Letter of Decision's findings concerning the land use approvals under the OPC and OMC are not supported by substantial evidence, and are contradicted by evidence in the record, including

findings and concerns raised by the City's Design Review Committee in the January 2019 Staff Report and June 2019 Staff Report.

***i. The proposed Project is inconsistent with the OPC and OMC's residential and residential design review criteria concerning the Project's height, density, and form.***

OPC, Section 17.136.050(A)(1) and (A)(5), OPC 17.134.050(1), (4), and (5) and OMC, Section 16.08.030(A), (B) and (D) all require that a proposed Project demonstrate consistency with the City's zoning ordinance and restrictions in the BVDSP concerning density and height. The Letter of Decision found that the Project's height was consistent with development in the surrounding area, because the area is developed or will be developed with buildings ranging in height from 80 to 400 feet.<sup>222</sup> Similarly, in its analysis under the CUP review criteria, the Letter of Decision stated that "[s]everal new multi-family residential developments of similar scale, bulk and density have been developed in the immediate vicinity of the project site in recent years."<sup>223</sup> Finally, in its discussion of the Tentative Parcel Map, at OMC, Sections 16.08.030 (A) (B) and (D), the Letter of Decision concludes that the proposed map and its design "is consistent with" the "proposed density" with the BVDSP "and with all applicable zoning controls."<sup>224</sup>

These findings are not supported by the evidence in the record. In both Staff Reports, Staff recognized that the D-BV-2 zone does not permit development at the requested density and height.<sup>225</sup> Yet; Staff concluded that the "proposed design consists of a very slender tower due to the limited available footprint of the development site, which results in a rather attractive massing for the building. This is especially true considering the proposal in the context of other existing and proposed towers surrounding the project site, that are all in the range of 240 to 250 feet in height. This tall slender tower at more than 350 feet in height would create a visual accent in an area that will likely be filled with towers of similar heights in the future."<sup>226</sup>

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<sup>222</sup> Letter of Decision, p. 3 (discussing OPC, § 17.136.050(A)(1).

<sup>223</sup> Letter of Decision, p. 5 (discussing OPC, § 17.134.050 (1).

<sup>224</sup> Letter of Decision, p. 7 (discussing OMC, § 16.08.030(A), (B) and (D).

<sup>225</sup> January 2019 Staff Report, pp. 3-4; June 2019 Staff Report, p. 1.

<sup>226</sup> January 2019 Staff Report, p. 5.

This finding that a “slender” tower eliminates the Project’s height exceedances is not supported by substantial evidence and is inconsistent with other statements in the Addendum and Staff Reports.

First, the Addendum, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan* lists all constructed, approved, and under construction projects in the BVDSP. It shows that 88 Grand Avenue, if approved, would be the *third largest building* in the entire plan area.<sup>227</sup> Thus, slender or not, the Project remains extremely tall, and is *not* likely to be filled in with similar-sized buildings in the future. Rather, the Project would continue to be significantly taller than the vast majority of proposed and existing buildings in the BVDSP area. Thus, the Director’s findings that the building would be surrounded by similar sized development is not supported by any evidence.

Second, the Staff’s conclusion that the building’s height would provide an attractive visual accent is contradicted by other statements in the Staff Reports, particularly with regards to the design of the building’s northern façade. This discussion also runs contrary to Staff’s conclusion that future buildings will be the same height or taller. These concerns were not addressed in the Letter of the Decision.

With regards to the building’s form and design, the January 2019 Staff Report discussed issues with the design of the Project’s northern façade in some depth. It states, “[t]he northern façade does raise some concerns. The proposal as submitted is almost entirely lacking any openings or glazing on the northern elevation .... *While design features like this are common practice on shorter buildings where those blank elevations will eventually be covered by a future building, this site is different because it will be the tallest building in the direct vicinity. As tall as the proposed building is, the largely blank northern façade will be very prominent in the City skyline....*”<sup>228</sup> The June 2019 Staff Report then admitted that while the Applicants had made some changes to the northern elevation in response to these concerns, “staff still has concerns about the design given that it will be a very prominent building in the skyline and the *lack of visual cohesiveness with the other building elevations.*”<sup>229</sup> In this way, the City admits that

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<sup>227</sup> Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan.*

<sup>228</sup> January 2019 Staff Report, p. 5, emphasis added.

<sup>229</sup> June 2019 Staff Report, p. 3, emphasis added.

the building will be taller than its surroundings, it will be not be surrounded by other similarly-sized development, and, coupled with the lack of design features on the northern elevation, will be visually jarring.

The Letter of Decision dismisses this issue without meaningful analysis. In discussing this issue, the Letter of Decision simply states that the northern façade will contain glass and metal paneling and this is consistent with the requirements of the Building Code. The Letter of Decision then makes a conclusory statement that the lower portions of the wall will contain visual accents, which will eventually be blocked by other development.<sup>230</sup> The design of the lower portion of the building is not at issue. At issue is the visibility of the northern façade and its impact above 250 feet (the remaining top half of the building), which is significantly taller than surrounding development, and thus more visible.

Relatedly, the Letter of Decision in its discussion of OPC, Section 17.136.050(5) states the proposed Project is consistent with the Corridor Design Guidelines by constructing “a new high density residential building within a few blocks of the 19th Street BART.”<sup>231</sup> The Letter of Decision also states that the Project is consistent with OPC, Section 17.134.050(3) and the BVDSPP “by developing a high density residential development with active ground floors in close proximity” to shopping.<sup>232</sup>

These conclusions are incorrect, for two reasons. First, the Letter of Decision raises for the first time in the record consistency with the Corridor Design Plan. Second, that these plans promote high density development is not an issue. The BVDSPP does not permit development at *this* density in the plan area. Nor does the Letter of Decision cite to any provision within the Corridor Design Plan that allows a building to be inconsistent with the zoning as defined in the zoning code or BVDSPP. The Letter of Decision failed to address or correct these errors. Thus, the City’s findings in support of Project approval are unsupported.

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<sup>230</sup> Letter of Decision, p. 3 (discussing OPC, § 17.136.050(A)).

<sup>231</sup> Letter of Decision, p. 4.

<sup>232</sup> Letter of Decision, p. 5.

ii. ***The Director's finding that the Project fulfills the criteria to grant TPM is not supported by substantial evidence.***

As discussed above, the Director's finding that TPM is consistent with OMC, Section 16.08.030 (A), (B) and (D) is not supported by substantial evidence as the map and the design of the proposed subdivision is not consistent with all applicable zoning controls concerning the density allowed on the parcel. Further, the Letter of Decision analyzed the proposed Project's consistency with the other criteria under OMC, Section 16.08.030, (C), and (E)-(F). However, the City's findings under OPM, Section 16.08.030(E) and (F) are not supported by evidence in the record.

OPM, Section 16.08.030(E) requires the City to deny a TPM if the design of the proposed Project is "likely to cause substantial environmental damage."<sup>233</sup> The City must also deny a TPM if the design of the proposed Project is "likely to cause serious public health problems."<sup>234</sup>

As discussed above and in the attached SWAPE Report, the proposed Project may result in potentially significant impacts to air quality during construction and operation, as well as cumulatively considerable air quality impacts. As the SWAPE Report explains, the Addendum failed to address cumulative impacts from emissions from all sources, did not include an HRA which analyzed public health risks as a result of construction activities, and failed to consider all sources of operational emissions, among other deficiencies. These impacts will be largely borne by neighborhood residents and visitors, and were not disclosed, analyzed or mitigated in the BVDSP EIR.<sup>235</sup> Impacted visitors to the area include patients at the Columbia Allergy and Asthma Clinic, located at 80 Grand Avenue.<sup>236</sup> This serious public health impact, both to these individuals, who are already suffering from decreased pulmonary functioning, and to local residents and visitors, are not addressed in the Staff Reports or Addendum and the Letter of Decision failed to address or correct this issue.

The SWAPE Report also provides expert evidence that impacts to global climate change from the proposed Project's GHG emissions were not analyzed,

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<sup>233</sup> Letter of Decision, p. 7, citing OMC, § 16.08.030(E).

<sup>234</sup> Letter of Decision, p. 7, citing OMC, § 16.08.030(F).

<sup>235</sup> See generally, SWAPE Report, pp. 1-4.

<sup>236</sup> Columbia Allergy and Asthma Clinic, <https://www.columbiaallergy.com/>, last viewed Jan. 2, 2020.

disclosed, or mitigated in the BVDSP EIR. Nor is this impact considered in the Staff Reports.<sup>237</sup> As discussed in the SWAPE Report, SB 32 and the 2017 CARB Scoping Plan require that proposed developments limit their GHG emissions in order to reach Statewide GHG reduction goals. Projects, such as this one, which ignore the State's GHG reduction benchmarks can jeopardize future jobs and development in the area by causing development moratoriums or restrictions. The plan for development described in the BVDSP may become unobtainable if currently proposed projects, such as this one, proceed without considering their GHG impacts. The Staff Reports and Addendum do not address this impact and the Letter of Decision failed to address or correct this issue. Thus, the City's conclusions are unsupported.

As described in detail above and in the attached Smith Report, the proposed Project may potentially generate traffic, in excess of the capacity of existing streets. As Mr. Smith explains, this level of traffic was not analyzed in the EIR prepared for the BVDSP because the traffic data relied upon in that document did not consider the recent economic recovery, among other deficiencies.<sup>238</sup> The Smith Report also details how the proposed Project may create a cumulatively considerable impact to public transit, specifically, to the functioning of the nearby 19th Street BART station.<sup>239</sup> The Staff Reports and Addendum do not address this impact and the Letter of Decision failed to address or correct this issue. Thus, the City's conclusions are unsupported.

As described in detail above and in the attached Watry Report, the proposed Project may create significant impacts to neighborhood residents from noise during Project construction. The mitigation provided in the BVDSP is vague, unenforceable, and of uncertain efficacy. As Mr. Watry explains, SCA-NOI-2 contains a significant loophole which makes it ineffective in reducing impacts during the proposed Project's noisiest phases.<sup>240</sup> This loophole would allow the Applicants to engage in the noisiest phases of construction, unceasingly, if the City deems it "necessary." Necessary is not defined.<sup>241</sup>

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<sup>237</sup> See generally, SWAPE Report, pp. 4-12.

<sup>238</sup> See generally, Smith Report, pp. 1-3.

<sup>239</sup> See generally, Smith Report, pp. 4-5.

<sup>240</sup> See generally, Watry Report, pp. 1-5.

<sup>241</sup> See generally, Watry Report, pp. 1-5.

This impact is especially acute because the proposed Project would be 411 feet tall, more than 60% taller than buildings analyzed in the BVDSP EIR.<sup>242</sup> Moreover, buildout of the Project, in conjunction with plans for buildout of the rest of the BVDSP area, will expose neighborhoods residents to “semi-permanent” construction noise – noise that will continue for several years.<sup>243</sup> Nearby sensitive receptors include the residents at The Grand and the patients of the 88 Grand Avenue medical offices.<sup>244</sup>

Neither Addendum nor the Staff Reports address the adverse impacts of exposure to continuous construction noise. The Letter of Decision failed to address or correct this issue. Thus, the City’s conclusions are unsupported.

***iii. Additional inconsistencies with the Residential Design Review and Conditional Use Permit Criteria.***

The Letter of Decision found that proposed Project would “not affect the livability or appropriate development of abutting properties and the surrounding neighborhood” and will not contribute to the “generation of traffic” under OPC, Section 17.134.050(1).<sup>245</sup> The Letter of Decision found that development will “protect, preserve, or enhance neighborhood characteristics” OPC, Section 17.136.050(A)(2). These findings are not supported by evidence in the record.

As discussed above, the proposed Project is likely to result in adverse impacts to air quality, public health, traffic, decreased functioning of public transit, noise, and from GHG emissions. The Director failed to address these deficiencies in the Letter of Decision. Therefore, these impacts to the environment and public health remain potentially significant and adverse. It is an abuse of discretion to find, without evidence, that a project with such impacts would not render the local community less livable and desirable. The Planning Commission should overturn the Project approvals, and remand the Project to Staff with instructions to draft a project-level EIR which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives.

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<sup>242</sup> See generally, Watry Report, pp. 1-5.

<sup>243</sup> See generally, Watry Report, pp. 6-7.

<sup>244</sup> Oakland Bone and Joint Specialists, <http://oaklandboneandjointspecialists.com/>, last viewed, Jan. 2, 2020; Columbia Allergy and Asthma Clinic, <https://www.columbiaallergy.com/>, last viewed, Jan. 2, 2020.

<sup>245</sup> Letter of Decision, p. 5.

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## IX. CONCLUSION

As EBRRD's January 2020 Comments, attached expert reports, and this Appeal demonstrate, the proposed Project is likely to create potentially significant impacts to air quality and public health, GHG, noise, and traffic. These impacts are peculiar to the Project, were not disclosed, analyzed, or mitigated in the EIR prepared for the BVDSP, and are not substantially mitigated by the Project's SCAs.

Moreover, because an EIR is required, the City cannot approve the proposed Project using a Minor CUP. A Major CUP is required, subject to review by the Oakland Planning Commission. And, even if the City could issue a Minor CUP in these circumstances, which it cannot, the City's findings under the general permit review criteria are not supported by substantial evidence.

The Letter of Decision failed to address and correct these errors. Therefore, the Director's findings were not supported by evidence in the record and granting the approvals was an abuse of discretion under CEQA and local land use law.

To comply with the law, the City must withdraw the Addendum and direct Staff to prepare a subsequent or supplemental EIR for public review and comment, which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives to the proposed Project.

Thank you for considering our comments. Please place this Appeal and attachments in the record of proceedings for this matter.

Sincerely,



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Sara Dudley

SFD:lj1  
Attachments

# EXHIBIT A



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February 28, 2019

Christina Caro  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd #1000  
South San Francisco, CA 94080

**Subject: Comments on the 88 Grand Avenue Project**

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Dear Ms. Caro,

We have reviewed the December 2019 Addendum ("Addendum") for the 88 Grand Avenue Project ("Project"), located in the City of Oakland ("City"), as well as the Letter of Decision filed by the City on February 20, 2020. The Project proposes to maintain an existing 44,000 square foot office building and construct 275 residential units, 1,000 square feet of retail space, and 45 parking spaces on the 0.51-acre site.

We provided a comment letter regarding the Addendum on January 3, 2020. Our review of the City's February 2020 Letter of Determination concludes that the Letter of Decision fails to address the deficiencies we previously identified in the Addendum's analysis of air quality, public health, and Greenhouse Gas ("GHG") impacts. As a result, the Addendum still fails to adequately evaluate the Project's Air Quality, Health Risk, and Greenhouse Gas impacts. As we previously commented, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. This letter contains our updated analysis in response to the Letter of Determination. An EIR should be prepared to adequately assess and mitigate the potential air quality and health risk impacts that the project may have on the surrounding environment.

## **Air Quality**

### *Incorrectly Assumes Tier 4 Final Equipment*

As stated in our January 2020 letter, SCA AIR-3 requires the Project to *either* "prepare a Health Risk Assessment (HRA) in accordance with current guidance" or "[a]ll off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement)" (p. A-7, SCA-AIR-3(a)(i) and (ii)). Thus,

SCA-AIR-3 does not bind the Project to the use of Tier 4 equipment, but rather allows the Project to *either* conduct an HRA or utilize the most effective VDECS available.

In this case, we can reasonably conclude that the Project opted for SCA-AIR-3(a)(ii), as the City did not prepare an HRA for the Project's construction emissions under option SCA-AIR-3(a)(i), and because the Project's emissions were modeled assuming Tier 4 Final equipment. However, SCA-AIR-3(a)(ii) does not require Tier 4 Final equipment. Rather, it authorizes the selection of emissions control equipment from a variety of equipment types, including less protective versions of Tier 4 engines than the Tier 4 Final equipment modeled in the Addendum. Specifically, SCA-AIR-3(a)(ii) states,

***"All off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by CARB.*** The equipment shall be properly maintained and tuned in accordance with manufacturer specifications. This shall be verified through an equipment inventory submittal and Certification Statement that the Contractor agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of contract" (p. A-7, SCA-AIR-3(a)(ii) (emphasis added)).

Thus, even if the Project chooses SCA-AIR-3(a)(ii), this does not guarantee the use of Tier 4 Final engines, as assumed in the Addendum. This condition requires the most effective VDECS, which the Addendum determines is "available" and states that "Tier 4 engines automatically meet this requirement" (p. A-7, SCA-AIR-3(a)(ii)). However, Tier 4 equipment is not the only type of VDECS available.<sup>1</sup> This condition therefore does not bind the proponent to the use of Tier 4 equipment. Rather, it offers the Project the opportunity to use the "most effective VDECS available". Thus, as applied to the Project, SCA-AIR-3 would allow the Project to determine that "available" equipment could include certified VDECS equipment that may not meet the Tier 4 requirement.

SCA-AIR-3 also fails to distinguish between the two types of Tier 4 equipment that are available on the market, Tier 4 Interim and Tier 4 Final, which produce different levels of DPM reductions. Tier 4 Final engines achieve greater DPM emissions reductions than Tier 4 Interim. The reduction in particulate matter (PM) and DPM achieved by the use of Tier 4 Final equipment includes emissions reductions of up to 93% during the construction phase (0.26 tons to 0.019 tons of DPM emitted), whereas, Tier 4 Interim equipment achieves emission reductions of 50% to 85% at best.<sup>2</sup> SCA-AIR-3(a)(ii) does not require Tier 4 Final engines. Rather, it authorizes the use of "Tier 4 engines," thus authorizing *both* Tier 4 Interim and Tier 4 Final. As applied to the Project, SCA-AIR-3(a)(ii) would therefore allow the Project to select DPM reduction equipment from the range of VDECS that are "available." And even if the Project chooses to use Tier 4 engines, we still cannot verify that these would be Tier 4 Final engines. By assuming Tier 4

<sup>1</sup> Emission Standards, Nonroad Diesel Engines, available at:

<https://www.dieselnet.com/standards/us/nonroad.php#tier3>.

<sup>2</sup> BREEZE. 2016. CALEEMOD. Appendix D, Default Data Tables. Table 3-5. OFFROAD Emission Factor Based on Engine Tier. Prepared for the California Air Pollution Control Offices Association. September, 2016. See [http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05\\_appendix-d2016-3-1.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05_appendix-d2016-3-1.pdf?sfvrsn=2); see also <https://dieselnet.com/standards/us/nonroad.php#tier4>.

Final engines in the CalEEMod model, the Addendum incorrectly quantified and analyzed the Project's emissions and health-related impacts. The City therefore lacks supporting evidence for its conclusion that "health risk impacts from project construction would not be more severe than what was identified in the BVDSP EIR" (Addendum, p. 40).

Finally, SCA-AIR-3(a)(ii) requires that the Project provide an equipment inventory submittal and Certification Statement to the City. However, neither are included in the Addendum or Letter of Decision. This presents an issue, as the use of Tier 4 Final equipment is not guaranteed by SCA-AIR-3. Without the referenced material(s), we cannot validate the Addendum's assumption that Tier 4 final equipment will be available for the Project, let alone required.

Based on the evidence in the City's record, the emissions modeling in the Addendum may underestimate construction DPM emissions and should not be relied upon to determine Project significance.

### Incomplete Operational Health Risk Analysis

We previously commented that, while the Addendum conducted a quantified HRA for Project operation, it only considered emissions from one emergency generator. Specifically, in regards to the HRA, the Addendum concluded that "the project's emergency generator would result in the BAAQMD's maximum permissible excess cancer risks of 10 in one million due to emissions of DPM" (p. 41). However, while the Addendum did conduct an HRA due to operational emissions from one emergency generator, it failed to include the Project's *entire* operational emissions. According to the CalEEMod User's Guide, a Project's operational emissions include the following sources: on-road mobile vehicle traffic, fugitive dust associated with roads, architectural coating activities, off-road equipment used during operation, landscaping equipment, emergency generators, fire pumps, process boilers, consumer products, parking lot degreasers, fertilizers/pesticides, cleaning supplies, wood stoves and hearth usage, electricity usage in buildings, electricity usage from lighting in parking lots and lighting, ventilation and elevators for parking, water usage, and solid waste disposal.<sup>3</sup> By only conducting an HRA for the Project's single operational emergency generator, the model underestimates the Project's health risk impact resulting from total operational emissions. The Letter of Decision failed to include an updated analysis of the Project's DPM emissions, as we recommended.

### Screening-Level Assessment Indicates Significant Impact

Due to the City's failure to prepare a construction HRA, and in an effort to demonstrate the potential risk posed by Project construction and operation to nearby sensitive receptors, we prepared a simple screening-level HRA. The results of our assessment, as described below, provide substantial evidence that the Project's construction and operational DPM emissions may result in a potentially significant health risk impact not previously identified by the Addendum.

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<sup>3</sup> "CalEEMod User's Guide." CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 2.

In order to conduct our screening level risk assessment, we relied upon AERSCREEN, which is a screening level air quality dispersion model.<sup>4</sup> The model replaced SCREEN3, and AERSCREEN is included in the OEHHA<sup>5</sup> and the California Air Pollution Control Officers Associated (CAPCOA)<sup>6</sup> guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRsAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project's construction and operational health-related impact to residential sensitive receptors using the annual PM<sub>10</sub> exhaust estimates from the Addendum's annual CalEEMod output files. It is important to note that this air model underestimates emissions, as we previously addressed in our January 2020 letter. Specifically, this CalEEMod model incorrectly includes the use of Tier 4 Final engines for construction equipment, an underestimated land use size for the proposed parking garage, an underestimated Sunday trip rate, an unsubstantiated water-related mitigation measure, and a failure to model the existing building's operational emissions. As such, this model underestimates Project emissions and is not the most conservative analysis of the Project's impacts. Review of the Project site on Google Earth demonstrates that the closest sensitive receptor is a residence approximately 80 feet, or roughly 25 meters, east of the Project site. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. The Project's construction CalEEMod output files indicate that construction activities will generate approximately 18 pounds of diesel particulate matter (DPM) over the 376-day construction period (CalEEMod, pp. 10). The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$\text{Emission Rate} \left( \frac{\text{grams}}{\text{second}} \right) = \frac{18.22 \text{ lbs}}{376 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.0002544 \text{ g/s}$$

Using this equation, we estimated a construction emission rate of 0.0002544 grams per second (g/s). Subtracting the 376-day construction duration from the total residential duration of 30 years, we assumed that after Project construction, the MEIR would be exposed to the Project's operational DPM for an additional 28.97 years, approximately. The Project's operational CalEEMod emissions indicate that operational activities will generate approximately 67 pounds of DPM per year throughout

<sup>4</sup> "AERSCREEN Released as the EPA Recommended Screening Model," USEPA, April 11, 2011, available at: [http://www.epa.gov/ttn/scram/guidance/clarification/20110411\\_AERSCREEN\\_Release\\_Memo.pdf](http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf)

<sup>5</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

<sup>6</sup> "Health Risk Assessments for Proposed Land Use Projects," CAPCOA, July 2009, available at: [http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA\\_HRA\\_LU\\_Guidelines\\_8-6-09.pdf](http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf)

operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$\text{Emission Rate } \left( \frac{\text{grams}}{\text{second}} \right) = \frac{67.4 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.0009695 \text{ g/s}$$

Using this equation, we estimated an operational emission rate of 0.0009695 g/s. Construction and operational activity was simulated as a 0.51-acre rectangular area source in AERSCREEN with dimensions of 74 meters by 28 meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.<sup>7</sup> AS previously stated, there are residential sensitive receptors located approximately 25 meters from the Project site. The single-hour concentration estimated by AERSCREEN for Project construction is approximately 1.899  $\mu\text{g}/\text{m}^3$  DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration 0.1899  $\mu\text{g}/\text{m}^3$  for Project construction at the nearest sensitive receptor. For Project operation, the single-hour concentration is estimated by AERSCREEN is approximately 7.237  $\mu\text{g}/\text{m}^3$  at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.7237  $\mu\text{g}/\text{m}^3$  for Project operation at the nearest sensitive receptor.

We calculated the excess cancer risk to the residential receptors located closest to the Project site using applicable HRA methodologies prescribed by OEHHA and the BAAQMD. Consistent with the construction schedule proposed by the DEIR, the annualized average concentration for construction was used for the entire third trimester of pregnancy (0.25 years) entire infantile stage of life (0 – 2 years), and first 0.78 years of the child stage of life (2 – 16 years). The annualized average concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the child stages of life (2 – 16 years) and adult stages of life (16 – 30 years). Consistent with OEHHA and BAAQMD guidance, we used Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.<sup>8,9</sup> According to the OEHHA guidance recommended

<sup>7</sup> "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: [http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019\\_OCR.pdf](http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf); see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 4-36

<sup>8</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

<sup>9</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en), p. 5-15.

by the BAAQMD, quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant) and should be multiplied by a factor of three during the child stage of life (2 to 16 years).<sup>10</sup> Furthermore, in accordance with guidance set forth by OEHHA, we used the 95<sup>th</sup> percentile breathing rates for infants.<sup>11</sup> Finally, according to BAAQMD guidance, we used a Fraction of Time At Home (FAH) value of 0.85 for the 3rd trimester and infant receptors, 0.72 for child receptors, and 0.73 for the adult receptors.<sup>12</sup> We used a cancer potency factor of 1.1 (mg/kg-day)<sup>-1</sup> and an averaging time of 25,550 days. Consistent with OEHHA guidance, exposure to the sensitive receptor was assumed to begin in the third trimester to provide the most conservative estimate of air quality hazards. The results of our calculations are shown below.

**The Closest Exposed Individual at an Existing Residential Receptor**

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	Cancer Risk without ASFs*	ASF	Cancer Risk with ASFs*
Construction	0.25	0.1899	361	2.2E-07	10	2.2E-06
<b>3rd Trimester Duration</b>	<b>0.25</b>			<b>2.2E-07</b>	<b>3rd Trimester Exposure</b>	<b>2.2E-06</b>
Construction	0.78	0.1899	1090	2.1E-06	10	2.1E-05
Operation	1.22	0.7237	1090	1.5E-05	10	1.2E-04
<b>Infant Exposure Duration</b>	<b>2.00</b>			<b>1.7E-05</b>	<b>Infant Exposure</b>	<b>1.4E-04</b>
Operation	14.00	0.7237	572	6.3E-05	3	1.9E-04
<b>Child Exposure Duration</b>	<b>14.00</b>			<b>6.3E-05</b>	<b>Child Exposure</b>	<b>1.9E-04</b>
Operation	14.00	0.7237	261	2.9E-05	1	2.9E-05
<b>Adult Exposure Duration</b>	<b>14.00</b>			<b>2.9E-05</b>	<b>Adult Exposure</b>	<b>2.9E-05</b>
<b>Lifetime Exposure Duration</b>	<b>30.00</b>			<b>1.1E-04</b>	<b>Lifetime Exposure</b>	<b>3.6E-04</b>

<sup>10</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en), p. 5-2.

<sup>11</sup> "Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics 'Hot Spots' Information and Assessment Act," June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19.

"Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>

<sup>12</sup> "Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines." BAAQMD, January 2016, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines\\_clean\\_jan\\_2016-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=en)

As indicated in the table above, the excess cancer risk posed to adults, children, infants, and during the third trimester of pregnancy at the closest receptor, located approximately 25 meters away, over the course of Project construction and operation are approximately 29, 190, 140, and 2.2 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately 360 in one million. The lifetime cancer risk exceeds the BAAQMD threshold of 10 in one million, thus resulting in a significant impact not previously identified or addressed by the Addendum. It is important to note that the health-related impacts are the result of emissions that are *underestimated* in the model. As such, an updated EIR should include an HRA evaluating emissions from a Project-specific CalEEMod model.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection.<sup>13</sup> The purpose of the screening-level HRA shown above is to demonstrate the link between the proposed Project's construction and operational emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when applicable guidance is used. Therefore, since our screening-level HRA indicates a potentially significant impact, the City should prepare an EIR with a revised HRA which makes a reasonable effort to update the Project's air quality model and the potential health risks posed to nearby receptors. Thus, the City should prepare an updated, quantified air pollution model as well as an updated, quantified refined health risk assessment which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

## **Greenhouse Gas**

### **Failure to Adequately Assess Greenhouse Gas Impacts**

We previously commented that the Addendum's GHG modeling failed to include the entire Project's operational emissions, and recommended that the City prepare an updated GHG analysis that adequately evaluates the Project's impacts. The Letter of Decision failed to respond to our comments or update its GHG analysis.

The Addendum concluded that the Project's GHG impact would be less than significant based on comparing emissions estimated in CalEEMod to the BAAQMD threshold of 1,100 MT CO<sub>2</sub>e/year (p. 63). Furthermore, the Addendum relied upon the BVDSP EIR and the Project's consistency with several policies related to GHG emissions, including CARB's Climate Change Scoping Plan, the Plan Bay Area, the City of Oakland ECAP, the City of Oakland General Plan, the City's Green Building Ordinance, the City's SCA GHG Reduction Plan (p. 64-66). The Letter of Decision relies on the same conclusion. However, this conclusion and less than significant impact finding is incorrect for the reasons discussed below.

### *Incorrect and Unsubstantiated Analysis Demonstrates a Potentially Significant Impact*

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<sup>13</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>, p. 1-5

Due to the City's failure to correct or update the Addendum's flawed GHG evaluation discussed in our January 2020 letter, we prepared an updated analysis, which demonstrates that the Project may result in a significant GHG impact. If the correct analysis had been conducted to evaluate the Project's emissions in the Addendum, it would have disclosed a significant GHG impact. According to the Addendum,

"The adopted Plan Bay Area serves as the SCS for the Bay Area. As defined by Plan Bay Area, Priority Development Areas (PDAs) are areas where new development will support the needs of residents and workers in a pedestrian-friendly environment served by transit. According to the Metropolitan Transportation Commission, the project is located within a PDA. Furthermore, the project is permitted in the zoning district where the project site is located, and is consistent with the bulk, density, and land uses envisioned for the site. Therefore, since the project qualifies as a mixed-use residential project pursuant to Public Resources Code Section 21159.28(d) and is consistent with the applicable provisions of Plan Bay Area, the estimated GHG emissions from cars and light-duty trucks are excluded from the GHG analysis" (p. 62-63).

The Addendum then goes on to quantify the Project's GHG emissions without including cars and light-duty trucks, by reducing the Project's mobile-source operational emissions in the CalEEMod by roughly 53%.<sup>14</sup> The Addendum then compares these reduced emissions (without emissions from cars and light-duty trucks) to the BAAQMD threshold of significance (see excerpt below) (p. 63, Table V.F-3).

**Table V.F-3 Summary of Average GHG Emissions for the Project**

Emissions Scenario	CO <sub>2</sub> e (MT/Year)	CO <sub>2</sub> e (MT/Year/SP)
Construction <sup>a</sup>	15.1	0.02
Operation - Area	3.4	<0.01
Operation - Energy	287.1	0.42
Operation - Mobile	469.1	0.68
Operation - Waste	64.1	0.09
Operation - Water	23.7	0.03
Total Project Emissions	862	1.3
Thresholds of Significance	1,100	4.6
Exceed Threshold?	No	No

However, calculating the GHG emissions without including emissions from cars and light-duty trucks may be incorrect, as the Project is not zoned for the density proposed. Rather, the Project site is zoned for a density that would allow 104 dwelling units, but the Addendum proposes to develop a 275-unit

<sup>14</sup> Calculated: (991.1 MT CO<sub>2</sub>e/year mobile-source operational emissions, per CalEEMod) - (469.1 MT CO<sub>2</sub>e/year mobile-source operational emissions included in the Addendum's GHG analysis) = 522 MT CO<sub>2</sub>e/year; 522 MT CO<sub>2</sub>e/year ÷ 991.1 MT CO<sub>2</sub>e/year = 52.67%.

building. Assuming that the Project is not consistent with the density, the impact of light duty trucks and cars should not be subtracted from mobile-source operational emissions in the GHG analysis.

Thus, the Project's emissions should have been calculated including emissions from cars and light-duty trucks, and compared to the correct threshold. When we compare the Project's GHG emissions, including cars and light-duty trucks, to the BAAQMD threshold of 1,100 MT CO<sub>2</sub>e/year, we find that the Project would result in a significant GHG impact not previously identified or addressed in the Addendum (see table below).

<b>Addendum Annual Greenhouse Gas Emissions</b>	
<b>Project Phase</b>	<b>Proposed Project (MT CO<sub>2</sub>e/year)</b>
Construction (amortized over 40 years)	15.1
Area	3.4
Energy	287.1
Mobile	991.1
Waste	64.1
Water	23.7
<b>Total</b>	<b>1,384.5</b>
Threshold	1,100
<b>Exceed?</b>	yes

As you can see in the table above, the Project's underestimated GHG emissions exceeds the BAAQMD's 1,100 MT CO<sub>2</sub>e/year threshold. Hence, a service population analysis is warranted.

According to CAPCOA's CEQA & Climate Change report, service population is defined as "the sum of the number of residents and the number of jobs supported by the project."<sup>15</sup> The Addendum states that

"[t]he average annual CO<sub>2</sub>e emissions per service population (687) was determined based on the forecasted population of residents and employees" (p. 62). The Addendum elaborates, "[b]ased on an average of 2.49 persons per household (2015-2023 Housing Element, 2010 US Census Data, p. 114, Table 3-5) and a standard assumption of 1 employee per 500 square feet. The BVDSP EIR assumed an average of 1.87 persons per household; however, a higher estimate was used to provide a more conservative 'worst case' scenario" (p. 62, fn. 35).

However, this claim is incorrect, as a higher service population results in a lower service population efficiency value. Thus, a "worst case" scenario would utilize the lower service population value as indicated by the BVDSP EIR's. Furthermore, the US Census Data applies generally across the United States, while the BVDSP is regionally-based, and thus more appropriate for the proposed Project.

<sup>15</sup> CAPCOA (Jan. 2008) CEQA & Climate Change, p. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

Utilizing this more accurate, conservative analysis, we find the service population for the Project to be 516.<sup>16</sup>

Furthermore, the BAAQMD's 2020 service population efficiency threshold of 4.6 MT CO<sub>2</sub>e/SP/yr is not appropriate for evaluating the Project's significance, which is not anticipated to complete construction until 2022 at the earliest (p. 60). Instead, the BAAQMD regularly utilizes a substantial progress population efficiency target goal of 2.6 MT CO<sub>2</sub>e/SP/year for target year 2030.<sup>17</sup> Thus, the DEIR should have compared the Project's emissions to the 2.6 MT CO<sub>2</sub>e/SP/year for the target year of 2030.

When dividing the Project's underestimated GHG emissions by a service population value of 516 people, we find that the Project would emit approximately 2.68 MT CO<sub>2</sub>e/SP/year, which exceeds the BAAQMD substantial progress threshold of 2.6 MT CO<sub>2</sub>e/SP/year (see table below).

<b>SWAPE Greenhouse Gas Emissions</b>	
<b>Project Phase</b>	<b>Proposed Project (MT CO<sub>2</sub>e/year)</b>
<b>Annual Emissions</b>	<b>1,384.5</b>
<b>Service Population</b>	<b>516</b>
<b>Service Population Efficiency</b>	<b>2.68</b>
<b>Threshold</b>	<b>2.60</b>
<b>Exceed?</b>	<b>Yes</b>

As the table above demonstrates, when a more conservative service population and accurate threshold are used to evaluate Project emissions, we find a significant impact not previously addressed or identified in the Addendum. Considering that these emissions are underestimated as previously discussed, the Project would exceed even more when modeled correctly. As a result, an updated GHG analysis should be prepared in a Project-specific EIR and additional mitigation should be incorporated.

#### *Failure to Implement a GHG Reduction Plan*

The Addendum concludes that the proposed Project would not require a GHG Reduction Plan, stating:

"For a project to be subject to SCA-GHG-1 (and be required to prepare a GHG Reduction Plan), the project must meet all the criteria of one or more of the scenarios. As shown in Table V.F-5, the project would not trigger the need for a GHG Reduction Plan requirement because none of the three scenarios of SCA GHG Reduction Plan (#42) are fully satisfied" (p. 65).

<sup>16</sup> Service Population = (1.87 x 275 dwelling units) + (1,000 square feet ÷ 500 square feet/employee) = 516 people.

<sup>17</sup> "Final White Paper Beyond 2020 and Newhall." Association of Environmental Professionals (AEP), October 2016, available at: [https://califaep.org/docs/AEP-2016\\_Final\\_White\\_Paper.pdf](https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf), p. 40; see also Santa Clara University Housing Air Quality & Greenhouse Gas Assessment, October 2019, available at: <https://www.sanioseca.gov/Home/ShowDocument?id=45718>; see also Facebook Campus Expansion Project Draft Environmental Impact Report, City of Menlo Park, May 2016, available at: [https://www.menlopark.org/DocumentCenter/View/10286/Ch03-05\\_GHG\\_Draft-EIR?bidId=](https://www.menlopark.org/DocumentCenter/View/10286/Ch03-05_GHG_Draft-EIR?bidId=)

Furthermore, the Addendum includes a table comparing the Project with the three scenarios that trigger a SCA GHG Reduction Plan (see table below) (p. 65, Table V.F-5).

Scenario	Criterion (a)	Criterion (b)	Criterion (c)	Criterion (d)	Applied to Project?
Scenario A	Involve land use development	Exceed BAAQMD's screening criteria <sup>a</sup>	Exceed both of the City's applicable thresholds	--	No
	Yes (mixed use)	Yes (275 dwelling units and 1,000 sf commercial)	No (See Table V.F-3)	--	
Scenario B	Involve land use development	Exceed BAAQMD's screening criteria <sup>a</sup>	Exceed one of the City's applicable thresholds	Very Large Project	No
	Yes	Yes	No (See Table V.F-3)	No	
Scenario C	Involve a stationary source	Exceed the City's applicable threshold	--	--	No
	Yes	No (see Table V.F-4)	--	--	

As you can see in the excerpt above, the Addendum concludes that the proposed Project would not require a GHG Reduction Plan, as it does not satisfy all of the criteria for any of the three scenarios. However, review of the Addendum's GHG analysis reveals that the Project would, in fact, satisfy all of the criteria for Scenario A when conducting a correct GHG analysis. As previously discussed, the Project's GHG analysis incorrectly subtracts emissions from cars and light-duty trucks, as well as utilizes an incorrect service population and an inapplicable, outdated service population efficiency threshold. As shown, when a correct GHG analysis is conducted utilizing the Project's underestimated emissions from the Addendum's CalEEMod model, we find that the Project satisfies all of the Scenario A criteria. As such, we find the Addendum's GHG analysis to be inadequate and recommend that an updated CEQA analysis be conducted to include a GHG reduction plan, as required by SCA #42 (City SCA F).<sup>18</sup>

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or

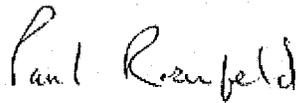
<sup>18</sup> See Exhibit 1,

otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.

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**Geologic and Hydrogeologic Characterization  
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Litigation Support and Testifying Expert  
CEQA Review**

**Education:**

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

**Professional Certifications:**

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

**Professional Experience:**

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

**Senior Regulatory and Litigation Support Analyst:**

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 100 environmental impact reports since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, Valley Fever, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a community adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

**Executive Director:**

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

**Hydrogeology:**

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports,

conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nationwide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

#### **Policy:**

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

### **Geology:**

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

### **Teaching:**

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt taught physical geology (lecture and lab and introductory geology at Golden West College in Huntington Beach, California from 2010 to 2014.

### **Invited Testimony, Reports, Papers and Presentations:**

**Hagemann, M.F., 2008.** Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

**Hagemann, M.F., 2008.** Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

**Hagemann, M.F., 2005.** Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

**Hagemann, M.F., 2004.** Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

**Hagemann, M.F., 2004.** Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

- Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.
- Hagemann, M.F.**, 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).
- Hagemann, M.F.**, 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.
- Hagemann, M.F.**, 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.
- Hagemann, M.F.**, 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.
- Hagemann, M.F.**, 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.
- Hagemann, M.F.**, 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.
- Hagemann, M.F.**, 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.
- Hagemann, M.F.**, 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.
- Hagemann, M.F.**, 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.
- Hagemann, M.F.**, 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.
- Hagemann, M.F.**, 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.
- Hagemann, M.F.**, 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.
- Hagemann, M.F.**, 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

- Hagemann, M.F.**, 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.
- Hagemann, M.F.**, 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.
- Hagemann, M.F.**, and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.
- VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.
- Hagemann, M.F.**, 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.
- Hagemann, M.F.**, 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.
- Hagemann, M.F.**, and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.
- Hagemann, M.F.**, Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.
- Hagemann, M. F.**, Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.
- Hagemann, M.F.**, 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.
- Hagemann, M.F.** and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.
- Hagemann, M.F.**, 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

**Hagemann, M.F.**, 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

**Other Experience:**

Selected as subject matter expert for the California Professional Geologist licensing examination, 2009-2011.



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

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## ***Paul Rosenfeld, Ph.D.***

**Chemical Fate and Transport & Air Dispersion Modeling**

*Principal Environmental Chemist*

**Risk Assessment & Remediation Specialist**

### **Education:**

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.  
M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.  
B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

### **Professional Experience:**

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. Dr. Rosenfeld has a doctorate in soil chemistry and has evaluated odors from biosolids applications to soil and the effect of biosolids to agricultural crops. Dr. Rosenfeld has also evaluated odor emissions from the compost and food industry. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing petroleum, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, MtBE, fuel oxygenates and odor. Dr. Rosenfeld has also evaluated and modeled emissions from fracking, boilers, incinerators and other industrial and agricultural sources relating to nuisance and personal injury. Dr. Rosenfeld has evaluated greenhouse gas emissions using various modeling programs recommended by California Air Quality Management Districts.

### **Professional History:**

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner  
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)  
UCLA School of Public Health; 2003 to 2006; Adjunct Professor  
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator  
UCLA Institute of the Environment, 2001-2002; Research Associate  
Komex H<sub>2</sub>O Science, 2001 to 2003; Senior Remediation Scientist  
National Groundwater Association, 2002-2004; Lecturer  
San Diego State University, 1999-2001; Adjunct Professor  
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager  
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager  
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor  
King County, Seattle, 1996 – 1999; Scientist  
James River Corp., Washington, 1995-96; Scientist  
Big Creek Lumber, Davenport, California, 1995; Scientist

Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist  
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist  
Bureau of Land Management, Kremmling Colorado 1990; Scientist

## **Publications:**

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermოდ and Empirical Data. *American Journal of Environmental Science*, 8(6), 622-632.

**Rosenfeld, P.E.** & Feng, L. (2011). *The Risks of Hazardous Waste*. Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2010). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Saugęt, IL. *Procedia Environmental Sciences*. 113-125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.** (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health*. 73(6), 34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*. Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*. Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. *WIT Transactions on Ecology and the Environment, Air Pollution*, 123 (17), 319-327.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, 70, 002252-002255.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, 70, 000527-000530.

Hensley, A.R. A. Scott, J.J. J. Clark, **Rosenfeld, P.E.** (2007). Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility. *Environmental Research*. 105, 194-197.

**Rosenfeld, P.E.**, J. J. J. Clark, A. R. Hensley, M. Suffet. (2007). The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities. *Water Science & Technology* 55(5), 345-357.

**Rosenfeld, P. E.**, M. Suffet. (2007). The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment. *Water Science & Technology* 55(5), 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.** (2007). *Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities*. Boston Massachusetts: Elsevier Publishing,

**Rosenfeld P.E.**, and Suffet, I.H. (Mel) (2007). Anatomy of an Odor Wheel. *Water Science and Technology*.

- Rosenfeld, P.E., Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007).** The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities. *Water Science And Technology*.
- Rosenfeld, P.E., and Suffet I.H. (2004).** Control of Compost Odor Using High Carbon Wood Ash. *Water Science and Technology*. 49(9),171-178.
- Rosenfeld P. E., J.J. Clark, I.H. (Mel) Suffet (2004).** The Value of An Odor-Quality-Wheel Classification Scheme For The Urban Environment. *Water Environment Federation's Technical Exhibition and Conference (WEFTEC) 2004*. New Orleans, October 2-6, 2004.
- Rosenfeld, P.E., and Suffet, I.H. (2004).** Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids. *Water Science and Technology*. 49(9), 193-199.
- Rosenfeld, P.E., and Suffet I.H. (2004).** Control of Compost Odor Using High Carbon Wood Ash, *Water Science and Technology*, 49( 9), 171-178.
- Rosenfeld, P. E., Grey, M. A., Sellev, P. (2004).** Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. *Water Environment Research*. 76(4), 310-315.
- Rosenfeld, P.E., Grey, M and Suffet, M. (2002).** Compost Demonstration Project, Sacramento California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008*.
- Rosenfeld, P.E., and C.L. Henry. (2001).** Characterization of odor emissions from three different biosolids. *Water Soil and Air Pollution*. 127(1-4), 173-191.
- Rosenfeld, P.E., and Henry C. L., (2000).** Wood ash control of odor emissions from biosolids application. *Journal of Environmental Quality*. 29, 1662-1668.
- Rosenfeld, P.E., C.L. Henry and D. Bennett. (2001).** Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. *Water Environment Research*. 73(4), 363-367.
- Rosenfeld, P.E., and C.L. Henry. (2001).** Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants. *Water Environment Research*, 73, 388-393.
- Rosenfeld, P.E., and Henry C. L., (2001).** High carbon wood ash effect on biosolids microbial activity and odor. *Water Environment Research*. 131(1-4), 247-262.
- Chollack, T. and P. Rosenfeld. (1998).** Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.
- Rosenfeld, P. E. (1992).** The Mount Liamuiga Crater Trail. *Heritage Magazine of St. Kitts*, 3(2).
- Rosenfeld, P. E. (1993).** High School Biogas Project to Prevent Deforestation On St. Kitts. *Biomass Users Network*, 7(1).
- Rosenfeld, P. E. (1998).** Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.
- Rosenfeld, P. E. (1994).** Potential Utilization of Small Diameter Trees on Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.
- Rosenfeld, P. E. (1991).** How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

## Presentations:

**Rosenfeld, P.E.**, Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society*. Lecture conducted from Santa Clara, CA.

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Atrazine: A Persistent Pesticide in Urban Drinking Water. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Bringing Environmental Justice to East St. Louis, Illinois. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

**Rosenfeld, P.E.** (April 19-23, 2009). Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

**Rosenfeld, P.E.** (April 19-23, 2009). Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*. Lecture conducted from Tuscon, AZ.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

**Rosenfeld, P. E.** (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld, P. E.** (October 15-18, 2007). The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld, P. E.** (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld P. E.** (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

**Rosenfeld P. E.** (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florida, Alabama. *The AEHS Annual Meeting*. Lecture conducted from San Diego, CA.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (August 21 – 25, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006*. Lecture conducted from Radisson SAS Scandinavia Hotel in Oslo Norway.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition*. Lecture conducted from Boston Massachusetts.

**Paul Rosenfeld Ph.D.** (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference*. Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

**Paul Rosenfeld Ph.D.** (September 19, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, *Toxicology and Remediation PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel, Irvine California.

**Paul Rosenfeld Ph.D.** (September 19, 2005). Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP. *PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel in Irvine, California.

**Paul Rosenfeld Ph.D.** (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference*. Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

**Paul Rosenfeld Ph.D.** (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

**Paul Rosenfeld Ph.D.** (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

**Paul Rosenfeld Ph.D.** (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

**Paul Rosenfeld, Ph.D.** and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

**Paul Rosenfeld, Ph.D.** (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

**Paul Rosenfeld, Ph.D.** (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

**Rosenfeld, P. E.**, Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference* Orlando, FL.

**Paul Rosenfeld, Ph.D.** and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants..* Lecture conducted from Hyatt Regency Phoenix Arizona.

**Paul Rosenfeld, Ph.D.** (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

**Paul Rosenfeld, Ph.D.** (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

**Rosenfeld, P.E. and Suffet, M.** (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association.* Lecture conducted from Barcelona Spain.

**Rosenfeld, P.E. and Suffet, M.** (October 7- 10, 2002). Using High Carbon Wood Ash to Control Compost Odor. *Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association.* Lecture conducted from Barcelona Spain.

**Rosenfeld, P.E. and Grey, M. A.** (September 22-24, 2002). Biocycle Composting For Coastal Sage Restoration. *Northwest Biosolids Management Association.* Lecture conducted from Vancouver Washington..

**Rosenfeld, P.E. and Grey, M. A.** (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conference.* Lecture conducted from Indianapolis, Maryland.

**Rosenfeld, P.E.** (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation.* Lecture conducted from Anaheim California.

**Rosenfeld, P.E.** (October 16, 2000). Wood ash and biofilter control of compost odor. *Biofest.* Lecture conducted from Ocean Shores, California.

**Rosenfeld, P.E.** (2000). Bioremediation Using Organic Soil Amendments. *California Resource Recovery Association.* Lecture conducted from Sacramento California.

**Rosenfeld, P.E., C.L. Henry, R. Harrison.** (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings.* Lecture conducted from Bellevue Washington.

**Rosenfeld, P.E., and C.L. Henry.** (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America.* Lecture conducted from Salt Lake City Utah.

**Rosenfeld, P.E., C.L. Henry, R. Harrison.** (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell.* Lecture conducted from Seattle Washington.

**Rosenfeld, P.E., C.L. Henry.** (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest.* Lecture conducted from Lake Chelan, Washington.

**Rosenfeld, P.E., C.L. Henry, R. Harrison.** (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings.* Lecture conducted from Bellevue Washington.

**Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills.** (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America.* Lecture conducted from Anaheim California.

## **Teaching Experience:**

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

## **Academic Grants Awarded:**

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

## **Deposition and/or Trial Testimony:**

In The Circuit Court of Ohio County, West Virginia  
Robert Andrews, et al. v. Antero, et al.  
Civil Action NO. 14-C-30000  
Rosenfeld Deposition, June 2015

In The Iowa District Court For Muscatine County

Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant  
Case No 4980  
Rosenfeld Deposition: May 2015

In the Circuit Court of the 17<sup>th</sup> Judicial Circuit, in and For Broward County, Florida

Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.  
Case Number CACE07030358 (26)  
Rosenfeld Deposition: December 2014

In the United States District Court Western District of Oklahoma

Tommy McCarty, et al., Plaintiffs, v. Oklahoma City Landfill, LLC d/b/a Southeast Oklahoma City  
Landfill, et al. Defendants.  
Case No. 5:12-cv-01152-C  
Rosenfeld Deposition: July 2014

In the County Court of Dallas County Texas

Lisa Parr et al, *Plaintiff*, vs. Aruba et al, *Defendant*.  
Case Number cc-11-01650-E  
Rosenfeld Deposition: March and September 2013  
Rosenfeld Trial: April 2014

In the Court of Common Pleas of Tuscarawas County Ohio

John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*  
Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)  
Rosenfeld Deposition: October 2012

In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken

David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.  
Case Number: 2007-CP-02-1584

In the Circuit Court of Jefferson County Alabama

Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*  
Civil Action No. CV 2008-2076  
Rosenfeld Deposition: September 2010

In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana

Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.  
Civil Suit Number 224,041 Division G  
Rosenfeld Deposition: September 2008

In the United States District Court, Western District Lafayette Division

Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.  
Case Number 2:07CV1052  
Rosenfeld Deposition: July 2009

In the United States District Court for the Southern District of Ohio

Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.  
Case Number 1:05 CV 227  
Rosenfeld Deposition: July 2008

In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana

Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.  
Case Number 07-2738 G

In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.  
Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153<sup>rd</sup> Judicial District

Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.

Case Number 153-212928-05

Rosenfeld Deposition: December 2006, October 2007

Rosenfeld Trial: January 2008

In the Superior Court of the State of California in and for the County of San Bernardino

Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100, inclusive, *Defendants*.

John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive, *Defendants*.

Case Number VCVVS044671

Rosenfeld Deposition: December 2009

Rosenfeld Trial: March 2010

In the United States District Court for the Middle District of Alabama, Northern Division

James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.

Civil Action Number 2:09-cv-232-WHA-TFM

Rosenfeld Deposition: July 2010, June 2011

In the Superior Court of the State of California in and for the County of Los Angeles

Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust; Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a California Corporation; and DOES 1 through 100, *Defendants*.

Case Number SC094173

Rosenfeld Deposition: September 2008, October 2008

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch

Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma corporation; and DOES 1 through 100, *Defendants*.

Case Number 1229251 (Consolidated with case number 1231299)

Rosenfeld Deposition: January 2008

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas

Harry Stephens Farms, Inc. and Harry Stephens, individual and as managing partner of Stephens Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil Chemical Co., *Defendants*.

Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)

Rosenfeld Deposition: July 2010

In the United States District Court for the Western District of Arkansas, Texarkana Division

Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.

Civil Action Number 07-4037

Rosenfeld Deposition: March 2010

Rosenfeld Trial: October 2010

In the District Court of Texas 21<sup>st</sup> Judicial District of Burleson County

Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.

Case Number 25,151

Rosenfeld Trial: May 2009

In the United States District Court of Southern District of Texas Galveston Division

Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.

Case 3:10-cv-00622

Rosenfeld Deposition: February 2012

Rosenfeld Trial: April 2013

In the Circuit Court of Baltimore County Maryland

Philip E. Cvach, II et al., *Plaintiffs* vs. Two Farms, Inc. d/b/a Royal Farms, Defendants

Case Number: 03-C-12-012487 OT

Rosenfeld Deposition: September 2013

# EXHIBIT 1

prohibit non-stormwater discharges into municipal storm drain systems and watercourses. The City of Oakland, as a member of the ACCWP, is a co-permittee under the ACCWP's permit and is, therefore, subject to the permit requirements.

- **Provision C.3 of the NPDES permit** is the section of the permit containing stormwater pollution management requirements for new development and redevelopment projects. Among other things, Provision C.3 requires that certain new development and redevelopment projects incorporate post-construction stormwater pollution management measures, including stormwater treatment measures, stormwater site design measures, and source control measures, to reduce stormwater pollution after the construction of the project. These requirements are in addition to standard stormwater-related best management practices (BMPs) required during construction.
- **Community Gardens and Farmer's Markets.** Community Garden locations include Arroyo Viejo, Bella Vista, Bushrod, Golden Gate, Lakeside Horticultural Center, Marston Campbell, Temescal, and Verdese Carter. Weekly Farmer's Markets locations include the Jack London Square, Old Oakland, Grand Lake, Mandela, and Temescal districts. Both efforts promote and facilitate the principal of growing and purchasing locally, which effects reductions in truck and vehicle use and GHG emissions.

#### **City of Oakland Standard Conditions of Approval and Uniformly Applied Development Standards Imposed as Standard Conditions of Approval**

The City's Standard Conditions of Approval (SCA) that directly pertain to greenhouse gases and that apply to the adoption and development under the Specific Plan are listed below. If the Specific Plan is adopted by the City, all applicable SCAs will be adopted as conditions of approval and required, as applicable, of the development under the Specific Plan to help ensure no significant impacts occur regarding construction period dust (or emissions). The SCA are incorporated and required as part of the Specific Plan, so they are not listed as mitigation measures.

- **SCA F: Greenhouse Gas (GHG) Reduction Plan**

*Prior to issuance of a construction-related permit and ongoing as specified.* The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval. The applicant shall implement the approved GHG Reduction Plan.

The goal of the GHG Reduction Plan shall be to increase energy efficiency and reduce GHG emissions to below at least one of the City of Oakland's CEQA Thresholds of Significance (1,100 metric tons of CO<sub>2</sub>e per year or 4.6 metric tons of CO<sub>2</sub>e per year per service population) **AND** to reduce GHG emissions by 36 percent below the project's "adjusted" baseline GHG emissions (as explained below) to help achieve the City's goal of reducing GHG emissions. The GHG Reduction Plan shall include, at a minimum, (a) a detailed GHG emissions inventory for the project under a "business-as-usual" scenario with no consideration of project design features, or other energy efficiencies, (b) an "adjusted" baseline GHG emissions inventory for the project, taking into consideration energy efficiencies included as part of the project (including the City's Standard Conditions of Approval, proposed mitigation measures, project design features, and other City requirements), (c) a comprehensive set of quantified additional GHG reduction measures available to further reduce GHG emissions beyond the adjusted GHG emissions, and (d) requirements for ongoing monitoring and reporting to demonstrate that the additional

GHG reduction measures are being implemented. If the project is to be constructed in phases, the GHG Reduction Plan shall provide GHG emission scenarios by phase.

Specifically, the applicant/sponsor shall adhere to the following:

- a) *GHG Reduction Measures Program.* Prepare and submit to the City Planning Director or his/her designee for review and approval a GHG Reduction Plan that specifies and quantifies GHG reduction measures that the project will implement by phase.

Potential GHG reduction measures to be considered include, but are not be limited to, measures recommended in BAAQMD's latest CEQA Air Quality Guidelines, the California Air Resources Board Scoping Plan (December 2008, as may be revised), the California Air Pollution Control Officers Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures Document (August 2010, as may be revised), the California Attorney General's website, and Reference Guides on Leadership in Energy and Environmental Design (LEED) published by the U.S. Green Building Council.

The proposed GHG reduction measures must be reviewed and approved by the City Planning Director or his/her designee. The types of allowable GHG reduction measures include the following (listed in order of City preference): (1) physical design features; (2) operational features; and (3) the payment of fees to fund GHG-reducing programs (i.e., the purchase of "offset carbon credits," pursuant to item "b" below).

The allowable locations of the GHG reduction measures include the following (listed in order of City preference): (1) the project site; (2) off-site within the City of Oakland; (3) off-site within the San Francisco Bay Area Air Basin; (4) off-site within the State of California; then (5) elsewhere in the United States.

- b) *Offset Carbon Credits Guidelines.* For GHG reduction measures involving the purchase of offset carbon credits, evidence of the payment/purchase shall be submitted to the City Planning Director or his/her designee for review and approval prior to completion of the project (or prior to completion of the project phase, if the project includes more one phase).

As with preferred locations for the implementation of all GHG reductions measures, the preference for offset carbon credit purchases include those that can be achieved as follows (listed in order of City preference): (1) within the City of Oakland; (2) within the San Francisco Bay Area Air Basin; (3) within the State of California; then (4) elsewhere in the United States. The cost of offset carbon credit purchases shall be based on current market value at the time purchased and shall be based on the Project's operational emissions estimated in the GHG Reduction Plan or subsequent approved emissions inventory, which may result in emissions that are higher or lower than those estimated in the GHG Reduction Plan.

- c) *Plan Implementation and Documentation.* For physical GHG reduction measures to be incorporated into the design of the project, the measures shall be included on the drawings submitted for construction-related permits. For operational GHG reduction measures to be incorporated into the project, the measures shall be implemented on an indefinite and ongoing basis beginning at the time of project completion (or at the completion of the project phase for phased projects).

For physical GHG reduction measures to be incorporated into off-site projects, the measures shall be included on drawings and submitted to the City Planning Director or his/her designee for review and approval and then installed prior to completion of the subject project (or prior to completion of the project phase for phased projects). For operational GHG reduction measures to be incorporated into off-site projects, the measures shall be implemented on an indefinite and ongoing basis beginning at the time of completion of the subject project (or at the completion of the project phase for phased projects).

- d) *Compliance, Monitoring and Reporting.* Upon City review and approval of the GHG Reduction Plan program by phase, the applicant/sponsor shall satisfy the following requirements for ongoing monitoring and reporting to demonstrate that the additional GHG reduction measures are being implemented. The GHG Reduction Plan requires regular periodic evaluation over the life of the Project (generally estimated to be at least 40 years) to determine how the Plan is achieving required GHG emissions reductions over time, as well as the efficacy of the specific additional GHG reduction measures identified in the Plan.

Implementation of the GHG reduction measures and related requirements shall be ensured through the project applicant/sponsor's compliance with Conditions of Approval adopted for the project. Generally, starting two years after the City issues the first Certificate of Occupancy for the project, the project applicant/sponsor shall prepare each year of the useful life of the project an Annual GHG Emissions Reduction Report (Annual Report), subject to the City Planning Director or his/her designee for review and approval. The Annual Report shall be submitted to an independent reviewer of the City Planning Director's or his/her designee's choosing, to be paid for by the project applicant/sponsor (see Funding, below), within two months of the anniversary of the Certificate of Occupancy.

The Annual Report shall summarize the project's implementation of GHG reduction measures over the preceding year, intended upcoming changes, compliance with the conditions of the Plan, and include a brief summary of the previous year's Annual Report results (starting the second year). The Annual Report shall include a comparison of annual project emissions to the baseline emissions reported in the GHG Plan.

The GHG Reduction Plan shall be considered fully attained when project emissions are less than either applicable numeric BAAQMD CEQA Thresholds AND GHG emissions are 36 percent below the project's "adjusted" baseline GHG emissions, as confirmed by the City Planning Director or his/her designee through an established monitoring program. Monitoring and reporting activities will continue at the City's discretion, as discussed below.

- e) *Funding.* Within two months after the Certificate of Occupancy, the project applicant/sponsor shall fund an escrow-type account or endowment fund to be used exclusively for preparation of Annual Reports and review and evaluation by the City Planning Director or his/her designee, or its selected peer reviewers. The escrow-type account shall be initially funded by the project applicant/sponsor in an amount determined by the City Planning Director or his/her designee and shall be replenished by the project applicant/sponsor so that the amount does not fall below an amount determined by the City Planning Director or his/her designee. The mechanism of this account shall be mutually agreed upon by the project applicant/sponsor and the City Planning Director or his/her designee, including the ability of the City to access the

funds if the project applicant/sponsor is not complying with the GHG Reduction Plan requirements, and/or to reimburse the City for its monitoring and enforcement costs.

- f) *Corrective Procedure.* If the third Annual Report, or any report thereafter, indicates that, in spite of the implementation of the GHG Reduction Plan, the project is not achieving the GHG reduction goal, the project applicant/sponsor shall prepare a report for City review and approval, which proposes additional or revised GHG measures to better achieve the GHG emissions reduction goals, including without limitation, a discussion on the feasibility and effectiveness of the menu of other additional measures (Corrective GHG Action Plan). The project applicant/sponsor shall then implement the approved Corrective GHG Action Plan.

If, one year after the Corrective GHG Action Plan is implemented, the required GHG emissions reduction target is still not being achieved, or if the project applicant/owner fails to submit a report at the times described above, or if the reports do not meet City requirements outlined above, the City Planning Director or his/her designee may, in addition to its other remedies, (a) assess the project applicant/sponsor a financial penalty based upon actual percentage reduction in GHG emissions as compared to the percent reduction in GHG emissions established in the GHG Reduction Plan; or (b) refer the matter to the City Planning Commission for scheduling of a compliance hearing to determine whether the project's approvals should be revoked, altered or additional conditions of approval imposed.

The penalty as described in (a) above shall be determined by the City Planning Director or his/her designee and be commensurate with the percentage GHG emissions reduction not achieved (compared to the applicable numeric significance thresholds) or required percentage reduction from the "adjusted" baseline.

In determining whether a financial penalty or other remedy is appropriate, the City shall not impose a penalty if the project applicant/sponsor has made a good faith effort to comply with the GHG Reduction Plan.

The City would only have the ability to impose a monetary penalty after a reasonable cure period and in accordance with the enforcement process outlined in Planning Code Chapter 17.152. If a financial penalty is imposed, such penalty sums shall be used by the City solely toward the implementation of the GHG Reduction Plan.

- g) *Timeline Discretion and Summary.* The City Planning Director or his/her designee shall have the discretion to reasonably modify the timing of reporting, with reasonable notice and opportunity to comment by the applicant, to coincide with other related monitoring and reporting required for the project.
- Fund Escrow-type Account for City Review: Certificate of Occupancy plus 2 months
  - Submit Baseline Inventory of "Actual Adjusted Emissions": Certificate of Occupancy plus 1 year
  - Submit Annual Report #1: Certificate of Occupancy plus 2 years
  - Submit Corrective GHG Action Plan (if needed): Certificate of Occupancy plus 4 years (based on findings of Annual Report #3)
  - Post Attainment Annual Reports: Minimum every 3 years and at the City Planning Director's or his/her designee's reasonable discretion

In addition, other SCA that pertain to greenhouse gases and that apply to the adoption and development under the Specific Plan are listed in other sections of this EIR and described below.

### 4.6.3 Impacts and Mitigation Measures

#### Significance Thresholds for GHG and Climate Change

Adoption and development under the Specific Plan would have a significant impact on the environment if it were to:

Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment, specifically:

- a) For a project involving a land use development, produce total emissions of more than 1,100 metric tons of CO<sub>2</sub>e annually **AND** more than 4.6<sup>4</sup> metric tons of CO<sub>2</sub>e per service population annually. The service population includes both the residents and the employees of the project. The project's impact would be considered significant if the emissions exceed **BOTH** the 1,100 metric tons threshold and the 4.6 metric tons threshold. Accordingly, the impact would be considered less than significant if the project's emissions are below **EITHER** of these thresholds.
- b) Fundamentally conflict with an applicable plan, policy, or regulation adopted for the purposes of reducing greenhouse gas emissions.

#### Approach to CEQA Analysis of GHG Emissions and Climate Change Impacts in this EIR

The analysis of potential GHG impacts uses the project-level methodology identified by the BAAQMD, the regional agency primarily responsible for developing air quality plans for the Bay Area, including the City of Oakland. This methodology is outlined in the BAAQMD document *California Environmental Quality Act Air Quality Guidelines* (BAAQMD, 2012). This hybrid of a project-level and plan-level analysis considers individual construction and operational emissions from development projects envisioned under the Plan and, consistent with BAAQMD's Air Quality Guidelines, represents adequate environmental analysis under CEQA for individual development projects envisioned under the Specific Plan.

This EIR does discuss, for consideration by decision makers, estimated GHG emissions from adoption and development under the Specific Plan. Because details of subsequent development projects are not known, project design features that would avoid or minimize those emissions are not estimated.

CEQA requires the analysis of potential adverse effects of a project on the environment. Potential effects of the environment on a project are legally not required to be analyzed or mitigated under

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<sup>4</sup> The 2011 BAAQMD Guidelines state that the plan-level service threshold of 6.6 metric tons of CO<sub>2</sub>e per service population annually should only be applied to general plans. For other types of plans, such as redevelopment plans and specific Plans, the Guidelines state that the project-level service threshold of 4.6 metric tons of CO<sub>2</sub>e of service population annually should be used.

# EXHIBIT B

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January 6, 2020

**VIA EMAIL AND HAND DELIVERY**

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**VIA EMAIL ONLY**

Mr. Brian P. Mulry, Deputy City Attorney  
Email: [bmulry@oaklandcityattorney.org](mailto:bmulry@oaklandcityattorney.org)

**Re: Comments on 88 Grand Avenue Project, Application for Regular Design Review, Minor Conditional Use Permit, and Tentative Parcel Map (PLN 18-406)**

Dear Mr. Merkamp, Mr. Vollman, and Mr. Mulry:

We are writing on behalf of Oakland Residents for Responsible Development (“Oakland Residents”) concerning the development at 88 Grand Avenue, in Oakland, California (“City”) proposed by KTG Architecture, 80 Grand MC, LLC (listed as Owner) and/or Seagate Properties (collectively, “Applicants”). The Applicants are requesting Regular Design Review; a Minor Conditional Use Permit

4782-005j

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(“Minor CUP”) for a Transfer of Development Rights (“TDR”); a Tentative Parcel Map; and an exemption from further environmental review under the California Environmental Quality Act (“CEQA”)<sup>1</sup> (“Project”). The proposed Project would utilize two parcels located at 60 Grand Avenue and 2250 Broadway/80 Grand Avenue (collectively referred to as “88 Grand Avenue” in the Addendum), Assessors Parcel Number (“APN”) 008-065600400 and 008-065600100.<sup>2</sup>

The proposed Project would be located within the plan area for the Broadway Valdez District Specific Plan (“BVDSP”), in the D-BV-2 Broadway Valdez District Retail – 2 Commercial Zone (“D-BV-2”) zone. The 88 Grand Avenue CEQA Analysis (“Addendum”) prepared by the City is proposed as an addendum to the Broadway Valdez District Specific Plan Environmental Impact Report (“BVDSP EIR”), as well as an exemption checklist document. In addition to claiming that the Project qualifies for an addendum to the BVDSP EIR, the Addendum proposes that environmental review for the Project proceed under CEQA exemptions for projects that are consistent with an adopted plan<sup>3</sup> and qualified in-fill development.<sup>4</sup>

Per Oakland Planning Code (“OPC”), Section 17.101C.050 and Table 17.101C.04, zoning for the D-BV-2 area is restricted to “a maximum of 24 stories and 250 feet in height” with “a residential density of one dwelling unit per 90 square feet of lot area.”<sup>5</sup> The City concedes that, under this zoning, only 103 residential units would be permitted at the Project site.<sup>6</sup> However, the Applicants propose to develop a 35-story, 374-foot-high residential building (411 feet to the top of the mechanical structures) with 275 residential units, 1,000-square feet of ground-floor retail, and below-ground parking. The proposed Project would also include a diesel-powered emergency generator.

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<sup>1</sup> Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq. (“CEQA Guidelines”).

<sup>2</sup> Addendum, p. 1; see also Notice of Limitation; Development Application, Transfer of Development Rights, Amendment re: Transfer of Development Rights.

<sup>3</sup> CEQA Guidelines, § 15183; see also 88 Grand Avenue Project, Zoning Manager Public Notice.

<sup>4</sup> CEQA Guidelines, § 15183.3; see also 88 Grand Avenue Project, Zoning Manager Public Notice.

<sup>5</sup> Oakland City Planning Commission, January 30, 2019 Design Review Committee Staff Report (“January 2019 Staff Report”), p. 3; see also *id.* pp. 3-4 (Zoning Analysis; Density Bonus for Affordable Housing).

<sup>6</sup> Addendum, p. 8 and Table II-1, p. 17 and Table II-2, p. 18.

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Five percent (5%) of the Project's residential units are proposed to be reserved for Very Low Income Housing ("VLI"). The Applicants are seeking a density bonus under State law for including VLI housing. The density bonus would qualify the Applicants to receive one development waiver and one concession.<sup>7</sup> Consequently, the Applicants hope to receive a State density bonus in order to construct 20% more units, a waiver for building height, and a concession to reduce the number of required parking spaces.<sup>8</sup>

The Applicants are also requesting a Minor CUP to transfer development rights from 80 Grand Avenue (an existing office building) to 60 Grand Avenue (a parking lot). 80 Grand Avenue is a 12,926 square-foot parcel.<sup>9</sup> 60 Grand Avenue is a 9,256 square-foot parcel.<sup>10</sup> The 60 Grand Avenue parking lot would become the 88 Grand Avenue residential tower.<sup>11</sup> The parcels would be merged and re-subdivided with approval of the Tentative Parcel Map. The proposed Project would then have the residential development potential of a 22,182 square-foot lot.<sup>12</sup>

Thus, without the Minor CUP, Tentative Parcel Map and subsequent density bonus and waiver, the total permitted number of residential units at 60 Grand Avenue / 88 Grand Avenue under existing zoning would be 103 units, with a maximum building height of 250 feet. With the approvals proposed for the Project, the Applicants would be permitted to build 275 residential units in a 35-story building, at a height of 374-feet / 411 feet.

Oakland Residents and its experts have reviewed the Addendum and related documents that the City has made available. Based on our review, we have determined that Project fails to comply with the OPC and CEQA for the following reasons:

1. substantial changes are proposed in the Project from the project that was originally analyzed in the BVDSP EIR, which are likely to result in new and more severe environmental effects than previously analyzed;

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<sup>7</sup> See generally, Addendum, pp. 8-18.

<sup>8</sup> See generally, Addendum, pp. 8-18.

<sup>9</sup> Addendum, p. 17.

<sup>10</sup> Addendum, p. 5.

<sup>11</sup> Addendum, pp. 1 -18, (describing TDR, density bonus, and including illustrative figures).

<sup>12</sup> Addendum, p. 17.

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2. significant changes have occurred with respect to the circumstances under which the Project would be undertaken, that are likely to result in new and more severe impacts to public transit than previously analyzed;

3. there is substantial evidence demonstrating that the proposed Project is likely to result in potentially significant impacts to air quality and public health, greenhouse gas emissions ("GHG"), traffic and noise which were not disclosed, analyzed, or mitigated in the BVDSP EIR, including, in particular, cumulative impacts to air quality;

4. the City is required to prepare an EIR for the Project; therefore, the City cannot approve the proposed Project with a Minor CUP, and a Major CUP is required; and

5. the City cannot make the required findings under the OPC to issue Design Review Approval, a Minor CUP, or a Tentative Parcel Map.

To comply with the law, the City must withdraw the Addendum and direct staff to prepare a subsequent or supplemental EIR for public review and comment.

We have prepared our comments on air quality, public health and GHG emissions with the assistance of air quality and GHG expert Paul E. Rosenfeld, Ph.D. of Soil Water Air Protection Enterprises, whose comments are included in the SWAPE Report. The SWAPE Report and Dr. Rosenfeld's expert curriculum vitae ("CV") are attached hereto as **Exhibit A**. We have prepared our comments on traffic and transportation with the assistance of Daniel T. Smith, Jr., P.E., principal at Smith Engineering & Management. The Smith Report and Mr. Smith's CV are attached hereto as **Exhibit B**. We have prepared our comments on noise impacts with the assistance of Derek Watry, acoustics, noise and vibration expert of Wilson Ihrig. The Watry Report and Mr. Watry's CV are attached hereto as **Exhibit C**. The attached expert reports are incorporated by reference into this comment letter as if fully set forth herein, and must be considered part of the record for this Project.

In addition, the City failed to make critical public records related to the proposed Project available for timely public review during the entire 17-day comment period, including documents cited and relied upon by the City in the

CEQA Addendum.<sup>13</sup> The City ultimately produced the missing documents on December 30, 2019, but declined to provide Oakland Residents the 17-day extension in the comment period we requested. Instead, the City provided a limited extension to January 6, 2019. As a result, Oakland Residents has had only 3 business days<sup>14</sup> to review more than 100 newly produced documents related to the Project before being required to submit written comments. Our review of the Project record remains ongoing. We continue to request an extension of the comment period, until **January 16, 2020** (17 days following the City's production of requested public records), and reserve the right to supplement these comments with additional comments, issues, and evidence following the close of the public comment period, and at later hearings and proceedings related to the Project.<sup>15</sup>

## I. STATEMENT OF INTEREST

Oakland Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of Oakland residents; the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County, including Michael Capps, Kahlil Larn and Jennifer Choi.

Individual members of Oakland Residents, including Michael Capps, Kahlil Larn and Jennifer Choi, and the affiliated labor organizations live, work, recreate and raise their families in the County of Alameda, City of Oakland, and surrounding areas. These members would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has a strong interest in enforcing the State's environmental laws that encourage sustainable

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<sup>13</sup> See Oakland Residents' December 27, 2019 Letter to City re Request for Extension in Public Comment Period attached hereto as **Exhibit D**; Gov. Code, § 6250 et seq.

<sup>14</sup> The New Years holiday fell in the middle of the 1-week extension provided by the City, further limiting Oakland Residents' and their experts' time to review the documents.

<sup>15</sup> Gov. Code, § 65009(b); Pub. Resources Code, § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal.App.4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by causing building moratoriums or restrictions, making it more difficult and more expensive for business and industry to expand in the region, and making it less desirable for businesses to locate and for people to live there.

**II. THE CITY MUST PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR WHICH DISCLOSES, ANALYZES, AND MITIGATES THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS TO AIR QUALITY, PUBLIC HEALTH, GHG, NOISE AND TRAFFIC.**

The City proposes to approve the Project as consistent with an adopted plan (the BVDSP)<sup>16</sup> under two alternative CEQA streamlining scenarios – by preparing an addendum to the BVDSP EIR, or alternatively, as a CEQA Checklist/Exemption Report pursuant to CEQA's streamlining provisions for qualified in-fill development ("Infill Exemption").<sup>17</sup> However, there is substantial evidence demonstrating that the proposed Project is not consistent with the BVDSP, and has environmental impacts that are specific to the Project which are new or more severe than previously analyzed in the BVDSP EIR. As a result, the Project cannot be approved pursuant to either a CEQA addendum or the Infill Exemption, and an EIR must be prepared.

The City must prepare an EIR for the Project for several reasons. First, the Project is not consistent with the zoned density for the Project's parcels, as required in order to qualify for CEQA streamlining. Second, there is substantial evidence demonstrating that the Project is likely to have significant environmental impacts on air quality, public health, from GHG emissions, noise, traffic, and on public transportation, which were not examined in the programmatic BVDSP EIR, or which are more severe than the impacts previously analyzed in the BVDSP EIR. Therefore, the City must withdraw the Addendum and conduct subsequent or supplemental environmental review in a project-level EIR which discloses, analyzes and mitigates the Project's potentially significant impacts, and considers environmentally-superior alternatives to the proposed Project.

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<sup>16</sup> Zoning Manager Public Notice, citing CEQA Guidelines, § 15183.

<sup>17</sup> Zoning Manager Public Notice, citing CEQA Guidelines, §§ 15164, 15183.3.

## A. Legal Standard

CEQA has two basic purposes, neither of which the City has satisfied in this case. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.<sup>18</sup> The EIR is the “heart” of this requirement,<sup>19</sup> and has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>20</sup> To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>21</sup> An adequate EIR must contain facts and analysis, not just an agency’s conclusions.<sup>22</sup>

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.<sup>23</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>24</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>25</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

### *i. Subsequent or supplemental environmental review*

In situations such as the one here, where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-

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<sup>18</sup> CEQA Guidelines, § 15002(a)(1); e.g., *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>19</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>20</sup> *County of Inyo v. Yorty*, *supra*, 32 Cal.App.3d at p. 810.

<sup>21</sup> CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>22</sup> See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>23</sup> CEQA Guidelines, § 15002(a)(2), (3); *Berkeley Jets*, 91 Cal.App.4th, at p. 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

<sup>24</sup> Pub. Resources Code, §§ 21002.1(a); 21100(b)(3).

<sup>25</sup> Pub. Resources Code, §§ 21002 - 21002.1.

step process to examine the later project to determine whether additional environmental review is required.<sup>26</sup>

First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.<sup>27</sup> If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.<sup>28</sup> Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.

Specifically, Public Resources Code, Section 21166, provides that a subsequent or supplemental environmental impact report is required when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) **Substantial changes occur with respect to the circumstances** under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) **New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.**<sup>29</sup>

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<sup>26</sup> See CEQA Guidelines, 15168(c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).

<sup>27</sup> CEQA Guidelines, § 15168(c)(1).

<sup>28</sup> CEQA Guidelines, § 15168(c)(1).

<sup>29</sup> Pub. Resources Code, § 21166(a)-(c), emphasis added; see also CEQA Guidelines, § 15162(a) (same).

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The CEQA Guidelines, Section 15162, subdivision (a) elaborates on the meaning of “new information of substantial importance,” stating:

- (3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
- (A) The project **will have one or more significant effects not discussed in the previous EIR** or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) **Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment**, but the project proponents decline to adopt the mitigation measure or alternative.<sup>30</sup>

The lead agency makes this determination, based on substantial evidence in light of the whole record.<sup>31</sup>

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum, or no further

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<sup>30</sup> CEQA Guidelines, § 15162(a)(3)(A)-(D), emphasis added.

<sup>31</sup> CEQA Guidelines, § 15162(a).

documentation.<sup>32</sup> The City's decision not prepare a subsequent or supplemental EIR must be supported by substantial evidence.<sup>33</sup>

The Public Resources Code does not provide for addendums, but they are discussed briefly in the CEQA Guidelines, Section 15164:

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.<sup>34</sup>

The City's decision to prepare an addendum must be supported by substantial evidence.<sup>35</sup>

***ii. CEQA's infill exemption and streamlining provisions***

The City seeks to rely on Public Resources Code, Sections 21083.3, and 21094.5 and CEQA Guidelines Sections 15183 and 15183.3 (Qualified Infill) (collectively, the "Infill Exemption").<sup>36</sup> This CEQA exemption allows approval of projects without an EIR, but only in very narrow circumstances.

To qualify under the Infill Exemption, the project must be consistent with site's density and intensity, as defined by its zoning, community plan, or general

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<sup>32</sup> CEQA Guidelines, § 15162(b).

<sup>33</sup> CEQA Guidelines, §§ 15162(a), 15164(e).

<sup>34</sup> CEQA Guidelines, § 15164(a), (b). Moreover, the Natural Resources Agency, which drafts the CEQA Guidelines, has described the purpose of an addendum as a method for making "minor changes" to an EIR. *Save Our Heritage Organization v. City of San Diego*, 28 Cal.App.5th 656, 664–665 (citing the Natural Resources Agency).

<sup>35</sup> CEQA Guidelines, § 15164(e).

<sup>36</sup> Addendum, p. 27 (citing exemptions) and Zoning Manager Public Notice (same); see also Pub. Resources Code, § 21094.

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plan policies for which an EIR was certified.<sup>37</sup> *Only if* a project meets these criteria, can it be further analyzed under the Infill Exemption.

For qualifying projects, the environmental analysis may be limited and streamlined to evaluating a project's effects on the environment that are: 1) specific to the project or to the project site, and were not addressed as significant effects in the prior environmental impact report; 2) were not analyzed as significant effects in the prior EIR; 3) potentially significant off-site impacts; and 4) were previously identified significant effects, which as a result of substantial new information which was not known at the time the EIR was certified, are determined to be more significant than described in the prior environmental impact report.<sup>38</sup>

Thus, the Infill Exemption allows a lead agency to streamline environmental review as described above, only in narrow circumstances and for qualifying projects. A lead agency's determination to use the Infill Exemption must be supported by substantial evidence.<sup>39</sup>

CEQA also contains an exemption similar to the above, for transit-oriented residential development which is consistent with previously adopted plan, under CEQA Guidelines, Section 15182. To qualify for this exemption, the project must be "consistent with the general use designation, density, building intensity, and applicable policies specified for the project area. ..."<sup>40</sup>

As discussed in detail below and in the attached expert reports, the proposed Project does not qualify for the Infill Exemption because its density and intensity is not consistent with the parcel's zoning. Moreover, there is substantial evidence in the record demonstrating that the programmatic EIR prepared for the BVDSPP did not disclose, analyze, or mitigate the proposed Project's potentially significant

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<sup>37</sup> CEQA Guidelines, § 15183(d)(1)(2) (project must be consistent with community plan adopted as part of a general plan, a "zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development," or a general plan for which an EIR was certified); Pub. Resources Code, § 21083.3(a) ("If a parcel has been zoned to accommodate a particular density" or such density has been designated in the adopted plan, then the project may qualify for CEQA streamlining).

<sup>38</sup> Pub. Resources Code, § 21083.3(b), 21094.5; CEQA Guidelines, § 15183(a),(b); see also CEQA Guidelines, § 15183.3(c)-(d).

<sup>39</sup> Pub. Resources Code, § 21094.5(a).

<sup>40</sup> CEQA Guidelines, § 15182(b)(1)(C), emphasis added.

impacts to human health or the environment. A project-level EIR is required which analyzes these impacts and considers environmentally-superior alternatives.

**B. The Project is Inconsistent with the Density Established by Existing Zoning and Does Not Qualify for the Infill Exemption.**

As noted above, to qualify for the Infill Exemption, CEQA requires that the project be consistent with the site's existing zoning.<sup>41</sup>

Here, the 60 Grand Avenue parcel is zoned for a density of development that would permit 90 units per acre, with a height limit of 250 feet.<sup>42</sup> As discussed above, the Applicants are requesting a TDR and associated discretionary permits in order to develop in order to substantially increase allowed density to 275 units in 35-story building, in a 374 / 411-foot building. The BVDSP does not authorize the Project's requested density and building height, and the BVDSP EIR did *not* analyze a project at this density or height at this site. Thus, the Project is inconsistent with existing zoning requirements, and was not analyzed in any prior EIR, both of which are mandatory prerequisites for relying on the Infill Exemption.<sup>43</sup> The City's reliance on future density bonus approvals does not satisfy these key elements of the Infill Exemption, and does not render the Project factually "consistent" with the BVDSP.

The Addendum concedes this lack of consistency in Attachment C (*Project Consistency with Community Plan or Zoning, Per CEQA Guidelines Section 15183*)<sup>44</sup> and Attachment D (*Infill Performance Standards, Per CEQA Guidelines Section 15183.3*).<sup>45</sup> Attachment C acknowledges that the proposed Project's height and density are not consistent with the applicable zoning. The City bases its finding that the Project is consistent under CEQA Guidelines, Section 15183 because the Applicants anticipate receiving the State density bonus waiver described above.<sup>46</sup> Of course, the Minor CUP and related approvals would also be required. Attachment D

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<sup>41</sup> CEQA Guidelines, §§ 15183(a), (d)(1)(B), 15182(b)(1)(C); Pub. Resources Code, §§ 21083.3(a), 21094.5(c)(1)(A).

<sup>42</sup> OPC, Table 17.101C.04.

<sup>43</sup> 14 Cal. Code Regs. Sec 15183(d)(1), (2).

<sup>44</sup> Addendum, pp. C-1 to C-2.

<sup>45</sup> Addendum, pp. D-1 to D-5.

<sup>46</sup> Addendum, p. C-2.

reiterates the findings in Attachment C.<sup>47</sup> In this way, the City acknowledges that as currently permitted, the Project site is not zoned for this level development, is inconsistent with the BVDSP, and its findings of consistency are based on future approvals, not the status quo.

Nor does the BVDSP contemplate a TDR for the purpose of transferring density from an office building to a proposed residential project. The only reference to a TDR in the BVDSP is Policy IMP-5.1. Policy IMP-5.1 discusses potential revisions to the OPC in order to adaptively reuse historic buildings.<sup>48</sup> The 60 Grand Avenue parking lot is not an historic structure, so Policy IMP-5.1 is inapplicable.

the City's reliance on anticipated density bonus approvals to claim that the Project is currently "consistent" with existing zoning and land use plans so as to claim an exemption from CEQA is entirely unsupported and contrary to CEQA. CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.<sup>49</sup> CEQA requires lead agency to analyze the 'whole' of the project – this includes all foreseeable discretionary approvals.<sup>50</sup> For example, in *Laurel Heights Improvement Association v. Regents of University of California*<sup>51</sup> the California Supreme Court rejected an EIR where the agency failed to consider the whole of the project. The agency defined the project as involving "only the acquisition and operation of an existing facility and negligible or no expansion of use of existing use at that facility."<sup>52</sup> However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental

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<sup>47</sup> Addendum, p. D-5.

<sup>48</sup> BVDSP, pp. 87, 266.

<sup>49</sup> CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).

<sup>50</sup> Pub. Resources Code, § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record"); CEQA Guidelines, § 15003(h) ("The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect" and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 ("*Laurel Heights I*")

<sup>51</sup> *Laurel Heights I, supra*, 47 Cal.3d 376.

<sup>52</sup> *Laurel Heights I, supra*, 47 Cal.3d at p. 388.

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effects.<sup>53</sup> Here, approval of the Project's requested density bonus is a reasonably foreseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus.

When viewed as a whole, there is no dispute that the Project exceeds applicable BVDSZ zoning, density and height requirements. By ignoring the Project's facial inconsistency with these requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has both failed to comply with its CEQA obligations to disclose the nature and severity of the Project's impacts, and the City lacks substantial evidence to support its density bonus findings that the Project's proposed height waiver and additional density bonus units would not have a specific adverse impact upon public health and safety or the physical environment.<sup>54</sup>

The City may be attempting to rely on *Wollmer v. City of Berkeley*<sup>55</sup> to determine the Project's consistency with BVDSZ zoning requirements based on the Project's pre-density bonus "base units" rather than on the actual size of the Project. This reliance is misplaced.

*Wollmer* applied to the CEQA Guidelines 15332 categorical in-fill exemption, and not the in-fill exemption relied on here, at CEQA Guidelines, Section 15183. The *Wollmer* Court relied on express language in the 15332 exemption which qualifies consistency determination based on whether the land use plan is "applicable" to the project. CEQA Guidelines, Section 15183 contains no such language, and does not qualify plan consistency with any discretionary decision by the lead agency as to whether the plan is, or is not, "applicable" to the Project once the density bonus is applied.

Moreover, the *Wollmer* court found that the applicable plan was the City of Berkeley's general plan, which did not contain a density restriction that would conflict with the proposed project. The court explains, "[t]he City's zoning ordinance does not specify a maximum density for the [district applicable to the proposed project] .... However, the land use element of the general plan specifies a maximum

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<sup>53</sup> *Laurel Heights I*, *supra*, 47 Cal.3d at p. 396.

<sup>54</sup> Gov. Code, § 65589.5(d)(2); see also OPC, §§ 17.107.100.B; 17.107.095.A.1.

<sup>55</sup> *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 ("*Wollmer*").

density of 44 to 88 persons (20 to 40 dwelling units) per acre for the area within the land use classification that includes the [applicable] District....”<sup>56</sup> The court went on to explain that “the City does not apply the general plan density standards to specific parcels. Instead, it applies the standards to larger areas of a land use classification surrounding a proposed project.”<sup>57</sup> As opposed to a general plan, “[a]llowable densities and uses in each zoning district are established in the more detailed and specific Zoning ordinance.”<sup>58</sup> Using this approach, the *Wollmer* court found that the project was consistent with applicable plan - the general plan - because the project would create a density of “approximately 19 units per acre, which is well below the general plan standard of 40 units per acre.”<sup>59</sup>

Here, the City *does* have a zoning ordinance which applies to the specific parcel where the proposed Project would be located within the Oakland Planning Code. The development standards in the OPC dictate that the height and density for proposed projects in the D-BV-2 zone is 250 feet and with a density of 103 units for a parcel of this size.<sup>60</sup> The Addendum disregards these clear and mandatory requirements of the OPC by simply contending that “the project sponsor anticipates receiving a concession from the City to reduce the allowable amount of parking spaces to 45 as a part of the California State Density Bonus Law. Therefore, the height and parking of the project complies with the BVDSP.”<sup>61</sup>

The Supreme Court, as well as the Courts of Appeal, have held that CEQA exemptions must be narrowly construed and “[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.”<sup>62</sup> The Supreme Court has also consistently held that CEQA exemptions are not to be implied,<sup>63</sup> and that other statutes do not implicitly preempt CEQA or exempt proposed projects from CEQA review – even if the other statute has environmental safeguards of its own. Instead, CEQA must be harmonized with other statutes and a proposed project must comply with both CEQA and any other applicable statute.<sup>64</sup>

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<sup>56</sup> *Wollmer, supra*, 193 Cal.App.4th at p. 1345.

<sup>57</sup> *Wollmer, supra*, 193 Cal.App.4th at p. 1345.

<sup>58</sup> *Wollmer, supra*, 193 Cal.App.4th at p. 1345, citing the Berkley General Plan.

<sup>59</sup> *Wollmer, supra*, 193 Cal.App.4th at p. 1345.

<sup>60</sup> OPC, Table 17.101C.04.

<sup>61</sup> Addendum, p. C-2.

<sup>62</sup> *Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal.4th 105, 125 (“*Mountain Lion*”).

<sup>63</sup> *Wildlife Alive v. Chickering*, 18 Cal.3d at 195-198, 202.

<sup>64</sup> *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 274.

In this case, the Addendum relies on the assumption that the City will grant a density bonus to the Project, consistent with the Density Bonus Law.<sup>65</sup> However, since the density bonus would result in the Project being inconsistent with the BVDSP's D-BV-2 zoning designation and development standards, the CEQA In-Fill Exemption does not apply, and full CEQA review is required. While the legislature created a CEQA exemption for "Qualified In-Fill Development Projects," there is no such CEQA exemption for "Density Bonus Projects." Thus, while in-fill development projects are exempt from CEQA if they comply with all applicable general plan and zoning requirements, an in-fill development project that exceeds general plan and zoning designations as a result of a density bonus waiver granted to accommodate its entitlement to density units and/or incentives and concessions from zoning requirements, is not subject to the Infill Exemption. While the City may be within its rights to grant density bonus and zoning concessions for the Project pursuant to the Density Bonus Law, it is still required to conduct CEQA review for the entire Project – including the additional units and building height added by the density bonus - since the Project as a whole fails to comply with the zoning designations as a result of the density bonus.

The Addendum provides no evidence to support its conclusion that the Project is "consistent" with applicable density so as to rely on the Infill Exemption. Instead, the Addendum merely references the City's reliance on the anticipated density bonus as the bases for its consistency determination. The City must withdraw the Addendum and direct staff to prepare an EIR which discloses, analyzes, and mitigates the proposed Project's impacts, and considers environmentally-superior alternatives.

**C. The City Should Deny the Requested Density Bonus and Waiver Because the Project is Likely to Have Unmitigated Adverse Impacts on Public Health and Safety and the Environment.**

The Density Bonus Law authorizes the City to deny requested density bonus units incentives, concessions, and waivers where the resulting project would have a "specific adverse impact" on public health and safety or the physical environment.<sup>66</sup> A denial is warranted here because the Addendum fails disclose and mitigate

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<sup>65</sup> Gov. Code sec. 65915; OPC Chapter 17.107 (Density Bonus and Incentive Procedure).

<sup>66</sup> See OPC, §§ 17.107.100(B); 17.107.095.A.1.

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several potentially significant, unmitigated environmental impacts that are likely to be caused or exacerbated by the Project.

As discussed below, there is substantial evidence demonstrating that the Project is likely to have significant and unmitigated impacts on public health from excess construction TAC emissions and noise, as well as significant environmental impacts on air quality, from GHGs, and on traffic and transportation. Because the City failed to prepare an EIR for the Project, these impacts have not been fully disclosed or mitigated, as required by CEQA.<sup>67</sup>

The Density Bonus Law provides that projects with adverse impacts warrant denial unless the approving agency is able to find that “there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.”<sup>68</sup> The City has not performed the requisite CEQA analysis to evaluate the cost and feasibility of mitigation required to reduce the Project’s impacts to the greatest extent feasible. Therefore, the City lacks substantial evidence to support a finding that there is “no feasible method” of mitigating these impacts without rendering the Project’s affordability component infeasible. As a result, the City cannot make the requisite findings to approve a density bonus in the face of the Project’s significant public health and environmental impacts.

Each of the below-described impacts provides the City with evidence supporting a denial or the requested density bonus unless and until the City prepares an EIR to fully disclose and mitigate these impacts to the greatest extent feasible.<sup>69</sup>

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<sup>67</sup> Pub. Res. Code §§ 21002.1(a), 21100(b)(3).

<sup>68</sup> See OPC, sec. 17.107.100(B).

<sup>69</sup> OPC, § 17.107.100(B) (density bonus cannot be approved where it would release in an adverse impact, as defined by Gov. Code, § 65589.5(d).)

**D. There is Significant New Information of Substantial Importance that Air Quality Impacts and Risks to Human Health Will be Significant and Adverse.**

The proposed Project is likely to result in potentially significant adverse impacts to air quality and public health during construction and operation of the proposed Project. These impacts were not disclosed, analyzed, or mitigated in the BVDSP EIR. This is significant new information of substantial importance, which must be analyzed in a subsequent or supplemental EIR. As noted above, Oakland Residents reviewed the Addendum with the assistance of experts at SWAPE. The SWAPE Report is attached hereto and summarized below.

***i. The Addendum fails to consider all sources of operational air quality emissions and underestimates impacts to air quality and human health.***

The proposed Project includes a diesel-powered emergency generator, which emits diesel particulate matter (“DPM”), a toxic air contaminant (“TAC”). The Addendum discloses the health risk impacts from nearby receptors from the generator from routine testing and maintenance in a Health Risk Assessment (“HRA”). The Addendum essentially ends its analysis of the Project’s operational air pollutant emissions there.<sup>70</sup>

This analysis raises several concerns, as discussed in detail in the SWAPE Report. First, the analysis only included one operational emissions source – the emergency generator. However, as the Addendum states, during operation, there will be 943 vehicle trips. “These trips will generate additional exhaust emission and continue to expose nearby sensitive receptors to DPM emissions throughout the life of the Project.”<sup>71</sup> In order to accurately characterize the full health risk from Project operations, the City’s HRA should have included an analysis of all operational sources, not just the generator.<sup>72</sup>

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<sup>70</sup> Addendum, pp. 40-42.

<sup>71</sup> SWAPE Report, p. 4.

<sup>72</sup> SWAPE Report, p. 3.

Second, the health risk from the generator was determined to result in an excess cancer risk from TACs of **exactly 1:10 million**, which is the applicable threshold of significance set by the Bay Area Air Quality Management District (“BAAQMD”). Any additional TAC emissions would therefore cause the threshold to be exceeded, creating a significant cancer risk to residents and the surrounding community.<sup>73</sup>

Third, the HRA failed to sum the cancer risk calculated for each age group, which is inconsistent with Office of Environmental Health Hazard Assessment (“OEHHA”) guidance that has been expressly adopted by BAAQMD. This omission is particularly glaring, as SWAPE’s review of the data reveals that this information was gathered in the HRA, but not summed to provide a lifetime exposure calculation, as recommended by OEHHA and BAAQMD.<sup>74</sup>

As a result of these omissions, the City’s analysis of the Project’s operational health risk remains incomplete and underestimated.

***ii. The Addendum fails to analyze public health risks during construction of the proposed Project.***

The Addendum fails to analyze the health risks from human exposure to TACs, including DPM, during construction of the proposed Project. The SWAPE Report provides expert evidence demonstrating that these risks are potentially significant and must be analyzed in a project-level EIR.

As the SWAPE Report explains, the Addendum concludes that the proposed Project would have a less-than-significant impact on the health of nearby sensitive receptors during Project construction, without performing a construction HRA. The Addendum justifies this lack of analysis by stating that the BVDSP EIR analyzed this risk. However, the EIR prepared for the BVDSP explains that it is a programmatic EIR, and as such, lacked the specific information necessary to reach a conclusion on the severity of the Project’s construction (or operational) emissions and the subsequent health risk for specific projects that would be constructed under the BVDSP. Therefore, the City cannot rely on this document to avoid project-level

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<sup>73</sup> SWAPE Report, pp. 1-2.

<sup>74</sup> SWAPE Report, p. 4.

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review of the proposed Project.<sup>75</sup> Rather, a construction HRA must be performed, which includes the Project's specific parameters.<sup>76</sup>

*iii. The Addendum underestimates cumulative impacts to air quality and human health.*

Mr. Rosenfeld concludes that the Addendum underestimates the proposed Project's cumulative health risks from construction and operation of the proposed Project.<sup>77</sup> The Addendum states, "in addition to existing TAC sources, there are ten proposed development projects that may be constructed within 1,000 feet of the [Maximally Exposed Individual Resident] location in the near future."<sup>78</sup> As the SWAPE Report explains, the Addendum therefore acknowledges that construction and operation of these 10 projects is likely to overlap, and claims to have conducted an analysis of the cumulative health risks.<sup>79</sup>

However, similar to the Project's operational HRA, the SWAPE Report further explains that the Addendum's cumulative HRA only analyzes TAC emissions from a single source for each identified project - emergency diesel generators - and fails to analyze TAC emissions from other sources, including diesel-powered mobile sources.<sup>80</sup> "As a result, the Addendum omits key sources of TAC emissions and underestimates the Project's cumulative health risk impact."<sup>81</sup> These impacts must be analyzed in an EIR to determine if they would exceed BAAQMD's cumulative health risk threshold of 100:1 million.<sup>82</sup>

*iv. Conclusion*

The SWAPE Report provides substantial evidence of potentially significant adverse impacts to air quality and human health, which were not analyzed in the programmatic EIR prepared for the BVDSP. The City must prepare a project-level

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<sup>75</sup> SWAPE Report, pp. 2-3.

<sup>76</sup> The SWAPE Report also notes that failure to conduct a construction HRA is inconsistent with OEHHA guidance, SWAPE Report, p. 3.

<sup>77</sup> SWAPE Report, pp. 4-5.

<sup>78</sup> SWAPE Report, p. 4, citing Addendum, p. 45.

<sup>79</sup> SWAPE Report, pp. 4-5.

<sup>80</sup> SWAPE Report, p. 4, citing Addendum, pp. 45-48.

<sup>81</sup> SWAPE Report, p. 4.

<sup>82</sup> SWAPE Report, p. 5.

EIR which discloses, analyzes, and mitigates these impacts to air quality and human health.

**E. There is Significant New Information of Substantial Importance that Impacts from GHG Emissions Will be Significant and Adverse.**

The Addendum concludes that impacts from the Project's operational GHG emissions will be equal-to or less-severe-than those described and analyzed in the EIR prepared for the BVDSP. This conclusion is not supported by substantial evidence. Significant new information of substantial importance demonstrates that GHG impacts are potentially significant and unmitigated.

The SWAPE Report demonstrates that the City underestimates GHG emissions by using inaccurate input parameters. The impact of the proposed Project's GHG emissions is also inaccurately evaluated, as the Addendum relies on outdated and inapplicable GHG reduction targets.

A project-level EIR is required which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives to the proposed Project.

***i. The Addendum fails to model all operational land uses.***

As described in detail above, the proposed Project consists of two parcels – the existing 80 Grand Avenue office building and the proposed 88 Grand Avenue residential tower. Yet, as the SWAPE Report explains, the existing land use at 80 Grand Avenue, over 12,000 square feet, was omitted from the modelling.<sup>83</sup> This information must be included in an updated GHG analysis.

***ii. The Addendum's GHG emissions analysis and data relies on incorrect and unsubstantiated input parameters.***

The Addendum relies on emissions calculated using CalEEMod.2016.3.2. CalEEMod provides recommended default values. Default values can be changed, but such changes must be supported by substantial evidence. As the SWAPE Report

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<sup>83</sup> SWAPE Report, p. 5.

demonstrates, in its CalEEMod files, the Addendum incorrectly assumes the use of Tier 4 Final engines, incorrectly calculates the Project's land use size, and uses an unsubstantiated water-reduction measure to substantiate its findings. Therefore, the Addendum underestimates GHG impacts from the proposed Project.

First, as the SWAPE Report explains, in calculating the Project's impacts, the Addendum applies mitigation measure SCA-AIR-3 to lessen or avoid impacts from construction-related DPM. SCA-AIR-3 permits the Applicants to use Tier 4 engines to reduce impacts. However, the measure does not specify whether Tier 4 Interim or Tier 4 Final engines should be used. Tier 4 Final engines are the cleanest burning engines, and thus the most protective of the environment and human health, and more effective at reducing TAC exposure than Tier 4 Interim engines.<sup>84</sup>

The CalEEMod files assumed the use of Tier 4 Final engines as a component of the Applicants' implementation of SCA-AIR-3. However, SCA-AIR-3 does not clearly require the use of Tier 4 Final engines. Thus, the City lacked substantial evidence to rely on the use of Tier 4 Final engines in its emissions modeling. To rely on the use of Tier 4 Final engines to lessen or avoid impacts, the City must impose their use as an enforceable mitigation measure or condition of approval on the Applicants. Assuming the use Tier 4 Final engines, without ensuring that they will be used, obscures and underestimates the proposed Project's impacts.<sup>85</sup>

Moreover, the Addendum fails to evaluate the feasibility of obtaining Tier 4 engines, both Interim and Final.<sup>86</sup> Tier 4 Final engines are still being phased into use in California. As of 2014, they accounted for just 4% of the fleet of engines available. By contrast, Tier 4 Interim engines account for 18% of the available fleet.<sup>87</sup> The City must analyze the impacts from the Project's feasible engine mix.<sup>88</sup>

Second, SWAPE's review of the Project's CalEEMod output files demonstrates that the parking garage was modelled using an underestimated floor surface area. The floor size given in the Addendum is 1,600 square feet, yet the only 460 square feet were modeled.<sup>89</sup> This discrepancy is not explained. As a result, the

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<sup>84</sup> SWAPE Report, pp. 6-8.

<sup>85</sup> SWAPE Report, pp. 6-8.

<sup>86</sup> SWAPE Report, pp. 8-9.

<sup>87</sup> SWAPE Report, p. 9, Fig. 4: 2014 Statewide All Fleet Sizes (Pieces of Equipment).

<sup>88</sup> SWAPE Report, p. 9.

<sup>89</sup> SWAPE Report, p. 9.

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Addendum underestimates the proposed Project's construction and operational emissions.<sup>90</sup> The City's reliance on this information to conclude that impacts will be equal-to or less-severe-than impacts modelled in the EIR prepared for the BVDSF is not supported by substantial evidence.

Third, SWAPE's review of the Project's CalEEMod output files demonstrates that the City used an inaccurate Sunday trip rate to calculate mobile emissions. The Addendum assumes 973 daily trips from the proposed Project, but the Sunday trip rate was calculated at 839 daily trips. If the Sunday trip rate is lower than 973, then the City must support its decision to use that figure for all weekly calculations with substantial evidence. The Addendum contains no such information.<sup>91</sup>

Fourth, SWAPE's review of the Project's CalEEMod output files reveals that the model included an operational "Water Conservation Strategy," which the model purports would reduce water consumption by exactly 20%. The Addendum does not otherwise define or describe this strategy.<sup>92</sup> The Addendum also states that it will comply with the CalGreen Code, which requires that indoor water use be reduced by 20%. As the SWAPE Report explains, reliance on building codes cannot guarantee that purported reductions will actually be achieved, particularly where, as here, the specifics required to achieve compliance have not been analyzed for accuracy or feasibility.<sup>93</sup>

As described above, the City's reliance on its CalEEMod modelling to demonstrate that impacts to global climate change would be equal-to or less-severe-than impacts analyzed in the EIR prepared for the BVDSF is not supported by substantial evidence. The City must withdraw the Addendum and prepare an updated GHG emissions analysis, using correct and substantiated input parameters.<sup>94</sup>

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<sup>90</sup> SWAPE Report, pp. 9-10.

<sup>91</sup> SWAPE Report, pp. 10-11.

<sup>92</sup> SWAPE Report, p. 11.

<sup>93</sup> SWAPE Report, p. 11; see e.g., *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-728 (an agency cannot rely on mitigation measures of uncertain efficacy or feasibility).

<sup>94</sup> SWAPE Report, p. 13.

***iii. GHG impacts are incorrectly evaluated because the Addendum relies on inapplicable GHG reduction targets.***

The Addendum found that GHG emissions would not exceed the BAAQMD threshold of significance of 1,100 MT CO<sub>2e</sub>/year.<sup>95</sup> The Addendum then concludes that the proposed Project's GHG impact would equal-to or less-severe-than that analyzed in the EIR prepared for the BVDSP. In making these determinations, the City relies on the Project's purported consistency with the Statewide GHG reduction targets set in The Global Warming Solutions Act of 2006 ("AB 32") and the City of Oakland's 2020 Equitable Climate Action Plan ("ECAP") and other plans. AB 32 and ECAP reduction targets are not applicable to the Project.<sup>96</sup> The only applicable plan is the California Air Resources Board 2017 Climate Scoping Plan ("2017 CARB Scoping Plan"). Yet, the Addendum does not include an analysis of the proposed Project's consistency with that plan. Thus, the City's conclusions are not based on substantial evidence. The City must withdraw the Addendum and prepare a project-level EIR which analyzes the proposed Project's impacts against the applicable GHG reduction targets.

First, AB 32 mandated that Statewide GHG emissions be reduced to 1990 levels by target year 2020. As the SWAPE Report explains, AB 32 is only applicable to projects that will be operational by target year 2020. As the Addendum states, construction will begin in 2020, and the Project would not become operational until 2022 – two years after the target date set in AB 32. Thus, the City is relying on outdated GHG reduction targets.<sup>97</sup>

For the same reason, the City cannot rely on the proposed Project's consistency with the ECAP to conclude that impacts will be less-than-significant.<sup>98</sup> As the Addendum states, the ECAP was adopted in 2013. Its goal was to reduce GHG emissions to 2005 levels by 2020.<sup>99</sup> Since the proposed Project would not become operational until 2022, meeting the ECAP's reduction targets is not a reliable indicator of the proposed Project's impact.<sup>100</sup>

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<sup>95</sup> SWAPE Report, p. 11, citing Addendum, p. 63.

<sup>96</sup> SWAPE Report, pp. 11-13.

<sup>97</sup> SWAPE Report, pp. 11-12.

<sup>98</sup> SWAPE Report, pp. 12-13.

<sup>99</sup> SWAPE Report, p. 13, citing Addendum, p. 64.

<sup>100</sup> SWAPE Report, pp. 12-13.

Second, AB 32 has been superseded by Senate Bill 32 (“SB 32”), passed by the Legislature in 2016. SB 32 codified Statewide GHG reduction targets to 40% below 1990 levels by 2030. In December 2017, the California Air Resources Board issued the 2017 CARB Scoping Plan. The 2017 CARB Scoping Plan outlined the Statewide strategy needed to achieve SB 32’s goals. The 2017 CARB Scoping Plan is the now the binding state regulatory scheme enacted for the purpose of reducing GHG emissions. Yet, the City does not include an analysis of consistency with the 2017 CARB Scoping Plan.<sup>101</sup>

*iv. Conclusion*

The SWAPE Report provides substantial evidence demonstrating that the Addendum relies on incorrect and unsubstantiated input parameters for the proposed Project to generate its supporting data, thus underestimating the Project’s actual emissions. Moreover, the Addendum fails to analyze the proposed Project’s threshold of significance against the applicable Statewide regulatory scheme, the 2017 CARB Scoping Plan. The City must withdraw the Addendum and direct Staff to prepare a project-level EIR which analyzes, discloses, and mitigates the proposed Project’s GHG emissions, and which considers a reasonable range of environmentally-superior alternatives.

**F. The Addendum Does Not Consider Changes in Circumstances and Significant New Information Related to Traffic Conditions Since the BVDSP EIR was Certified.**

As discussed above, an EIR is required when “[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.”<sup>102</sup> The Smith Report provides substantial evidence of changes in circumstances related to traffic conditions that have occurred since the BVDSP EIR was certified. This triggers the City’s duty to prepare an EIR.

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<sup>101</sup> SWAPE Report, p. 12.

<sup>102</sup> Pub. Resources Code, § 21166(b).

***i. The Addendum does not consider changes in circumstances related to traffic conditions since the BVDSP EIR was certified.***

As the Smith Report explains, the traffic data in the BVDSP EIR was primarily collected from 2008 to 2010. This was during the period of the economic recession. The economic recession caused a decrease in traffic, as less people were commuting to work and fewer projects were being built.<sup>103</sup>

In 2012, the EIR for the BVDSP then updated weekday peak counts at three (3) of the 57 intersections analyzed from 2008 to 2010. This accounts for just 5% of the potentially impacted intersections.<sup>104</sup> Since 2012, the economy has experienced considerable growth and recovery.

As the Smith Report explains, the BVDSP EIR relied on California Department of Transportation (“CalTrans”) annual daily traffic volume counts for surrounding roadway networks from 2012 in its analysis. However, since 2012 “CalTrans has documented substantial increases” in annual daily traffic volumes.<sup>105</sup> These increases include an 6.67% increase from 2014 to 2015, an additional 2.62% increase in 2016, and further increases in 2017.<sup>106</sup> The City failed to consider this substantial change in circumstances in the Addendum.<sup>107</sup> Thus, as the Smith Report explains, most of the data relied upon in the BVDSP EIR was already out-of-date, the BVDSP failed to update 95% of this information, and since 2012, traffic has further increased.<sup>108</sup>

The City cannot rely on a lack of study and analysis to support its decision not to prepare an EIR. As the California Supreme Court concluded in *Sierra Club v. County of Fresno*, when an EIR’s description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is “not a substantial evidence question.”<sup>109</sup> Here, the Addendum is completely devoid of any

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<sup>103</sup> Smith Report, p. 2.

<sup>104</sup> Smith Report, pp. 2-3.

<sup>105</sup> Smith Report, p. 3.

<sup>106</sup> Smith Report, p. 3.

<sup>107</sup> Smith Report, p. 3.

<sup>108</sup> Smith Report, pp. 2-3.

<sup>109</sup> (2018) 6 Cal.5th 502, 519.

recent data or analysis. The City has an obligation to fill this informational void by preparing a legally adequate EIR.

The economic recovery and further changes in traffic levels are significant changes in circumstances which may create a potentially significant impact to traffic congestion on local streets and highways. Traffic generated by the Project will exacerbate these conditions.<sup>110</sup> This is also significant new information concerning a more severe traffic impact than previously analyzed which must be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

***ii. The Addendum fails to disclose, analyze, and mitigate cumulatively considerable impacts to public transit.***

The proposed Project is located within 0.5 mile of the 19th Street BART station. The BART system is already overcrowded in this area, and the proposed Project is likely to cause cumulatively considerable impacts to public transit, particularly since the economic recovery. This is significant new information of substantial importance that must be disclosed, analyzed and mitigated in a subsequent or supplemental EIR.

First, as the Smith Report explains, the City's *Transportation Impact Review Guidelines* (April 2017) discusses the requirements for a transit review analysis for new projects. Although the BVDSPEIR contained a transit review analysis, it did not reflect the most current guidance in the *Transportation Impact Review Guidelines*. The *Transportation Impact Review Guidelines* provides that the analysis must include the total number of passengers that would be added per transit line, and the effect that additional passengers would have on available space.<sup>111</sup>

Second, the proposed Project is 64% taller than the zoned height limit analyzed in the BVDSPEIR. As the Smith Report explains, as a result, the BVDSPEIR is inadequate to access public transit impacts from this much-larger proposed Project.<sup>112</sup>

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<sup>110</sup> See 14 Cal. Code Regs. Sec. 15064.

<sup>111</sup> Smith Report, pp. 3-4.

<sup>112</sup> Smith Report, p. 4.

Third, since the BVDSPP EIR was certified, there have been significant changes in circumstances related to public transit.<sup>113</sup> Specifically, there has been a “substantial increase in BART ridership” and “deteriorated BART conditions” which “have arisen since the BVDSPP EIR was certified.”<sup>114</sup> As the Smith Report explains, the *Transit Capacity and Quality of Service Manual* published by the Transit Cooperative Research Program establishes that 5.4 square-feet per passenger is the minimally allowable amount of comfortable space.<sup>115</sup> The Federal Transit Authority (“FTA”) has also adopted this threshold.<sup>116</sup> During peak times, BART riders in the Transbay Corridor currently average only 5.2 feet of space.<sup>117</sup> And, the most crowded sections in the Transbay Corridor, between Embarcadero and the West Oakland BART station, only maintain 4.2 square-feet of passenger space.<sup>118</sup> As the Smith Report explains, the 19th Street BART Station is obviously situated within this already overcrowded corridor.<sup>119</sup> Yet, the Addendum “fails to disclose the number of BART riders that the Project will generate, fails to disclose the impact these riders will have on the public transit system, and fails to require any mitigation measures to address potentially significant impacts.”<sup>120</sup> Nor is this information contained in the BVDSPP EIR.

Finally, the proposed Project’s proximity to public transit is mentioned throughout the Addendum as a positive feature. Yet, as the Smith Report explains, if public transit is unable to handle the increased ridership, then the proximity to public transit is no longer an asset, but a significant adverse impact.<sup>121</sup>

A project-level EIR is required which discloses, analyzes, and mitigates the proposed Project’s potentially significant impacts to public transit, and which considers changes in circumstances since 2012 which impact transit riders.

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<sup>113</sup> Smith Report, pp. 4-5.

<sup>114</sup> Smith Report, p. 4.

<sup>115</sup> Smith Report, p. 5.

<sup>116</sup> Smith Report, p. 5.

<sup>117</sup> Smith Report, p. 5.

<sup>118</sup> Smith Report, p. 5.

<sup>119</sup> Smith Report, p. 5.

<sup>120</sup> Smith Report, p. 5.

<sup>121</sup> Smith Report, pp. 4-5.

**G. There is Significant New Information of Substantial Importance Demonstrating that Impacts to Sensitive Receptors from Construction-Related Noise is Potentially Significant and Unmitigated.**

As the attached Watry Report demonstrates, there is significant new information of substantial importance that impacts to nearby sensitive receptors from construction-related noise is potentially significant and unmitigated, due to size of the proposed Project and its proximity to nearby sensitive receptors. In addition, the mitigation measure proposed in the BVDSP EIR to lessen or avoid impacts during the noisiest phases of construction is vague, unenforceable, and of uncertain efficacy. The City should withdraw the Addendum and prepare a subsequent or supplemental EIR which discloses, analyzes, and mitigates this impact.

***i. Noise impacts to sensitive receptors at the 100 Grand apartment building are potentially significant and unmitigated.***

As the Watry Report explains, the nearest sensitive receptor is The Grand apartment building, located at 100 Grand Avenue. OPC, Section 17.120.050.G states the City's construction noise standards. For longer-term construction noise (more than 10 business days), the OPC provides that noise at the receiving line for residential receptors should not exceed 65 decibels during the weekday and 55 decibels on weekends.<sup>122</sup>

The BVDSP EIR provided reference noise levels for construction equipment and typical average noise levels during various phases of construction. Table 2A in the Watry Report presents these noise levels in average decibels<sup>123</sup> at 50, 66, and 185 feet from The Grand. <sup>124</sup> Table 2B assumes that noise levels can be reduced by 10 decibels by using engine mufflers, consistent with Environmental Protection Agency guidance.<sup>125</sup> The Watry Report notes that these are average figures, and actual noise may be three to six decibels higher.<sup>126</sup> Moreover, these figures are

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<sup>122</sup> Watry Report, pp. 2-3.

<sup>123</sup> Note that decibels are expressed as either "dBA" or "dB."

<sup>124</sup> Watry Report, p. 3; see also Langan, Geotechnical Report (2019).

<sup>125</sup> Watry Report, p. 4.

<sup>126</sup> Watry Report, p. 4.

provided with regard to a hypothetical project, as the BVDSP EIR is a programmatic EIR.

As the Watry Report concludes, and Table 2B demonstrates, “even with the use of modern mufflers, the noise levels at The Grand are expected to exceed Oakland’s weekday, daytime noise limit of 65 dBA by 1 to 12 dB during the various phases of construction.”<sup>127</sup> And, an “additional 12 dB of noise reduction will likely not be achieved by additional improvement of the mufflers.”<sup>128</sup> As such, construction noise should be identified as a significant noise impact, which is more severe than that analyzed in the BVDSP EIR.<sup>129</sup> Thus, subsequent or supplemental environmental review is required.

Moreover, as the Watry Report explains, the proposed Project will be 64% larger than allowed under the current, applicable zoning and will take 29 months to construct. The impact of constructing a 411-foot structure were not analyzed in the BVDSP EIR. The noise impacts from a building this size is significant new information that was not analyzed in the BVDSP EIR.<sup>130</sup>

***ii. SCA-NOI-2 is insufficient to mitigate the proposed Project’s potentially significant impacts from construction-related noise.***

As the Watry Report explains, the Addendum relies on SCA-NOI-2 (BVDSP SCA# 29) (Construction Noise) to mitigate the noise from the Project’s most severe, noise-inducing construction activities. As the Watry Report concludes, the “City cannot rely on this measure to reduce noise impacts to nearby sensitive receptors because the *Addendum* does not provide sufficient information to determine if it will be enforceable or effective.”<sup>131</sup>

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<sup>127</sup> Watry Report, p. 4.

<sup>128</sup> Watry Report, p. 5.

<sup>129</sup> Watry Report, pp. 4-5.

<sup>130</sup> Watry Report, p. 1.

<sup>131</sup> Watry Report, p. 5.

Courts have imposed several parameters for the adequacy of mitigation measures. Importantly, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>132</sup> In addition, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>133</sup> Additionally, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.<sup>134</sup> Finally, compliance with noise regulations does not guarantee that noise impacts will be less than significant.<sup>135</sup>

Here, SCA-NOI-2 provides: “The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.”<sup>136</sup>

This measure is vague, unenforceable, and of uncertain efficacy as the Watry Report explains.<sup>137</sup> First, the Addendum does not provide the construction schedule for the Project and does not disclose the length of time that must occur between noisy periods. Second, this measure does not place any limitations on the nature or length of the proposed extensions that the City may authorize. Third, the mitigation measure does not define the criteria that City will apply to determine if an extension is necessary. Thus, the measure is vague, unenforceable and of uncertain efficacy.<sup>138</sup>

For example, under this measure, the Applicants could engage in a 10-day period of extreme noise, followed by one day of no noise (for example, on a Sunday), followed by 10 more days of extreme noise. This pattern could continue for months or years. Moreover, if the City deems it “necessary,” and determines that the Applicants are already compiling with the other measures (including the use of

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<sup>132</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

<sup>133</sup> CEQA Guidelines, § 15126.4(a)(2).

<sup>134</sup> *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

<sup>135</sup> *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

<sup>136</sup> Watry Report, p. 5, citing SCA-NOI-2.

<sup>137</sup> Watry Report, p. 5.

<sup>138</sup> Watry Report, p. 5.

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mufflers, which will not reduce impacts to less-than-significant levels), then the Applicants would be permitted to generate extreme noise, entirely uninterrupted. Because necessary is undefined, it could include a finding by the City, that due to traffic considerations, it is necessary that the Applicants complete extremely loud excavation work on an expedited schedule. The City is not required to consider noise impacts to sensitive receptors in making such a finding under the terms of the mitigation measure.

And, as discussed above, the BVDSP EIR did not consider the size of the proposed Project - 64% larger than that allowed by the applicable zoning - in its discussion and mitigation of extreme noise events.<sup>139</sup> This is significant new information of substantial importance that may result in more severe noise impacts than analyzed in the BVDSP EIR which must be analyzed in a supplemental or subsequent EIR.

The Watry Report explains that the Addendum's proposed mitigation is inadequate to reduce the Project's potentially significant noise impact to less than significant levels. Because the use of mufflers and SCA-NOI-2 will not be effective in reducing impacts to less-than-significant levels, Mr. Watry concludes that additional noise mitigation is required. The Watry Report recommends that, in addition to SCA-NOI-2, the City should require that the Applicants deploy a noise monitoring system on the lower balcony-levels of the 100 Grand building. This system would alert site management when levels are exceeded. Work should cease when this occurs.<sup>140</sup>

This mitigation measure is considerably different from any measure proposed or adopted in the BVDSP EIR. Thus, supplemental or subsequent review is required.<sup>141</sup>

***iii. The proposed Project will contribute to a semi-permanent state of construction noise in the neighborhood.***

The Watry Report explains that local residents will be subjected to semi-permanent levels of construction noise as a result of the proposed Project, in

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<sup>139</sup> Watry Report, p. 5.

<sup>140</sup> Watry Report, p. 4.

<sup>141</sup> CEQA Guidelines, § 15162(a)(3)(D).

conjunction with other projects under the BVDSP, as they are constructed.<sup>142</sup> This potentially significant impact should be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

The City noise ordinance defines short-term noise impacts as those lasting up to 10 working days (approximately two weeks); after that, impacts are considered long-term. Here, construction is proposed to last at least 29 months. This is 63 times longer than the period that the City considers to be short-term. And, the 88 Grand Avenue Project is only one of many proposed and under-construction projects within the BVDSP plan area.<sup>143</sup>

As the Watry Report explains, living with the noise of continuous construction has already impacted the lives of local Oakland residents, including those in close proximity to the proposed Project.<sup>144</sup>

And here, “as of July 30, 2018 residents of The Grand are either experiencing or have recently finished experiencing construction noise from a multi-use development at 2315 Valdez and will soon experience construction noise from permitted projects at 2270 Broadway and 2305 Webster. These Oakland residents can therefore expect to be exposed to construction noise for many years to come, as the Broadway Valdez District is transformed to fulfill the vision expressed by the Specific Plan.”<sup>145</sup>

This is a significant impact which was not considered in the BVDSP EIR. The City should address the noise impact to sensitive receptors from creating a semi-permanent state of construction in the local community in order to build the proposed Project and other projects in the BVDSP.<sup>146</sup>

#### *iv. Conclusion*

There is significant new information of substantial importance demonstrating that noise impacts will be more severe than disclosed, analyzed, and mitigated in the BVDSP EIR. In addition, the key mitigation measure proposed

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<sup>142</sup> Watry Report, pp. 6-7.

<sup>143</sup> Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan*.

<sup>144</sup> Watry Report, pp. 6-7.

<sup>145</sup> Watry Report, p. 6.

<sup>146</sup> Watry Report, pp. 6-7.

under the BVDSP to reduce impacts from the noisiest phases of construction is insufficient. Thus, the City's conclusion that construction noise impacts will be the same-as or less-severe-than those analyzed in the BVDSP EIR is not supported by substantial evidence. A supplemental or subsequent EIR required to analyze, disclose, and mitigate the proposed Project's potentially significant impacts to sensitive noise receptors.

### III. A MAJOR CONDITIONAL USE PERMIT IS REQUIRED FOR THE PROJECT.

The City seeks to approve the proposed Project with a Minor CUP, per OPC, Sections 17.134.020(B), 17.134.020(A). Because the City must prepare an EIR in order to approve the proposed Project, a *Major* CUP is required.

OPC, Section 17.134.020 defines and differentiates between a Major and Minor CUP. A Major CUP is required when projects cross a defined threshold of size or density in identified zones,<sup>147</sup> when specified uses are proposed,<sup>148</sup> and, as relevant here, when there are "special situations."<sup>149</sup> The first special situation cited is when an EIR is required.<sup>150</sup> Only if *none* of the above-listed situations apply to a proposed project is a Minor CUP permitted.<sup>151</sup>

A Minor CUP is approved by the Director of City Planning and no hearing is required.<sup>152</sup> Decisions are appealable to the Planning Commission.<sup>153</sup> In contrast, a Major CUP is reviewed at noticed public hearing before Planning Commission. Planning Commissions are appealable to the City Council.<sup>154</sup>

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<sup>147</sup> OPC, § 17.134.020(A)(1).

<sup>148</sup> OPC, § 17.134.020(A)(2).

<sup>149</sup> OPC, § 17.134.020(A)(3).

<sup>150</sup> OPC, § 17.134.020(A)(3)(a).

<sup>151</sup> OPC, § 17.134.020(B).

<sup>152</sup> The City's failure to conduct a public hearing in conjunction with its proposed approval of the Project also violates the public hearing requirements of the Infill Exemption. See 14 Cal. Code Regs. § 15183(e)(2) (a public hearing is required for lead agency to determine whether significant environmental effects will be mitigated to the greatest extent feasible).

<sup>153</sup> OPC, § 17.134.040(B).

<sup>154</sup> OPC, § 17.134.040(A).

As discussed in detail above and in the attached expert reports, the proposed Project would create potentially significant impacts to air quality and public health, GHG, traffic, and noise. An EIR is required which discloses, analyzes, and mitigates these impacts. Therefore, a Major CUP is required in order to approve the proposed Project. The application for a Minor CUP should be withdrawn, and the Applicant should be directed to apply for a Major CUP. The Major CUP can only be considered after an EIR has been prepared, circulated for public comment, and certified by the City.

**IV. THE CITY'S FINDINGS CONCERNING REGULAR DESIGN REVIEW, THE MINOR CONDITIONAL USE PERMIT, AND THE TENTATIVE PARCEL MAP ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.**

Even if the City could approve the proposed Project using a Minor CUP, which it cannot, the City's findings under the OPC's general use permit and design review criteria are not supported by substantial evidence.<sup>155</sup>

*i. Legal background*

As stated above, the OPC, Section 17.134.040(B) permits the Director of Planning to grant a Minor CUP if the proposed development conforms to the general use criteria set forth in OPC, Section 17.134.050. OPC, Section 17.134.050 states the general use permit criteria:

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

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<sup>155</sup> OPC, §§ 17.134.050, 17.136.050(A).

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

....

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at **Section 17.136.050**;

**E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map** which has been adopted by the Planning Commission or City Council.<sup>156</sup>

The Regular Design Review criteria, OPC, Section 17.136.050(A), referenced above, further provides that “approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria” for residential family developments:

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, **scale, bulk, height, materials, and textures**:

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

....

**5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map** which have been adopted by the Planning Commission or City Council.<sup>157</sup>

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<sup>156</sup> OMC, §17.134.050(A)-(B) and (D)-(E), emphasis added.

<sup>157</sup> OMC, § 17.136.050(A)(1)-(2), (5), emphasis added.

Finally, per OPC, Section 17.010C.010(B)(2), the intent of the D-BV-2 zone is to “create, maintain and enhance” the area with ground level retail and upper floor residential development.

The proposed Project does not meet these criteria because, as discussed above, the Project is inconsistent with BVDSP zoning and density requirements, and is likely to result in significant, unmitigated impacts on public health and the environment. As a result, the applications for a Minor CUP, Regular Design Review, and the Tentative Parcel Map should be denied.

***ii. The proposed Project is inconsistent with the OPC's general review criteria.***

The January 2019 Staff Report and Oakland Planning Commission's June 26, 2019 Staff Report (“June 2019 Staff Report”) purported to analyze the proposed Project's consistency with the site's zoning and OPC's design review criteria.

In both Staff Reports, Staff recognized that the D-BV-2 zone does not permit development at the requested density and height.<sup>158</sup> Yet, Staff concluded that the “proposed design consists of a very slender tower due to the limited available footprint of the development site, which results in a rather attractive massing for the building. This is especially true considering the proposal in the context of other existing and proposed towers surrounding the project site, that are all in the range of 240 to 250 feet in height. This tall slender tower at more than 350 feet in height would create a visual accent in an area that will likely be filled with towers of similar heights in the future.”<sup>159</sup>

This finding that a “slender” tower eliminates the Project's height exceedances is not supported by substantial evidence and is inconsistent with other statements in the Addendum and Staff Reports.

First, the Addendum, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan* lists all constructed, approved, and under construction projects in the BVDSP. It shows that 88 Grand Avenue, if approved, would be the

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<sup>158</sup> January 2019 Staff Report, pp. 3-4; June 2019 Staff Report, p. 1.

<sup>159</sup> January 2019 Staff Report, p. 5.

third largest building in the entire plan area.<sup>160</sup> Thus, slender or not, the Project remains extremely tall, and is *not* likely to be filled in with similar-sized buildings in the future. Rather, the Project would continue to be significantly taller than surrounding proposed buildings.

Second, the Staff's conclusion that the building's height would provide an attractive visual accent is contradicted by other statements in the Staff Reports, particularly with regard to the design of the building's northern façade. This discussion also runs contrary to Staff's conclusion that future buildings will be the same height or taller.

The January 2019 Staff Report discusses the building's northern façade in some depth. It states, "[t]he northern façade does raise some concerns. The proposal as submitted is almost entirely lacking any openings or glazing on the northern elevation .... *While design features like this are common practice on shorter buildings where those blank elevations will eventually be covered by a future building, this site is different because it will be the tallest building in the direct vicinity.* As tall as the proposed building is, the largely blank northern façade will be very prominent in the City skyline...."<sup>161</sup> The June 2019 Staff Report then admitted that while the Applicants had made some changes to the northern elevation in response to these concerns, "staff still has concerns about the design given that it will be a very prominent building in the skyline and the *lack of visual cohesiveness with the other building elevations.*"<sup>162</sup> In this way, the City admits that the building will be taller than its surroundings, it will be not be surrounded by other similarly-sized development, and, coupled with the lack of design features on the northern elevation, will be visually jarring.

Nor will the proposed Project be "compatible with and not adversely affect the livability or development of abutting properties and the surrounding neighborhood"<sup>163</sup> and related provisions cited above in the OPC.

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<sup>160</sup> Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan.*

<sup>161</sup> January 2019 Staff Report, p. 5, emphasis added.

<sup>162</sup> June 2019 Staff Report, p. 3, emphasis added.

<sup>163</sup> OPC, § 17.134.050(A)

As discussed in detail above and in the attached SWAPE Report, the proposed Project may result in potentially significant impacts to air quality during construction and operation, as well as cumulatively considerable air quality impacts. As the SWAPE Report explains, the Addendum failed to address cumulative impacts from emissions from all sources, did not include an HRA which analyzed public health risks as a result of construction activities, and failed to consider all sources of operational emissions, among other deficiencies. These impacts will be largely borne by neighborhood residents and visitors, and were not disclosed, analyzed or mitigated in the BVDSP EIR.<sup>164</sup> Impacted visitors to the area include patients at the Columbia Allergy and Asthma Clinic, located at 80 Grand Avenue.<sup>165</sup> Impacts to these individuals, who are already suffering from decreased pulmonary functioning, are not addressed in the Staff Reports or Addendum.

The SWAPE Report also provides expert evidence that impacts to global climate change from the proposed Project's GHG emissions were not analyzed, disclosed, or mitigated in the BVDSP EIR. Nor is this impact considered in the Staff Reports.<sup>166</sup> As discussed in the SWAPE Report, SB 32 and the 2017 CARB Scoping Plan require that proposed developments limit their GHG emissions in order to reach Statewide GHG reduction goals. Projects, such as this one, which ignore the State's GHG reduction benchmarks can jeopardize future jobs and development in the area by causing development moratoriums or restrictions. The plan for development described in the BVDSP may become unobtainable if currently proposed projects, such as this one, proceed without considering their GHG impacts.

As described in detail above and in the attached Smith Report, the proposed Project may potentially generate traffic, in excess of the capacity of existing streets. As Mr. Smith explains, this level of traffic was not analyzed in the EIR prepared for the BVDSP because the traffic data relied upon in that document did not consider the recent economic recovery, among other deficiencies.<sup>167</sup> The Smith Report also details how the proposed Project may create a cumulatively considerable impact to public transit, specifically, to the functioning of the nearby 19th Street BART station.<sup>168</sup> The Staff Reports and Addendum do not address this impact on

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<sup>164</sup> See generally, SWAPE Report, pp. 1-4.

<sup>165</sup> Columbia Allergy and Asthma Clinic, <https://www.columbiaallergy.com/>, last viewed Jan. 2, 2020.

<sup>166</sup> See generally, SWAPE Report, pp. 4-12.

<sup>167</sup> See generally, Smith Report, pp. 1-3.

<sup>168</sup> See generally, Smith Report, pp. 4-5.

neighborhood livability, should the BART system be unable to handle increased ridership as a result of the proposed Project.

As described in detail above and in the attached Watry Report, the proposed Project may create significant impacts to neighborhood residents from noise during Project construction. The mitigation provided in the BVDSP is vague, unenforceable, and of uncertain efficacy. As Mr. Watry explains, SCA-NOI-2 contains a significant loophole which makes it ineffective in reducing impacts during the proposed Project's noisiest phases.<sup>169</sup> This loophole would allow the Applicants to engage in the noisiest phases of construction, unceasingly, if the City deems it "necessary." Necessary is not defined.<sup>170</sup>

This impact is especially acute because the proposed Project would be 411 feet tall, more than 60% taller than buildings analyzed in the BVDSP EIR.<sup>171</sup> Moreover, buildout of the Project, in conjunction with plans for buildout of the rest of the BVDSP area, will expose neighborhoods residents to "semi-permanent" construction noise – noise that will continue for several years.<sup>172</sup> Nearby sensitive receptors include the residents at The Grand and the patients of the 88 Grand Avenue medical offices.<sup>173</sup> Neither the Addendum nor the Staff Reports address how exposure to continuous construction noise would impact neighborhood livability or be compatible with existing uses. Thus, the City's conclusions are unsupported.

### *iii. Conclusion*

If permitted, the Minor CUP, Tentative Parcel Map and Regular Design Review approvals would allow the Applicant to construct a massive, 35-story tower on a single half-acre parcel, immediately adjacent to a small street. Development of this height, scale, density and massing at this location is wholly out of character with surrounding development, and will have deleterious impacts to neighborhood livability, including impacts to air quality, traffic, public transit and noise. The City

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<sup>169</sup> See generally, Watry Report, pp. 1-5.

<sup>170</sup> See generally, Watry Report, pp. 1-5.

<sup>171</sup> See generally, Watry Report, pp. 1-5.

<sup>172</sup> See generally, Watry Report, pp. 6-7.

<sup>173</sup> Oakland Bone and Joint Specialists, <http://oaklandboneandjointspecialists.com/>, last viewed, Jan. 2, 2020; Columbia Allergy and Asthma Clinic, <https://www.columbiaallergy.com/>, last viewed, Jan. 2, 2020.

January 6, 2020

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should reject the Applicants' request for a Minor CUP, Regular Design Review, and Tentative Parcel Map.

## V. CONCLUSION

As this letter and attached expert reports demonstrate, the proposed Project is likely to create potentially significant impacts to air quality and public health, GHG, noise, and traffic. These impacts were not disclosed, analyzed, or mitigated in the EIR prepared for the BVDSP.

Moreover, because an EIR is required, the City cannot approve the proposed Project using a Minor CUP. A Major CUP is required, subject to review by the Oakland Planning Commission. And, even if the City could issue a Minor CUP in these circumstances, which it cannot, the City's findings under the general permit review criteria are not supported by substantial evidence.

To comply with the law, the City must withdraw the Addendum and direct Staff to prepare a subsequent or supplemental EIR for public review and comment, which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives to the proposed Project.

At the very least, the City should extend the comment period on the Addendum by 17 additional days, until **January 16, 2020**, in order to allow Oakland Residents additional time to review the materials received on December 30, 2019 in response to their California Public Records Act Request.

Thank you for considering our comments. Please place this comment letter and attachments in the record of proceedings for this matter.

Sincerely,



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Sara Dudley

SFD:ljl

4782-005j

# EXHIBIT A



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January 3, 2020

Christina Caro  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd #1000  
South San Francisco, CA 94080

**Subject: Comments on the 88 Grand Avenue Project**

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Dear Ms. Caro,

We have reviewed the December 2019 Addendum (“Addendum”) for the 88 Grand Avenue Project (“Project”) located in the City of Oakland (“City”). The Project proposes to maintain an existing 44,000 square foot office building and construct 275 residential units, 1,000 square feet of retail space, and 45 parking spaces on the 0.51-acre site.

Our review concludes that the Addendum fails to adequately evaluate the Project’s Air Quality, Health Risk, and Greenhouse Gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An EIR should be prepared to adequately assess and mitigate the potential air quality and health risk impacts that the project may have on the surrounding environment.

## **Air Quality**

### **Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated**

While the Addendum discloses the health risk impacts on nearby sensitive receptors from exposure to toxic air contaminants (TACs) that will be released during the operation of a single emergency generator, it fails to disclose the extent of the Projects’ health risk impacts that will be released during Project construction and operation.

First, while the Addendum includes a quantified health risk assessment (HRA) for Project operation, it only considers emissions from the operation of a single emergency generator (p. 41). Notably, the

Addendum finds that, while the cancer risk calculated by the City did not exceed the BAAQMD threshold of 10 in one million, it was exactly 10 in one million (see excerpt below) (p. 41).<sup>1</sup>

**Table V.B-1 Health Risks at Maximally Exposed Individual Resident (MEIR) from Operation of an Emergency Generator at the Project Site**

Emission Source	Diesel Particulate Matter		Exhaust PM <sub>2.5</sub> Annual Average Concentration (µg/m <sup>3</sup> )
	Cancer Risk per Million	Chronic Hazard Index	
Emergency Generator	10.0	<0.01	0.02
Thresholds of Significance	10	1.0	0.3
Exceed Threshold?	No	No	No

Notes: µg/m<sup>3</sup> = micrograms per cubic meter

Source: BAAQMD, 2016. Risk and Hazards Emissions Screening Calculator (Beta Version).

As you can see in the excerpt above, the Project's operational cancer risk resulting from the stationary source diesel generator is exactly equal to the BAAQMD cancer risk threshold. Therefore, any additional TAC emissions above the level estimated in the Addendum would result in a significant cancer risk.

Second, the Addendum fails to quantify the Project's health risk associated with construction TAC emissions. The Addendum concludes that the proposed Project would have a less than significant impact on the health of nearby sensitive receptors without conducting an HRA to evaluate TAC exposure resulting from the Project's construction. The Addendum attempts to justify this omission by stating that "health risk impacts from project construction would not be more severe than what was identified in the BVDSP EIR" (p. 40). However, review of the BVDSP DEIR reveals that no HRA was performed for Project construction due to a lack of detail (BVDSP EIR, p. 4.2-27). The BVDSP DEIR states:

[The highly variable nature of construction activities] results in difficulties with producing accurate estimates of increased health risk. The specificity of detail necessary to conduct a health risk assessment is not available at the Specific Plan stage (p. 4.2-27).

Thus, the BVDSP DEIR failed to conduct a health risk analysis because the project-specific information necessary to prepare a quantitative HRA was not available at the Specific Plan stage. Without a quantified HRA for the proposed Project, the Addendum's conclusion that "health risk impacts from project construction would not be more severe than what was identified in the BVDSP EIR" is unsubstantiated and should not be relied upon (p. 40). The Project's health risk impacts from construction emissions were therefore not analyzed in the Addendum or Specific Plan DEIR. Because this impact has not be analyzed previously, an EIR should be prepared that includes an HRA for the Project's construction and operational TAC emissions, which compares these emissions to the BAAQMD's specific

<sup>1</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)

numeric threshold of 10 in one million in order to determine the significance the proposed Project's health risk impacts.<sup>2</sup> Neither the BVDSP DEIR nor the Addendum include this analysis.

By failing to prepare a quantitative HRA, the Addendum fails to quantify the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutant emissions. Project construction is expected to occur over an approximately 2-year, 5-month (29-month) construction period, and will involve the use of both on-site construction equipment and haul trucks to haul excavated soil off-site. (p. 61, Table V.F-2). Based on the length of Project construction and the nature of construction equipment required, it is reasonable to assume that a significant amount of diesel particulate matter (DPM), a known human carcinogen, will be emitted from the exhaust stacks of equipment required for Project construction over the duration of the construction period (p. 61, Table V.F-2). Similarly, the Addendum explains that operational activities will include approximately 973 daily vehicle trips, thus generating diesel exhaust over the duration of Project operation (p. 94, Table V.M-2). As such, the Addendum should have included a construction and operational health risk assessment, as long-term exposure to DPM and other TACs may result in a significant health risk impact that must be disclosed, properly assessed, and mitigated. Furthermore, the BAAQMD provides a specific numerical threshold of 10 in one million for determining a project's health risk impact. Therefore, in order to determine the proposed Project's health-related impact, the Addendum should have conducted an assessment that compares the Project's construction and operational health risk to the BAAQMD's specific numerical threshold of 10 in one million.<sup>3</sup>

Third, the omission of a quantified health risk analysis is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing guidance on conducting HRAs in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015.<sup>4</sup> This guidance document describes the types of projects that warrant the preparation of an HRA, and includes land use projects similar to the proposed Project. Construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment over a construction period of approximately two and a half years (p. 61, Table V.F-2). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.<sup>5</sup> Therefore, per OEHHA guidelines, health risk impacts from Project construction should have been evaluated by the Addendum.

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<sup>2</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)

<sup>3</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)

<sup>4</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html)

<sup>5</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/2015/2015GuidanceManual.pdf](http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf), p. 8-18

The Addendum also incorrectly omits an analysis of the Project's entire operational health risk impacts from mobile TAC emissions. Once construction of the Project is complete, the Project will operate for a long period of time. As previously stated, Project operation will generate approximately 973 vehicle trips per day (p. 94, Table V.M-2). These trips will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions throughout the life of the Project. The OEHHA guidance recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).<sup>6</sup> Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have also been evaluated in an EIR, as a 30-year exposure duration vastly exceeds the 2-month and 6-month requirements set forth by OEHHA. These recommendations reflect the most recent health risk policy, and as such, an updated assessment of health risks to nearby sensitive receptors from Project construction and operation should be included in an EIR for the Project.

Fourth, the Addendum fails to sum the cancer risk calculated for each age group. According to OEHHA guidance, "the excess cancer risk is calculated separately for each age grouping and then summed to yield cancer risk at the receptor location."<sup>7</sup> However, review of the operational HRA conducted in the Addendum demonstrates that, while each age bin was calculated, the Addendum failed to sum them to evaluate the total cancer risk over the course of the Project's lifetime. The Addendum therefore fails to accurately disclose the Project's lifetime health risk. Thus, we recommend that an updated HRA be prepared, which quantifies the Project's construction and operational health risks, and sums them to compare to the BAAQMD threshold of 10 in one million.<sup>8</sup> If impacts exceed this threshold, the Project should identify additional mitigation measures to reduce these impacts to less than significant levels.

Finally, the Addendum incorrectly underestimates the Project's cumulative health risk from construction and operation. The Addendum explains that, "in addition to existing TAC sources, there are ten proposed development projects that may be constructed within 1,000 feet of the MEIR location in the near future." (p. 45). The Addendum acknowledges that construction and operation of these projects is likely to overlap, and claims to conduct an analysis of the cumulative health risks posed by the Project in conjunction with these 10 other projects. However, similar to the Project's individual operational HRA, the Addendum's cumulative HRA only analyzes TAC emissions from a single source for each project – emergency diesel generators – and fails to analyze TAC emissions from diesel-powered mobile sources. (pp. 45-48). As a result, the Addendum omits sources of TAC emissions and underestimates the Project's cumulative health risk impact. Thus, an updated analysis of cumulative health risk impacts should be prepared that discloses the full extent of cumulative exposure of nearby sensitive receptors to

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<sup>6</sup> "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: [http://oehha.ca.gov/air/hot\\_spots/2015/2015GuidanceManual.pdf](http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf), p. 8-6, 8-15

<sup>7</sup> "Guidance Manual for preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf> p. 8-4

<sup>8</sup> "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)

TAC emissions from all 11 projects, and compares this exposure to BAAQMD’s cumulative health risk threshold of 100 in one million. If cumulative impacts exceed this threshold, additional mitigation measures should be incorporated to reduce these impacts to less than significant levels.

## Greenhouse Gas

### Failure to Model All Operational Land Uses

Review of the Project’s CalEEMod output files demonstrates the model failed to include the entire Project’s operational emissions. The Addendum states that “[t]he existing 80 Grand office building and its respective parcel would be retained” (p. 7). Thus, the model for the Project’s operational emissions should include the 80 Grand office building. Review of the Addendum demonstrates that the existing land use at 80 Grand is a 12,926 square foot office building (p. 5). However, the Project’s CalEEMod output files demonstrate that this existing land use was not included in the model (see excerpt below) (pp. 1).

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Enclosed Parking with Elevator	45.00	Space	0.00	460.00	0
Apartments High Rise	275.00	Dwelling Unit	3.00	300,640.00	665
Regional Shopping Center	1.00	1000sqft	0.00	1,000.00	2

As you can see in the excerpt above, the air model fails to include the 12,926 square foot office building located at 80 Grand Ave. The land usage parameters, including land use types and sizes, are used throughout CalEEMod to determine default variables and emission factors that go into the model’s calculations.<sup>9</sup> For example, land use areas are used for certain calculations, such as determining the wall space to be painted (i.e., VOC emissions from architectural coatings) and volume that is heated or cooled (i.e., energy impacts). Therefore, by failing to include the existing office building, the Project’s operational emissions are not properly accounted for. An updated air model should be prepared in an EIR to adequately evaluate the Project’s operational greenhouse gas impacts.

### Unsubstantiated Input Parameters Used to Estimate Project Emissions

The Addendum’s greenhouse gas (GHG) analysis relies on emissions calculated with CalEEMod.2016.3.2.<sup>10</sup> CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act (CEQA) requires that such changes be justified by substantial evidence.<sup>11</sup> Once all of the values are inputted into the model, the Project’s construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in

<sup>9</sup> *Supra*, fn 1, p. 14.

<sup>10</sup> CAPCOA (November 2017) CalEEMod User’s Guide, [http://www.aqmd.gov/docs/default-source/caleemod/01\\_user-39-s-guide2016-3-2\\_15november2017.pdf?sfvrsn=4](http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4).

<sup>11</sup> CAPCOA (November 2017) CalEEMod User’s Guide, [http://www.aqmd.gov/docs/default-source/caleemod/01\\_user-39-s-guide2016-3-2\\_15november2017.pdf?sfvrsn=4](http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4), p. 1, 9.

calculating the Project's emissions and make known which default values were changed as well as provide justification for the values selected.<sup>12</sup>

Review of the Project's modeling demonstrates that the Addendum underestimates emissions associated with Project activities. As previously stated, the Addendum's GHG analysis relies on air pollutant emissions calculated using CalEEMod. When reviewing the Project's CalEEMod output files, we found that several of the values inputted into the model were not consistent with information disclosed in the Addendum. As a result, the Project's GHG emissions are underestimated. An updated CEQA analysis should be prepared to include an updated GHG analysis that adequately evaluates the Project's impacts.

*Incorrectly Assumes Tier 4 Final Equipment*

SCA-AIR-3 in the Addendum, "Diesel Particulate Matter Controls – Construction Related," requires the project to either "prepare a Health Risk Assessment (HRA) in accordance with current guidance", or to equip construction equipment "with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement)" (Attachment A, p. A-7, SCA-AIR-3 (i and ii)). Thus, SCA-AIR-3 gives the applicant the choice between *either* conducting an HRA *or* implementing risk reduction measures, such as Tier 4 engines. Furthermore, SCA-AIR-3(ii) fails to specify between Tier 4 Interim or Tier 4 Final engines, stating simply "Tier 4 engines." (Attachment A, p. A-7, SCA-AIR-3 (ii)).

However, review of the Project's CalEEMod output files demonstrates that the model assumed that the Project's construction equipment would include the more efficient Tier 4 *Final* engines (see excerpt below) (pp. 2, 3).

Table Name	Column Name	Default Value	New Value
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00

<sup>12</sup> CAPCOA (November 2017) CalEEMod User's Guide, [http://www.aqmd.gov/docs/default-source/caleemod/01\\_user-39-s-guide2016-3-2\\_15november2017.pdf?sfvrsn=4](http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4), fn 1, p. 11, 12 – 13. A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.



Maximum horsepower	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015+
25hp<50							7.1/4.1/0.80			5.8/4.1/0.45				5.8/4.1/0.22						3.5/4.1/0.02	
50hp<75										5.8/3.7/0.30				3.5/3.7/0.22 <sup>a</sup>						3.5/3.7/0.02	
75hp<100								6.9/-/-						3.5/3.7/0.30						0.14/2.6/0.15	0.14/0.30/0.15
100hp<175										4.8/3.7/0.22				3.0/3.7/0.22 <sup>a</sup>						3.7/0.015 <sup>b</sup>	0.14/0.30/0.15
175hp<300										4.8/2.8/0.15										0.14/1.5/2.6/0.015 <sup>b</sup>	0.14/0.30/2.6/0.015
300hp<600				1.0/6.9/8.5/0.40						4.8/2.8/0.15				3.0/2.8/0.15 <sup>b</sup>						0.14/1.5/2.6/0.015 <sup>b</sup>	0.14/0.30/2.6/0.015
600hp<750																				0.14/1.5/2.6/0.015 <sup>b</sup>	0.14/0.30/2.6/0.015
Mobile Machines >750hp																				0.14/1.5/2.6/0.015 <sup>b</sup>	0.14/0.30/2.6/0.015
750hp<GEN ≤1200hp							1.0/6.9/8.5/0.40							4.8/2.8/0.15						0.30/2.8/2.6/0.07	0.14/0.30/2.6/0.07
GEN>1200hp																				0.30/0.50/2.6/0.07	0.14/0.30/2.6/0.07

Source: derived from California Air Resources Board, [http://www.arb.ca.gov/msprog/ordiesel/documents/Off-Road\\_Diesel\\_Std.xls](http://www.arb.ca.gov/msprog/ordiesel/documents/Off-Road_Diesel_Std.xls).

- a) When ARB and USEPA standards differ, the standards shown here represent the more stringent of the two.
- b) Standards given for all sizes of Tier 1 engines are hydrocarbons/oxides of nitrogen (NOx)/carbon monoxide (CO)/particulate matter (PM) in grams per brake horsepower per hour (g/bhp-hr).
- c) Standards given for all sizes of Tier 2 and Tier 3 engines, and Tier 4 engines below 75 horsepower are non-methane hydrocarbons (NMHC)+NOx/CO/PM in g/bhp-hr.
- d) Standards given for Tier 4 engines above 75 horsepower are NMHC/NOx/CO/PM in g/bhp-hr.
- e) Engine families in this power category may alternately meet Tier 3 PM standards (0.30 g/bhp-hr) from 2008-2011 in exchange for introducing final PM standards in 2012.
- f) The implementation schedule shown is the three-year alternate NOx approach. Other schedules are available.
- g) Certain manufacturers have agreed to comply with these standards by 2005.

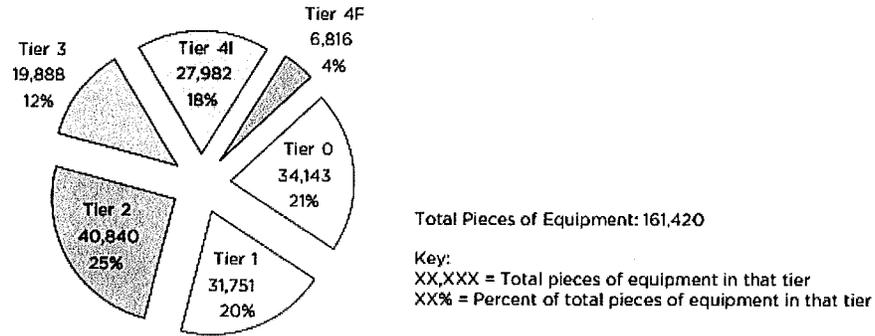


As demonstrated in the figure above, Tier 4 Interim and Tier 3 equipment have greater emission levels than Tier 4 Final equipment. Therefore, by modeling construction emissions assuming nearly a full Tier 4 Final equipment fleet, the Addendum failed to account for higher emissions that may occur as a result of the use of Tier 3 or Tier 4 Interim equipment. Since SCA-AIR-3 fails to specify whether the Project will use Tier 4 Interim or Tier 4 Final equipment, it is incorrect to model emissions assuming that the more efficient Tier 4 Final equipment will be used. Until the Addendum commits to the use of Tier 4 Final engines during all phases of construction, and not Tier 4 Interim equipment, the Project's potential impacts should not be evaluated assuming the use of this cleaner burning equipment.

Furthermore, review of the Addendum demonstrates that the Addendum failed to evaluate the feasibility in obtaining Tier 4 equipment. Due to the limited amount of Tier 4, especially Tier 4 Final, equipment available, the Addendum should have assessed the feasibility in obtaining equipment with Tier 4 engines (see excerpt below).<sup>14</sup>

<sup>14</sup> *Ibid.*

Figure 4: 2014 Statewide All Fleet Sizes (Pieces of Equipment)



As demonstrated in the figure above, the Tier 4 Final and Interim equipment only account for 4% and 18%, respectively, of all off-road equipment currently available in California. Thus, emissions are modeled assuming that the Project will be able to obtain Tier 4 Final equipment even though this equipment only accounts for 4% of available off-road equipment currently available in California. As a result, the model represents the best-case scenario even though obtaining these types of equipment may not be feasible.

Due to the limited availability of Tier 4 Interim and Final equipment, the Addendum should have evaluated the feasibility of obtaining Tier 4 equipment and included a commitment to the mitigation measure in the Project’s MMRP. As a result, construction emissions may be underestimated.

*Use of an Incorrect Land Use Size*

Review of the Project’s CalEEMod output files demonstrates that the parking garage was modeled with an underestimated floor surface area, and as a result, the model underestimates the Project’s construction and operational emissions.

According to the Addendum, the Project would construct “1,600 square feet of area for an automated vehicle parking structure” (p. 8). However, review of the Project’s CalEEMod output files demonstrates that the parking land use size was manually reduced from the default value of 18,000 square feet to 460 square feet (pp. 5).

Table Name	Column Name	Default Value	New Value
tblLandUse	LandUseSquareFeet	18,000.00	460.00

As you can see in the above excerpt, the land use square footage was manually reduced to 460 square feet, underestimating the size of the proposed parking garage by 1,140 square foot. As previously mentioned, the CalEEMod User’s Guide requires any changes to model defaults be justified.<sup>15</sup> Furthermore, the land use type and size features are used throughout CalEEMod to determine default variable and emission factors that go into the model’s calculations.<sup>16</sup> For example, the square footage of

<sup>15</sup> CalEEMod User Guide, available at: <http://www.caleemod.com/>, p. 2, 9

<sup>16</sup> “CalEEMod User’s Guide.” CAPCOA, November 2017, available at: <http://www.caleemod.com/>, p. 17.

a land use is used for certain calculations such as determining the wall space to be painted (i.e., VOC emissions from architectural coatings), volume that is heated or cooled, electricity usage from lighting, ventilation (i.e., energy impacts), parking lot degreasers, and cleaning supplies. Finally, CalEEMod assigns each land use type with its own set of energy usage emission factors.<sup>17</sup> Thus, by underestimating the size of the proposed parking garage within the air model, the emissions associated with construction and operation of the Project are underestimated and should not be relied upon to determine Project significance.

*Use of an Underestimated Sunday Trip Rate*

Review of the Project’s CalEEMod output files demonstrates that the Sunday trip rate for the proposed Project was underestimated. As a result, the Project’s operational emissions may be underestimated.

According to the Addendum, the Project is estimated to generate 973 new daily vehicle trips (see excerpt below) (p. 94, Table V.M-2).

**Table V.M-2 Project Vehicle Trip Generation**

Land Use	ITE Code	Daily	Weekday AM Peak Hour			Weekday PM Peak Hour		
			In	Out	Total	In	Out	Total
<b>Multi-Family Residential</b>								
275 Units	220 <sup>a</sup>	1,790	28	110	138	110	59	169
<b>Retail</b>								
1.0 KSF	820 <sup>b</sup>	43	1	0	1	2	2	4
	<i>Subtotal</i>	<i>1,833</i>	<i>29</i>	<i>110</i>	<i>139</i>	<i>112</i>	<i>61</i>	<i>173</i>
Non-Auto Reduction (-47%) <sup>c</sup>		-860	-14	-52	-66	-53	-28	-81
<b>Total New Project Vehicle Trips</b>		<b>973</b>	<b>15</b>	<b>58</b>	<b>74</b>	<b>59</b>	<b>33</b>	<b>92</b>

As you can see in the table above, the Project is expected to generate 973 daily vehicle trips. However, review of the Project’s CalEEMod output files demonstrates that the model includes 839 trips for Sunday (see excerpt below) (pp. 27).

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Apartment High Rise	951.50	1,127.50	825.00	2,213,924	2,213,924
Enclosed Parking with Elevator	0.00	0.00	0.00		
Regional Shopping Center	22.83	26.72	13.50	38,665	38,665
<b>Total</b>	<b>974.33</b>	<b>1,154.22</b>	<b>838.50</b>	<b>2,252,589</b>	<b>2,252,589</b>

As you can see in the excerpt above, the total number of daily trips calculated for Sunday is approximately 839. Thus, the trip rate inputted into the model for Sunday was underestimated by 134 trips. According to the “User Entered Comments & Non-Default Data” Table in the CalEEMod output

<sup>17</sup> “CalEEMod User’s Guide.” CAPCOA, September 2016, Appendix D, available at: [http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05\\_appendix-d2016-3-1.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/05_appendix-d2016-3-1.pdf?sfvrsn=2), p. 5.

files, the Project justifies the trip rates by stating, “Based on 88 Grand Trip Gen 20181126” (pp. 2). However, as previously stated, the Addendum only indicated a daily trip total of 973. Thus, the model does not account for the proper number of trips generated by the proposed Project, as described in the Addendum. As a result, the Project’s operational mobile-source emissions may be underestimated.

#### *Unsubstantiated Application of Water-Related Mitigation Measure*

Review of the Project’s CalEEMod output files reveals that the model included an operational water-related mitigation measure without sufficient justification, and as a result, the Project’s operational emissions may be underestimated.

The Project’s CalEEMod output files demonstrate that the Project’s emissions were modeled with an unsubstantiated operational water-related mitigation measure (see excerpt below) (pp. 33).

### **7.1 Mitigation Measures Water**

#### **Apply Water Conservation Strategy**

As you can see in the excerpt above, the Project’s operational emissions were modeled assuming the application of a water conservation strategy. As previously stated, the CalEEMod User’s Guide requires that any non-default values inputted must be justified.<sup>18</sup> According to the “User Entered Comments & Non-Default Data” in the CalEEMod output files, the justification provided for this mitigation measure is: “CalGreen Code requires indoor water use to be reduced by 20%” (pp. 2). However, the Addendum fails to mention the Project’s proposed “Water Conservation Strategy,” and fails to demonstrate how the Project’s assumed implementation of a water conservation strategy would reduce water consumption by exactly 20%. Reliance on required building codes alone does not guarantee that Project’s water use would be reduced, particularly where the reduction relies on a “Water Conservation Strategy” that has not been described or defined for the Project. As a result, the application of this mitigation measure is unsubstantiated, and the Addendum’s reliance on a 20% water use reduction is unsupported. The Addendum does not contain adequate information to determine whether the Project’s water use assumptions are accurate or feasible for the Project. Thus, the model may underestimate the Project’s operational emissions.

#### **Failure to Adequately Evaluate the Project’s Greenhouse Gas Impacts**

The Addendum concludes that the Project’s GHG impact would be less than significant based on the BAAQMD threshold of 1,100 MT CO<sub>2</sub>e/year (p. 63). Furthermore, the Addendum relies upon the BVDSP EIR and the Project’s consistency with several policies related to GHG emissions, including the Plan Bay Area, the City of Oakland ECAP, the City of Oakland General Plan, the City’s Green Building Ordinance, the City’s SCA GHG Reduction Plan (p. 64-66).

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<sup>18</sup> CAPCOA (November 2017) CalEEMod User’s Guide, [http://www.aqmd.gov/docs/default-source/caleemod/01\\_user-39-s-guide2016-3-2\\_15november2017.pdf?sfvrsn=4](http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4), p. 7, 13.

However, the Addendum's analysis and subsequent "less than significant" impact conclusion is incorrect for several reasons:

- (1) AB 32 reduction targets are not applicable to the Project;
- (2) Compliance with the City of Oakland ECAP cannot be relied upon to determine Project significance; and
- (3) The Addendum relies upon an incorrect and unsubstantiated quantitative analysis to determine the significance of the Project's GHG impact.

*(1) AB 32 Reduction Targets are Not Applicable to the Project*

The Project relies on BAAQMD's GHG thresholds of significance to determine if impacts during Project construction and operation will be significant. However, these reductions targets are based on BAAQMD's thresholds of significance which were designed to reduce carbon dioxide equivalents (CO<sub>2</sub>E) to comply with Assembly Bill 32, The Global Warming Solutions Act of 2006 ("AB 32"). The City's reliance on AB 32 as a threshold of significance for the Project's GHG emissions is not supported by substantial evidence, and the City cannot rely on compliance with AB 32 to effectively reduce GHG emissions for two reasons.

First, AB 32 is only applicable to Projects that will be operational by 2020. As the Addendum states, the Project would start construction in January 2020, and the Project would not be operational until 2022.<sup>19</sup>

Second, the AB 32 targets are outdated and no longer applicable to this Project. AB 32 mandated that statewide greenhouse gas emissions be reduced to 1990 levels by target year 2020.<sup>20</sup> However, in 2016, the Legislature passed SB 32,<sup>21</sup> which codified a new statewide 2030 GHG emissions reduction target of 40% below 1990 levels. In addition, then-Governor Jerry Brown issued Executive Order B-30-15 in 2015, directing State agencies to implement measures to reduce GHG emissions to 40% below 1990 levels by 2030 and to 80% of 1990 levels by 2050.

Following Executive Order B-30-15 and SB 32, in December 2017, the California Air Resources Board issued a new scoping plan which outlined the strategy needed to achieve SB 32 GHG targets ("2017 CARB Scoping Plan").<sup>22</sup> The CARB Scoping Plan is now the binding "state regulatory scheme" that the CEQA Guidelines require agencies to account for. Yet, the Addendum does not analyze the Project's consistency with the 2017 CARB Scoping Plan. Thus, the Addendum's conclusion that impacts will be less than significant is not supported by substantial evidence.

*(2) The City of Oakland's ECAP is Not Applicable to the Project*

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<sup>19</sup> 88 Grand Avenue Project CEQA Analysis, p. 60.

<sup>20</sup> California Air Resources Board, *Assembly Bill 32 Overview*, available at: <https://www.arb.ca.gov/cc/ab32/ab32.htm>, accessed Oct. 1, 2019.

<sup>21</sup> California Legislature, Senate Bill 32, available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB32](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32), accessed Oct. 1, 2019.

<sup>22</sup> California Air Resources Board, *California's 2017 Climate Change Scoping Plan*, available at [https://ww3.arb.ca.gov/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf), accessed Oct. 1, 2019

The Addendum next relies upon consistency with the City of Oakland ECAP to determine Project significance. As with AB 32, the City's reliance on the ECAP as a threshold of significance to evaluate the Project's GHG emissions is unsubstantiated. According to the Addendum, the City of Oakland ECAP contains actions "that will enable the City to achieve a 36 percent reduction in GHG emissions below the 2005 level by 2020" (p. 64). However, the Project's CalEEMod output files demonstrate that the Project would not be operational until 2022 (pp. 1). Because the City of Oakland ECAP fails to include an emissions reduction target past the year 2020, it is therefore not applicable to projects with operational dates after 2020, including the proposed Project. An EIR should be prepared to include an adequate evaluation and mitigation of the proposed Project's GHG emissions to ensure that impacts are reduced to a less than significant level.

*(3) The Addendum's GHG Analysis Relies Upon an Incorrect and Unsubstantiated Air Model*

In addition to the Addendum's inability to rely on various plans and policies to demonstrate less than significant GHG impacts, the Addendum utilizes an incorrect CalEEMod model to analyze the Project's GHG impact. As discussed above, the Addendum's CalEEMod model relies upon incorrect input parameters to estimate the Project's criteria air pollutant and GHG emissions, resulting in an underestimation of Project emissions. Therefore, we find the Addendum's quantitative GHG analysis to be incorrect and unreliable. An updated CEQA analysis should be prepared, using correct, project-specific modeling to adequately assess and mitigate the Project's GHG impact.

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Paul E. Rosenfeld, Ph.D.



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**Education:**

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

**Professional Certifications:**

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

**Professional Experience:**

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

**Senior Regulatory and Litigation Support Analyst:**

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 100 environmental impact reports since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, Valley Fever, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a community adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

**Executive Director:**

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

**Hydrogeology:**

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports,

conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

### **Policy:**

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

### **Geology:**

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

### **Teaching:**

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt taught physical geology (lecture and lab and introductory geology at Golden West College in Huntington Beach, California from 2010 to 2014.

### **Invited Testimony, Reports, Papers and Presentations:**

**Hagemann, M.F.**, 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

**Hagemann, M.F.**, 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

**Hagemann, M.F.**, 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

**Hagemann, M.F.**, 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

**Hagemann, M.F.**, 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and Hagemann, M., 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

**Hagemann, M.F.**, 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

**Hagemann, M.F.**, 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

**Hagemann, M.F.**, and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

**Hagemann, M.F.**, 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

**Hagemann, M.F.**, 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

**Hagemann, M.F.**, and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

**Hagemann, M.F.**, Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

**Hagemann, M. F.**, Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

**Hagemann, M.F.**, 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

**Hagemann, M.F.** and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

**Hagemann, M.F.**, 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

**Hagemann, M.F., 1992.** Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

**Other Experience:**

Selected as subject matter expert for the California Professional Geologist licensing examination, 2009-2011.



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

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## ***Paul Rosenfeld, Ph.D.***

**Chemical Fate and Transport & Air Dispersion Modeling**

*Principal Environmental Chemist*

**Risk Assessment & Remediation Specialist**

### **Education:**

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on VOC filtration.  
M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.  
B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

### **Professional Experience:**

Dr. Rosenfeld is the Co-Founder and Principal Environmental Chemist at Soil Water Air Protection Enterprise (SWAPE). His focus is the fate and transport of environmental contaminants, risk assessment, and ecological restoration. Dr. Rosenfeld has a doctorate in soil chemistry and has evaluated odors from biosolids applications to soil and the effect of biosolids to agricultural crops. Dr. Rosenfeld has also evaluated odor emissions from the compost and food industry. His project experience ranges from monitoring and modeling of pollution sources as they relate to human and ecological health. Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing petroleum, chlorinated solvents, pesticides, radioactive waste, PCBs, PAHs, dioxins, furans, volatile organics, semi-volatile organics, perchlorate, heavy metals, asbestos, PFOA, unusual polymers, MtBE, fuel oxygenates and odor. Dr. Rosenfeld has also evaluated and modeled emissions from fracking, boilers, incinerators and other industrial and agricultural sources relating to nuisance and personal injury. Dr. Rosenfeld has evaluated greenhouse gas emissions using various modeling programs recommended by California Air Quality Management Districts.

### **Professional History:**

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner  
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)  
UCLA School of Public Health; 2003 to 2006; Adjunct Professor  
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator  
UCLA Institute of the Environment, 2001-2002; Research Associate  
Komex H<sub>2</sub>O Science, 2001 to 2003; Senior Remediation Scientist  
National Groundwater Association, 2002-2004; Lecturer  
San Diego State University, 1999-2001; Adjunct Professor  
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager  
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager  
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor  
King County, Seattle, 1996 – 1999; Scientist  
James River Corp., Washington, 1995-96; Scientist  
Big Creek Lumber, Davenport, California, 1995; Scientist

Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist  
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist  
Bureau of Land Management, Kremmling Colorado 1990; Scientist

## **Publications:**

Chen, J. A., Zapata, A R., Sutherland, A. J., Molmen, D. R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.**, Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermod and Empirical Data. *American Journal of Environmental Science*, 8(6), 622-632.

**Rosenfeld, P.E.** & Feng, L. (2011). *The Risks of Hazardous Waste*. Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2010). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences*. 113–125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.** (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health*. 73(6), 34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries*. Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*. Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. *WIT Transactions on Ecology and the Environment, Air Pollution*, 123 (17), 319-327.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, 70, 002252-002255.

Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, 70, 000527-000530.

Hensley, A.R. A. Scott, J. J. J. Clark, **Rosenfeld, P.E.** (2007). Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility. *Environmental Research*. 105, 194-197.

**Rosenfeld, P.E.**, J. J. J. Clark, A. R. Hensley, M. Suffet. (2007). The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities. *Water Science & Technology* 55(5), 345-357.

**Rosenfeld, P. E.**, M. Suffet. (2007). The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment. *Water Science & Technology* 55(5), 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.** (2007). *Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities*. Boston Massachusetts: Elsevier Publishing,

**Rosenfeld P.E.**, and Suffet, I.H. (Mel) (2007). Anatomy of an Odor Wheel. *Water Science and Technology*.

- Rosenfeld, P.E.,** Clark, J.J.J., Hensley A.R., Suffet, I.H. (Mel) (2007). The use of an odor wheel classification for evaluation of human health risk criteria for compost facilities. *Water Science And Technology*.
- Rosenfeld, P.E.,** and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash. *Water Science and Technology*. 49(9),171-178.
- Rosenfeld P. E.,** J.J. Clark, I.H. (Mel) Suffet (2004). The Value of An Odor-Quality-Wheel Classification Scheme For The Urban Environment. *Water Environment Federation's Technical Exhibition and Conference (WEFTEC) 2004*. New Orleans, October 2-6, 2004.
- Rosenfeld, P.E.,** and Suffet, I.H. (2004). Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids. *Water Science and Technology*. 49(9), 193-199.
- Rosenfeld, P.E.,** and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash, *Water Science and Technology*, 49( 9), 171-178.
- Rosenfeld, P. E.,** Grey, M. A., Sellew, P. (2004). Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. *Water Environment Research*. 76(4), 310-315.
- Rosenfeld, P.E.,** Grey, M and Suffet, M. (2002). Compost Demonstration Project, Sacramento California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6), Sacramento, CA Publication #442-02-008*.
- Rosenfeld, P.E.,** and C.L. Henry. (2001). Characterization of odor emissions from three different biosolids. *Water Soil and Air Pollution*. 127(1-4), 173-191.
- Rosenfeld, P.E.,** and Henry C. L., (2000). Wood ash control of odor emissions from biosolids application. *Journal of Environmental Quality*. 29, 1662-1668.
- Rosenfeld, P.E.,** C.L. Henry and D. Bennett. (2001). Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. *Water Environment Research*. 73(4), 363-367.
- Rosenfeld, P.E.,** and C.L. Henry. (2001). Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants. *Water Environment Research*, 73, 388-393.
- Rosenfeld, P.E.,** and Henry C. L., (2001). High carbon wood ash effect on biosolids microbial activity and odor. *Water Environment Research*. 131(1-4), 247-262.
- Chollack, T. and **P. Rosenfeld**. (1998). Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.
- Rosenfeld, P. E.** (1992). The Mount Liamuiga Crater Trail. *Heritage Magazine of St. Kitts*, 3(2).
- Rosenfeld, P. E.** (1993). High School Biogas Project to Prevent Deforestation On St. Kitts. *Biomass Users Network*, 7(1).
- Rosenfeld, P. E.** (1998). Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.
- Rosenfeld, P. E.** (1994). Potential Utilization of Small Diameter Trees on Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.
- Rosenfeld, P. E.** (1991). How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

## **Presentations:**

**Rosenfeld, P.E.**, Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society*. Lecture conducted from Santa Clara, CA.

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Atrazine: A Persistent Pesticide in Urban Drinking Water. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Bringing Environmental Justice to East St. Louis, Illinois. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

**Rosenfeld, P.E.** (April 19-23, 2009). Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

**Rosenfeld, P.E.** (April 19-23, 2009). Cost to Filter Atrazine Contamination from Drinking Water in the United States? Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*. Lecture conducted from Tuscon, AZ.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

**Rosenfeld, P. E.** (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld, P. E.** (October 15-18, 2007). The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld, P. E.** (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. *The 23<sup>rd</sup> Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

**Rosenfeld P. E.** (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

**Rosenfeld P. E.** (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama. *The AEHS Annual Meeting*. Lecture conducted from San Diego, CA.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (August 21 – 25, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006*. Lecture conducted from Radisson SAS Scandinavia Hotel in Oslo Norway.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition*. Lecture conducted from Boston Massachusetts.

**Paul Rosenfeld Ph.D.** (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference*. Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

**Paul Rosenfeld Ph.D.** (September 19, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, *Toxicology and Remediation PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel, Irvine California.

**Paul Rosenfeld Ph.D.** (September 19, 2005). Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP. *PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel in Irvine, California.

**Paul Rosenfeld Ph.D.** (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference*. Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

**Paul Rosenfeld Ph.D.** (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

**Paul Rosenfeld Ph.D.** (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

**Paul Rosenfeld Ph.D.** (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

**Paul Rosenfeld, Ph.D.** and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

**Paul Rosenfeld, Ph.D.** (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

**Paul Rosenfeld, Ph.D.** (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

**Rosenfeld, P. E.**, Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference* Orlando, FL.

**Paul Rosenfeld, Ph.D.** and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants..* Lecture conducted from Hyatt Regency Phoenix Arizona.

**Paul Rosenfeld, Ph.D.** (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

**Paul Rosenfeld, Ph.D.** (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

**Rosenfeld, P.E.** and Suffet, M. (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association.* Lecture conducted from Barcelona Spain.

**Rosenfeld, P.E.** and Suffet, M. (October 7- 10, 2002). Using High Carbon Wood Ash to Control Compost Odor. *Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association.* Lecture conducted from Barcelona Spain.

**Rosenfeld, P.E.** and Grey, M. A. (September 22-24, 2002). Biocycle Composting For Coastal Sage Restoration. *Northwest Biosolids Management Association.* Lecture conducted from Vancouver Washington..

**Rosenfeld, P.E.** and Grey, M. A. (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conference.* Lecture conducted from Indianapolis, Maryland.

**Rosenfeld, P.E.** (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation.* Lecture conducted from Anaheim California.

**Rosenfeld, P.E.** (October 16, 2000). Wood ash and biofilter control of compost odor. *Biofest.* Lecture conducted from Ocean Shores, California.

**Rosenfeld, P.E.** (2000). Bioremediation Using Organic Soil Amendments. *California Resource Recovery Association.* Lecture conducted from Sacramento California.

**Rosenfeld, P.E.,** C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings.* Lecture conducted from Bellevue Washington.

**Rosenfeld, P.E.,** and C.L. Henry. (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America.* Lecture conducted from Salt Lake City Utah.

**Rosenfeld, P.E.,** C.L. Henry, R. Harrison. (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell.* Lecture conducted from Seattle Washington.

**Rosenfeld, P.E.,** C.L. Henry. (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest.* Lecture conducted from Lake Chelan, Washington.

**Rosenfeld, P.E.,** C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings.* Lecture conducted from Bellevue Washington.

**Rosenfeld, P.E.,** C.L. Henry, R. B. Harrison, and R. Dills. (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America.* Lecture conducted from Anaheim California.

## **Teaching Experience:**

UCLA Department of Environmental Health (Summer 2003 through 2010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

## **Academic Grants Awarded:**

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993.

## **Deposition and/or Trial Testimony:**

In The Circuit Court of Ohio County, West Virginia  
Robert Andrews, et al. v. Antero, et al.  
Civil Action NO. 14-C-30000  
Rosenfeld Deposition, June 2015

- In The Iowa District Court For Muscatine County  
Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant  
Case No 4980  
Rosenfeld Deposition: May 2015
- In the Circuit Court of the 17<sup>th</sup> Judicial Circuit, in and For Broward County, Florida  
Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.  
Case Number CACE07030358 (26)  
Rosenfeld Deposition: December 2014
- In the United States District Court Western District of Oklahoma  
Tommy McCarty, et al., Plaintiffs, v. Oklahoma City Landfill, LLC d/b/a Southeast Oklahoma City  
Landfill, et al. Defendants.  
Case No. 5:12-cv-01152-C  
Rosenfeld Deposition: July 2014
- In the County Court of Dallas County Texas  
Lisa Parr et al, *Plaintiff*, vs. Aruba et al, *Defendant*.  
Case Number cc-11-01650-E  
Rosenfeld Deposition: March and September 2013  
Rosenfeld Trial: April 2014
- In the Court of Common Pleas of Tuscarawas County Ohio  
John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*  
Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)  
Rosenfeld Deposition: October 2012
- In the Court of Common Pleas for the Second Judicial Circuit, State of South Carolina, County of Aiken  
David Anderson, et al., *Plaintiffs*, vs. Norfolk Southern Corporation, et al., *Defendants*.  
Case Number: 2007-CP-02-1584
- In the Circuit Court of Jefferson County Alabama  
Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*  
Civil Action No. CV 2008-2076  
Rosenfeld Deposition: September 2010
- In the Ninth Judicial District Court, Parish of Rapides, State of Louisiana  
Roger Price, et al., *Plaintiffs*, vs. Roy O. Martin, L.P., et al., *Defendants*.  
Civil Suit Number 224,041 Division G  
Rosenfeld Deposition: September 2008
- In the United States District Court, Western District Lafayette Division  
Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.  
Case Number 2:07CV1052  
Rosenfeld Deposition: July 2009
- In the United States District Court for the Southern District of Ohio  
Carolyn Baker, et al., *Plaintiffs*, vs. Chevron Oil Company, et al., *Defendants*.  
Case Number 1:05 CV 227  
Rosenfeld Deposition: July 2008
- In the Fourth Judicial District Court, Parish of Calcasieu, State of Louisiana  
Craig Steven Arabie, et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.  
Case Number 07-2738 G
- In the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana

Leon B. Brydels, *Plaintiffs*, vs. Conoco, Inc., et al., *Defendants*.  
Case Number 2004-6941 Division A

In the District Court of Tarrant County, Texas, 153<sup>rd</sup> Judicial District  
Linda Faust, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, Witco Chemical Corporation  
A/K/A Witco Corporation, Solvents and Chemicals, Inc. and Koppers Industries, Inc., *Defendants*.  
Case Number 153-212928-05  
Rosenfeld Deposition: December 2006, October 2007  
Rosenfeld Trial: January 2008

In the Superior Court of the State of California in and for the County of San Bernardino  
Leroy Allen, et al., *Plaintiffs*, vs. Nutro Products, Inc., a California Corporation and DOES 1 to 100,  
inclusive, *Defendants*.  
John Loney, Plaintiff, vs. James H. Didion, Sr.; Nutro Products, Inc.; DOES 1 through 20, inclusive,  
*Defendants*.  
Case Number VCVVS044671  
Rosenfeld Deposition: December 2009  
Rosenfeld Trial: March 2010

In the United States District Court for the Middle District of Alabama, Northern Division  
James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.  
Civil Action Number 2:09-cv-232-WHA-TFM  
Rosenfeld Deposition: July 2010, June 2011

In the Superior Court of the State of California in and for the County of Los Angeles  
Leslie Hensley and Rick Hensley, *Plaintiffs*, vs. Peter T. Hoss, as trustee on behalf of the Cone Fee Trust;  
Plains Exploration & Production Company, a Delaware corporation; Rayne Water Conditioning, Inc., a  
California Corporation; and DOES 1 through 100, *Defendants*.  
Case Number SC094173  
Rosenfeld Deposition: September 2008, October 2008

In the Superior Court of the State of California in and for the County of Santa Barbara, Santa Maria Branch  
Clifford and Shirley Adelhelm, et al., all individually, *Plaintiffs*, vs. Unocal Corporation, a Delaware  
Corporation; Union Oil Company of California, a California corporation; Chevron Corporation, a  
California corporation; ConocoPhillips, a Texas corporation; Kerr-McGee Corporation, an Oklahoma  
corporation; and DOES 1 through 100, *Defendants*.  
Case Number 1229251 (Consolidated with case number 1231299)  
Rosenfeld Deposition: January 2008

In the United States District Court for Eastern District of Arkansas, Eastern District of Arkansas  
Harry Stephens Farms, Inc. and Harry Stephens, individual and as managing partner of Stephens  
Partnership, *Plaintiffs*, vs. Helena Chemical Company, and Exxon Mobil Corp., successor to Mobil  
Chemical Co., *Defendants*.  
Case Number 2:06-CV-00166 JMM (Consolidated with case number 4:07CV00278 JMM)  
Rosenfeld Deposition: July 2010

In the United States District Court for the Western District of Arkansas, Texarkana Division  
Rhonda Brasel, et al., *Plaintiffs*, vs. Weyerhaeuser Company and DOES 1 through 100, *Defendants*.  
Civil Action Number 07-4037  
Rosenfeld Deposition: March 2010  
Rosenfeld Trial: October 2010

In the District Court of Texas 21<sup>st</sup> Judicial District of Burleson County  
Dennis Davis, *Plaintiff*, vs. Burlington Northern Santa Fe Rail Way Company, *Defendant*.  
Case Number 25,151

Rosenfeld Trial: May 2009

In the United States District Court of Southern District of Texas Galveston Division

Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant*.

Case 3:10-cv-00622

Rosenfeld Deposition: February 2012

Rosenfeld Trial: April 2013

In the Circuit Court of Baltimore County Maryland

Philip E. Cvach, II et al., *Plaintiffs* vs. Two Farms, Inc. d/b/a Royal Farms, Defendants

Case Number: 03-C-12-012487 OT

Rosenfeld Deposition: September 2013

# EXHIBIT B



SMITH ENGINEERING & MANAGEMENT

January 3, 2020

Ms. Christina Caro  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080-7037

**Subject: 88 Grand Project CEQA Analysis Report**

P19054

Dear Ms. Caro:

Per your request, I reviewed the CEQA Analysis Report, ("Addendum") for the 88 Grand Avenue Project (the "Project") in Oakland (the "City"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and over 50 years professional consulting practice in these fields. I have both prepared and reviewed the Transportation and Traffic sections of environmental documents pursuant to the California Environmental Quality Act ("CEQA") including ones for projects involving residential and mixed-use developments. My professional resume is attached hereto.

Technical comments on the CAR follow:

**Overview**

The City's Addendum claims that the Project would not result in more significant (severe) environmental effects than those identified in the Broadway-Valdez District Specific Plan (the "BVDSP") EIR, and that there have been no changes in circumstances or changes in the development assumptions underlying the prior EIR's analysis since the BVDSP EIR was prepared. The Addendum also asserts that, where Project-specific significant environmental impacts would occur, they would be substantially mitigated by mitigation measures from the BVDSP EIR and/or by uniformly applicable development policies and standards. As a consequence of the above assertions, the City contends that the Project qualifies for an Addendum to the BVDSP EIR and an Eligible Infill Exemption under CEQA Guidelines Sections 15162, 15164, and 15183.3, and that no additional environmental review is required.

However, this comment letter presents evidence that changes in circumstances since the BVDSP EIR was certified may result in significantly more severe traffic impacts of than anticipated in the BVDSP EIR, and that there are more severe transit impacts that have not been addressed or mitigated in the Addendum.

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### **The Addendum Relies on an Outdated Traffic Condition Baseline That Does Not Reflect Current Traffic Conditions**

The Addendum relies on baseline traffic data from the BVDSP EIR for its analysis of existing conditions, Year 2020 conditions, and Year 2025 conditions.<sup>1</sup> However, the baseline traffic data from the BVSP EIR was mostly collected in 2008-2010. During this time, traffic and transit volumes were depressed due to the economic recession, which caused a wide-spread and well-documented decrease in economic activity, resulting in a decrease in traffic and transit use, as less people were employed and thus less people were commuting.<sup>2</sup> Construction activity (residential, commercial, industrial, infrastructure) decreased significantly as well, causing a significant decrease in construction equipment on the road and even repairing the roads.<sup>3</sup>

Thus, the traffic counts for the BVDSP EIR were already out of date as that document was being prepared in 2012, leading to its release in September 2013, and ultimate certification in 2014. The BVDSP EIR only collected new weekday peak counts in 2012 at 3 of the 57 intersections analyzed in the BVDSP EIR, reflecting current 2012 data for just 5.3% of the BVDSP's potentially impacted intersections.<sup>4</sup>

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<sup>1</sup> Addendum, p. 88.

<sup>2</sup> See e.g. BVDSP EIR, p. 4.13-109 ("Both AC Transit and BART have generally reduced service in the last few years due to reduction in operating budget caused by the 2007/2008 Recession"); p. 4.13-110 ("The increase in overall unemployment, caused by the 2007/2008 Recession, resulted in fewer transit riders as less people commuted to work."); see Cal. LAO Report, *The Great Recession and California's Recovery* (December 2018) ("LAO Report"), pp. 10-17 (2009 California unemployment increased from 10%-11.8%, reached 12.2% in 2010, begins to fall in January 2011 from 12.2% to 12.1%, returns to 10% unemployment in December 2012), available at <https://lao.ca.gov/reports/2018/3910/recession-recovery-121318.pdf> (last visited 12/29/2019); see Orange County Register, *The recession that cut California deeply isn't fully forgotten* (September 17, 2018) ("OCR Report"), available at <https://www.ocregister.com/2018/09/17/the-recession-that-cut-california-deeply-isnt-fully-forgotten/> (last visited 12/29/19) ("In 2009, miles driven by Californians fell 3.4 percent — twice the drop of 35 years earlier [during Arab oil embargo]. Credit... goes to the recession, which slashed the number of commuters going to work. That same unemployment trimmed consumer spending and limited the need for truckers to deliver goods. It wasn't just 2009: In the next four years, California driving levels barely budged. Then the broad economy's rebound finally got folks moving again. Driving rose to a record 200 million miles in 2017 after a four-year surge of 12 percent in traffic. That's the fastest increase since the boom days of the late 1980s.").

<sup>3</sup> See OCR Report ("By the time 2008 started, the local permitting pace had been sliced by one-third. In the next two years, as global markets crashed and the regional economy fully imploded, construction plans fell another stunning 72 percent."); see Center on Wage and Employment Dynamics (May 2016), *California's Labor Market: Eight Years Post-Great-Recession*, available at <https://irle.berkeley.edu/files/2016/Californias-Labor-Market-Eight-Years-Post-Great-Recession.pdf> (last visited 12/29/2019), p. 2 ("The bursting of the housing bubble was central to the recession and greatly affected the construction industry. At its worst point in California, construction jobs were down 37%.").

<sup>4</sup> Traffic counts were conducted in 2012 at all 57 intersections studied but these were Saturday counts and not relevant to the weekday peak hour analysis.

Based on findings that two of the three weekday AM peak counts and two of the three weekday PM peak counts at these 3 intersections were lower in 2012 than in 2008, the City and its consultants concluded that counts from as far back as 2008 were satisfactory to use. However, all that this fragmentary evidence demonstrates is that economic recovery in the BVDSP project vicinity had not yet taken place by 2012 and that all of the traffic baseline traffic data in the BVDSP EIR is therefore not indicative of the substantial economic recovery that has occurred locally and regionally since 2012, and the related increases in traffic volumes.<sup>5</sup>

The BVDSP EIR also relied on CalTrans annual average daily traffic volume ("AADT") for surrounding roadway networks from 2012 for its baseline analysis of existing traffic conditions for 2013, Year 2020, and Year 3035.<sup>6</sup> However, CalTrans has documented substantial increases in AADT in the years following the BVDSP EIR, including a 6.67% increase in AADT from 2014 to 2015, an additional 2.62% increase in AADT in 2016, and further increases in 2017.<sup>7</sup> The Addendum relies on the same existing conditions described in the BVDSP EIR, including the BVDSP's predicted conditions for Year 2020 and Year 2035.<sup>8</sup> Therefore, these increased AADT's are not addressed in the Addendum, because they were not known and were not analyzed in the BVDSP.

By relying on outdated and underestimated baseline conditions, the Addendum ignores the substantial changes in traffic and transit conditions that have occurred in the Project vicinity since the BVDSP EIR was certified. It is incumbent upon the City to demonstrate through thorough analysis, rather than broad declaratory statements which simply rely on the outdated BVDSP EIR, that the Project's traffic impacts will be mitigated to less than significant levels based on current 2019 traffic conditions. The City should prepare a project-level EIR which includes an accurate analysis of existing traffic conditions in the vicinity of the Project site, and which analyzes the increase in traffic that will be caused by the Project's added vehicle miles travelled based on accurately stated existing conditions.

### **The Addendum Fails to Analyze the Project's Potentially Significant Impacts on Public Transit**

The Addendum admittedly does not analyze impacts on transit. Instead, it asserts that "the BVDSP EIR determined that no significant impacts to transit, pedestrian, bicycle, and other related topics would occur under any of the scenarios; therefore, these topics are not further discussed herein."<sup>9</sup> However, the BVDSP EIR's analysis of transit

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<sup>5</sup> See LAO Report, pp. 17-22 (California unemployment rates dropped from 12.2% in December 2010, to less than 5% in February 2017 "for the first time in 10 years.").

<sup>6</sup> See BVDSP EIR, pp. 4.13-1, 4.13-4.

<sup>7</sup> See CalTrans, *2016 Traffic Volumes on California State Highways*, at p. ii, available at <https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/census/aadt/tc-2016-aadt-volumes-a11y.pdf> (last visited 12/29/19); CalTrans 2017 AADT traffic volumes, available at <https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017> and <https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017/route-505-980> for Routes 505-980 (last visited 12/29/19).

<sup>8</sup> Addendum, p. 88.

<sup>9</sup> See Addendum, p. 88.

assumed added ridership could not cause a significant adverse impact on transit. New information indicates that BART has a capacity problem that is impacted by added riders. Also, the BVDSP EIR's analysis of transit impacts did not address the impacts of this Project because the current Project is substantially larger than the project analyzed in the BVDSP EIR, and because circumstances related to impacted public transit have changed substantially since the BVDSP EIR was prepared, rendering the Project's impacts more severe than previously analyzed.

The proposed Project is 64% taller than the zoned height limit analyzed in the BVDSP EIR and includes 275 residential units in a 35-story tower.<sup>10</sup> The Project proposes only 45 vehicle parking spaces, and assumes that Project residents and retail users will rely on public transit.<sup>11</sup> The BVDSP's transit analysis addressed potential impacts from a smaller project that was consistent with the zone height limit. The BVDSP EIR therefore did not analyze the substantially larger Project that is described in the Addendum.

The City's *Transportation Impact Review Guidelines* clearly require that the City perform a transit analysis for the Project, as follows:

Transit trips shall be assigned to transit routes based on the project's travel demand and mode split analyses. The frequency and load factors for affected transit routes should be documented per guidance in Section 5.5. Transit trips shall also be assigned as pedestrian trips for roadway segments between the project site and the affected transit stops and stations.<sup>12</sup>

The BVDSP EIR transit impact analysis did not analyze transit impacts according to the City's current *Transportation Impact Review Guidelines*. For example, the BVDSP EIR did assign project trips to the various BART lines. However, it did so by prediction of differences in passenger loadings or load factors per car rather than projecting total added passengers per line and its effect on available space per passenger, the current significance criterion for impacts on transit riders. The BVDSP EIR's transit analysis therefore does not inform anyone about whether the Project will have significant transit impacts under the City's significance criteria. The Addendum also fails to evaluate the consistency of the Project with the BVDSP EIR or identify any BVDSP EIR mitigation measures that the Project would trigger. The City therefore lacks any evidence to support its reliance on the BVDSP EIR to avoid analyzing transit impacts.

The Addendum also fails to disclose the potentially significant impacts the Project will have on BART given the substantial increase in BART ridership and deteriorated BART conditions that have arisen since the BVDSP EIR was certified. The subject Project is located within 0.5 miles of the 19<sup>th</sup> Street BART Station. The Project would be reasonably expected to generate a substantial number of trips using BART. BART's peak period capacity problems in the Oakland Wye, Transbay Tube and Embarcadero and Montgomery stations have been well documented subsequent to certification of the BVDSP EIR. BART's existing Transbay Corridor ridership exceeds capacity in the peak

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<sup>10</sup> See Addendum, p. 1.

<sup>11</sup> See Addendum, pp. 1, 5 (Project is located three blocks from 19<sup>th</sup> Street BART station), 24 (BVDSP development program objectives include transit-oriented development).

<sup>12</sup> *Transportation Impact Review Guidelines*, City of Oakland, April 2019, p. 10, <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak063581.pdf>.

between the Embarcadero station in San Francisco and the Downtown Berkeley, Rockridge, and Bay Fair stations in the East Bay. Within this corridor, riders in the peak hour currently have an average of 5.2 square feet of space each, which is an uncomfortable level for passengers. The *Transit Capacity and Quality of Service Manual* published through the Transit Cooperative Research Program (TCRP) establishes 5.4 square feet of space per passenger as a minimum comfortable loading level on U.S. rail transit systems. The Federal Transit Administration (FTA) has adopted this as the threshold level of crowding for funding Core Capacity projects with Capital Investment Grant funds. The 19<sup>th</sup> Street BART Station obviously is sited within the overcrowded corridor that already falls below the minimum required space per passenger. The most crowded part of the BART corridor is the five-mile-long Transbay Tube between the Embarcadero and West Oakland stations, where the average rider has just 4.7 square feet of space, far less than the FTA threshold. The Project will obviously contribute some as-yet undisclosed number of new riders to this most overcrowded segment of the corridor.

Current BART riders endure uncomfortably crowded conditions, while some commuters choose other modes to avoid the crush-load conditions on some BART trains. BART's ability to increase ridership – and the region's ability to steer growth to places served by transit – depend upon additional BART capacity in the Transbay Corridor.<sup>13</sup> However, the Addendum fails to disclose the number of BART riders that the Project will generate, fails to disclose the impact these riders will have on the public transit system, and fails to require any mitigation to address potentially significant impacts.

The City should conduct a transit analysis project-level EIR which discloses the severity of the Project's transit impacts, and requires binding mitigation to mitigate the impacts to those system components to the greatest extent feasible. The Addendum has utterly failed to do so and the BVDSP EIR ridership predictions are not readily translatable to the current significance criterion of minimum space per passenger. Hence, the Addendum's omission of a transportation analysis is entirely unsupported. Moreover, since there is reasonable expectation of significant impact, the conditions for a CEQA exemption are not met.

#### **Lead Agency's Duty To Provide Relevant Information**

The fact that the City has failed to analyze the Project's transportation impacts on BART and the fact that its traffic analysis failed to analyze the effect of economic recovery on traffic does not shift the burden of proving that the Project would have significant impacts on BART or that economic recovery would have significant impacts on background traffic to the public. Agencies cannot hide behind their own failure to gather relevant data. "CEQA places the burden of environmental investigation on government rather than the public."<sup>14</sup>

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<sup>13</sup> *The Transbay Corridor Core Capacity Program*, Bay Area Rapid Transit District, January 2018, ("The trains are crowded, and ridership has grown significantly over the last ten years. As the system expands and as the core continues to attract development, further increases in ridership are expected"), <https://www.bart.gov/about/projects/corecapacity>.

<sup>14</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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There is extensive public documentation that provides clear evidence of BART's current capacity deficiencies that the City and its consultants are aware of or should be aware of. Therefore, full environmental review of the Project must be undertaken before permits can be issued.

### Conclusion

This completes my current comments on the Addendum concerning the 88 Grand Avenue Project. It is evident that economic recovery would cause traffic conditions fundamentally more demanding than those observed at the depths of recession. The economic recovery is a change in circumstances since the BVDSP EIR was prepared (which itself was already relying on outdated data). The significant impact from this change in circumstances must be analyzed in further environmental review.

It is also evident that the Project would generate sufficient transit ridership as to have impacts on capacity-challenged portions of the BART system. This is a potentially significant impact which has not been addressed or mitigated in the BVDSP EIR. Hence the conditions for Addendum to the EIR and CEQA exemption are not met.

Sincerely,

Smith Engineering & Management  
A California Corporation



Daniel T. Smith Jr., P.E.  
President

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Adams Broadwell Joseph & Cardozo  
January 3, 2020  
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## **DANIEL T. SMITH, Jr.**

### **President**

#### **EDUCATION**

Bachelor of Science, Engineering and Applied Science, Yale University, 1967  
Master of Science, Transportation Planning, University of California, Berkeley, 1968

#### **PROFESSIONAL REGISTRATION**

California No. 21913 (Civil)                      Nevada No. 7969 (Civil, Ret.)    Washington No. 29337 (Civil, Ret.)  
California No. 938 (Traffic)                      Arizona No. 22131 (Civil, Ret.)

#### **PROFESSIONAL EXPERIENCE**

Smith Engineering & Management, 1993 to present. President.  
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.  
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.  
Personal specialties and project experience include:

**Litigation Consulting.** Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

**Urban Corridor Studies/Alternatives Analysis.** Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.). Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

**Area Transportation Plans.** Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nation's largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

**Transportation Centers.** Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus

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development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

**Campus Transportation.** Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

**Special Event Facilities.** Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

**Parking.** Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

**Transportation System Management & Traffic Restraint.** Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

**Bicycle Facilities.** Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

#### MEMBERSHIPS

Institute of Transportation Engineers      Transportation Research Board

#### PUBLICATIONS AND AWARDS

*Residential Street Design and Traffic Control*, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

*Residential Traffic Management, State of the Art Report*, U.S. Department of Transportation, 1979.

*Improving Residential Street Environment*, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

*Strategic Concepts in Residential Neighborhood Traffic Control*, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

*Planning and Design of Bicycle Facilities: Pitfalls and New Directions*, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

# EXHIBIT C



29 December 2019

Christina Caro, Esq.  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd, Suite 1000  
South San Francisco, California 94080

Subject: *88 Grand Avenue Project – CEQA Analysis / Addendum (December 2019)*  
Review and Comment on Construction Noise Analysis

Dear Ms. Caro,

Per your request, I have reviewed the subject matter document and associated documents with respect to construction noise.

To make my comments more concrete, I will focus on the effects of noise on occupants of The Grand, an apartment building located across Webster Street at 100 Grand Avenue and the nearest sensitive receptor. This 20-story building has both balconies and rooms with operable windows that look down upon the 88 Grand project site. The residents of this building will be subjected to the prolonged construction – 29 months – that will be required to build the proposed, 35-story, 411 ft tall project building. The prolonged construction period is peculiar to this project because the normal zoned height limit for the project site is only 250 ft. The 64% increase in height entails a commensurate increase in exposure to construction noise by existing residences.

The CEQA Analysis prepared by the City for the 88 Grand Project underestimates the construction noise impacts from the Project because it relies on the noise analysis done for the *Broadway Valdez District Specific Plan (BVDSPP)*. The noise analysis in the BVDSPP did not adequately analyze the Project that is currently proposed for approval because the Project is substantially different from the project analyzed in the BVDSPP. The proposed Project is 64% taller than the zoned height limit analyzed in the BVDSPP EIR and will, therefore, involve a longer and more extensive construction period than the construction noise addressed in the BVDSPP EIR. The BVDSPP EIR did not foresee or analyze the extended construction period associated with the proposed Project because the size of the current Project was not known, or even proposed, at the time the Specific Plan impacts were analyzed. Additionally, the development circumstances analyzed in the BVDSPP are considerably different than the current rapid pace of concurrent development in the BVDSPP plan area. The BVDSPP EIR failed to consider the current circumstances surrounding the Project, namely that numerous projects would be constructed both concurrently and serially, such that construction noise would impact existing residents for years on end.

## Documents Reviewed

The *88 Grand Avenue Project – CEQA Analysis (“Addendum”)* is a derivative project-level document that references the 2014 *BVDSP* program-level EIR and the Specific Plan itself. Following is a list of the documents that I have reviewed in preparing my comments herein:

1. *88 Grand Avenue Project – CEQA Analysis*, December 2019 (“*Addendum*”);
2. *Broadway Valdez District Specific Plan - Environmental Impact Report*, (“*BVDSP EIR*”); comprised of:
  - a. *Broadway Valdez District Specific Plan - Draft Environmental Impact Report*, SCH No. 2012052008, September 2013.
  - b. *Broadway Valdez District Specific Plan - Final Environmental Impact Report*, May 2014;
3. *Broadway Valdez District Specific Plan*, June 2014. (“*BVDSP*”); and
4. *Broadway Valdez District Specific Plan – Project Status*, July 30, 2018 (“*BVDSP Status*”).

The *BVDSP* contains Standard Conditions of Approval (“SCAs”), some of which have been incorporated into the *Addendum* as mitigation measures. Specifically, the *BVDSP* includes SCAs 28, 29, 30, and 39 as SCA-NOI-1 (Construction Days/Hours); SCA-NOI-2 (Construction Noise); SCA-NOI-4 (Construction Noise Complaints); and SCA-NOI-3 (Extreme Construction Noise), respectively.<sup>1</sup>

## Review of *BVDSP EIR* Construction Noise Analyses as Applied to The Grand Indicates that Noise Levels are Potentially Significant and Unmitigated.

The *BVDSP EIR* cites the City of Oakland Construction Noise Standards at Receiving Property Line (Oakland Planning Code §17.120.050.G; *BVDSP EIR* at p 4.10-12), reproduced below at Table I. Construction of the 88 Grand Avenue project is expected to take 630 weekdays, so the daytime, residential standards applicable at the balconies of The Grand are:

Weekdays (7 a.m. to 7 p.m.) 65 dBA

Weekends (9 a.m. to 8 p.m.) 55 dBA

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<sup>1</sup> The Addendum in Attachment A provides a list of mitigation measures, such as “SCA-NOI-1: Construction Days/House (#62)”. The number in parenthesis does not correspond with the SCA number listed in the text of the noise section *BVDSP*, where that measure is listed as SCA #28. In this letter, I am using the SCA-NOI-# numbering convention used in the Addendum.



<b>TABLE 1</b>		
<b>City of Oakland Construction Noise Standards at Receiving Property Line, dBA<sup>1</sup></b>		
Receiving Land Use	Maximum Allowable Noise Level (dBA)	
	Weekdays 7 a.m.-7 p.m.	Weekends 9 a.m.-8 p.m.
<b>Less than 10 days</b>		
<b>Residential</b>	80	65
<b>Commercial, Industrial</b>	85	70
<b>More than 10 Days</b>		
<b>Residential</b>	65	55
<b>Commercial, Industrial</b>	70	60
Notes: 1) If the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise		
2) Oakland Municipal Code § 17.120.050.G		

The *BVDSP EIR* contains reference noise levels for construction equipment and typical average ( $L_{eq}$ ) levels for the various construction phases. Table 2A presents the typical average noise levels at the reference distance, 50 ft, and at the closest and farthest distance from the project site to the façade of The Grand, 66 ft and 185 ft, respectively. Also shown are the amounts that the noise levels will exceed the §17.120.050.G daytime construction noise standard when work is done at the nearest and farthest point of the site.

<b>TABLE 2A</b>					
<b>Typical Average (<math>L_{eq}</math>) Construction Noise Levels<sup>‡</sup>, dBA</b>					
<b>(Using 50 ft reference levels from BVDSP EIR)</b>					
Phase	Ref.	Distance to The Grand <sup>†</sup>		Max Over 65 dBA (Closest)	Min Over 65 dBA (Farthest)
	50 ft	66 ft	185 ft		
<b>Ground Clearing</b>	84	82	73	17	8
<b>Excavation</b>	89	87	78	22	13
<b>Foundations</b>	78	76	67	11	2
<b>Structural Erection</b>	85	83	74	18	9
<b>Exterior Finishing</b>	89	87	78	22	13

<sup>‡</sup> The maximum noise levels will necessarily be higher, likely by 3 to 6 dB.

<sup>†</sup> Noise levels at The Grand are calculated using 6 dB/doubling of distance consistent with the BVDSP EIR.

The noise levels used in the *BVDSP EIR* use data provided by the Environmental Protection Agency (EPA) in 1971.<sup>2</sup> As stated in the *BVDSP EIR*, "The dominant construction equipment noise source is usually a diesel engine". [*BVDSP EIR* at p 4.10-20]. Construction equipment in the early 1970s was often poorly muffled, so the requirement in SCA-NOI-2 (Noise Control) that all equipment and trucks use mufflers is expected to reduce the noise levels indicated in Table 2A. The 1971 EPA report at page 12 states, "The greatest and most direct potential for noise abatement here lies in quieting the engine by use of improved mufflers." The authors of the report estimated that improved mufflers could provide up to 10 dB of additional noise abatement, an estimate that is substantiated by a comparison of the 1971 EPA noise data with 2006 noise data disseminated by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA)

Applying 10 dB of noise reduction attributable to the improvement of mufflers from 1971 to 2006 to the reference values in Table 2A results in the noise estimates shown in Table 2B. (Note that the noise levels in Table 2B are average levels. At times, the maximum noise levels will be some 3 to 6 dB higher.)

As seen in Table 2B, even with the use of modern mufflers, the noise levels at The Grand are expected to exceed Oakland's weekday, daytime noise limit of 65 dBA by 1 to 12 dB during the various phases of construction. As such, construction noise should be identified as a significant noise impact.

<b>TABLE 2B</b>					
<b>Typical Average (Leq) Construction Noise Levels<sup>‡</sup>, dBA</b>					
<b>(Assumes 10 dB attenuation from modern mufflers)</b>					
<b>Phase</b>	Ref.	Distance to The Grand <sup>†</sup>		Max Over 65 dBA (Closest)	Min Over 65 dBA (Farthest)
	50 ft	66 ft	185 ft		
Ground Clearing	74	72	63	7	--
Excavation	79	77	68	12	3
Foundations	68	66	57	1	--
Structural Erection	75	73	64	8	--
Exterior Finishing	79	77	68	12	3

<sup>‡</sup> The maximum noise levels will necessarily be higher, likely by 3 to 6 dB.

<sup>†</sup> Noise levels at The Grand are calculated using 6 dB/doubling of distance consistent with the *BVDSP EIR*.

To recap, the *BVDSP EIR* construction noise analysis using reference data from 1971 as applied to the construction of 88 Grand at 100 Grand (The Grand apartments), indicates that up to 22 dB of noise reduction will be required to meet Oakland's noise standard (Table 2A). A similar analysis assuming that equipment today is fit with modern mufflers indicates that Project construction will still exceed

<sup>2</sup> U.S. Environmental Protection Agency, *Noise from Construction Equipment and Building Operations, Building Equipment and Home Appliances*, December 1971.

Oakland's 65 dBA limit for daytime, long-term construction noise by up to 12 dB. An additional 12 dB of noise reduction will likely not be achieved by additional improvement of the mufflers required by SCA-NOI-2, which would only achieve muffling of up to 10 dB. It is therefore unlikely that the current mitigation imposed by the *Addendum* will reduce Project noise impacts to less than significant levels

If the City asserts that contractors will utilize whatever means are necessary to meet the City of Oakland daytime Construction Noise Standard so that the construction noise will cause a less than significant impact, then this assertion should be enforced by additional binding mitigation. For example, the developer should be required to deploy a construction noise monitoring system on a lower-level balcony at The Grand that is capable of sending alerts to the Resident Engineer when the 65 dBA standard is exceeded, and be required to halt work until such time as the equipment is substituted and/or modified to enable the 65 dBA standard to be met.

The mitigation measures required by SCA-NOI-1 through SCA-NOI-4 include best-practices and should certainly be enforced. However, the measures contained in these SCAs are unlikely to provide the noise reduction necessary to meet the City of Oakland Construction Noise Standards at the Receiving Property Line at The Grand, as the *Addendum* asserts they would.

### **The BVDSP Mitigation Measures are Inadequate to Reduce the Project's Impacts**

The *Addendum* relies on SCA-NOI-2 (*BVDSP EIR SCA #29*) (Construction Noise) to mitigate the noise from the Project's construction activities. The City cannot rely on this measure to reduce noise impacts to nearby sensitive receptors because the *Addendum* does not provide sufficient information to determine if it will be enforceable or effective.

SCA-NOI-2 includes this provision: "The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented." The *Addendum* does not provide the construction schedule for the Project, and SCA-NOI-2 does not describe or place any limitations on the nature or length of proposed "extensions" that the City may authorize. The *Addendum* is additionally vague in that it does not define what criteria the City may use to determine whether an extension is "necessary." This is particularly relevant to this Project which will be 64% larger than projects contemplated in the *BVDSP EIR's* noise analysis. Moreover, there is nothing in the *Addendum* which describes the duration of, or analyzes the impacts of, the Project's "noisiest phases of construction."

In order to evaluate this impact, the City should provide the Project's proposed construction schedule which identifies the 10-day periods of the noisiest activities, describes the length of any breaks between the "noisy phases," and describes potential conditions under which an "extension" of noisy phases may be authorized. This information should then be analyzed to determine if the Project's noisiest phases would have potentially significant impacts, and whether SCA-NOI-2 would be sufficient to reduce noise impacts to sensitive receptors. If it is not sufficient, additional mitigation must be required.

Without disclosing and analyzing the Project's construction schedule, the City lacks substantial evidence to support the conclusion that the noisiest phases of construction will be limited to 10 days, and that that impacts of any extended noisy phases would be mitigated to less than significant levels.

### A Note About Very Long-Term (Semi-Permanent) Construction Noise

The City of Oakland Construction Noise Standards, presented above in Table 1, differentiates between short-term construction noise and long-term construction noise. This is reasonable because most people are willing to accept elevated noise levels from construction for short periods of time, particularly if they see value in the project being constructed. Tellingly, the delineation Oakland uses between short-term and long-term is 10 days.<sup>3</sup> Reasonably, the City considers 10 days or less to be short-term. The *Addendum* explains that the Project that will take 29 months to construct (630 weekdays over 126 weeks). This is 63 times longer than the period which the City considers to be “short-term.” Based on the City’s own definition of short-term impacts, and in my professional opinion, any project that takes substantially longer than 10 days to construct, as this one would, should be considered semi-permanent, rather than long-term temporary.

This is corroborated by the following comment submitted by an Oakland resident on another project near 88 Grand Avenue which, like the proposed Project, is expected to take up to 3 years to build:

At the community meeting, we learned that construction is scheduled to last 28-36 months. Three years is significantly longer than other projects. The noise from this construction will render our apartments unlivable during that period. We’re speaking from experience. We’ve been impacted by the construction at 17<sup>th</sup> St for over a year; construction across 19<sup>th</sup> St is just starting up.<sup>4</sup>

As the comment above by Mr. Hornof succinctly illustrates, living with a construction project for over a year, let alone 2½ years, has a serious effect on a person’s daily life.

As the *Broadway Valdez District Specific Plan - Project Status* document indicates, as of July 30, 2018 residents of The Grand are either experiencing or have recently finished experiencing construction noise from a multi-use development at 2315 Valdez and will soon experience construction noise from permitted projects at 2270 Broadway and 2305 Webster. These Oakland residents can therefore expect to be exposed to construction noise for many years to come, as the Broadway Valdez District is transformed to fulfill the vision expressed by the Specific Plan.

Given the numerous developments planned for the Valdez Triangle over the next several years, the semi-permanent nature of construction in the area (and for the people living the The Grand, the semi-permanent nature of the construction of 88 Grand Avenue) is a potentially significant construction noise impact that should be analyzed separately and distinctly from the City of Oakland Construction Noise Standards. For residents of The Grand, construction will be a way of life for a very long time, and should be assessed as such.

### Conclusion

In summary, I do not believe that *Addendum’s* reliance on the program-level *BVDSP EIR* is appropriate because the *BVDSP EIR* did not adequately analyze or mitigate potentially significant and adverse construction noise impacts from the current 88 Grand Project on residents of The Grand apartments. The program-level EIR prepared for the *BVDSP* did not study the construction noise impacts in

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<sup>3</sup> The 10 days are taken to be 10 weekdays.

<sup>4</sup> Email from Joseph Hornof, a resident of 1770 Broadway, to Darin Ranelletti ([DRanelletti@oaklandca.gov](mailto:DRanelletti@oaklandca.gov)), March 6, 2019, concerning the redevelopment of 1750 Broadway.

sufficient depth to consider the project-specific impacts of construction noise on the residents of 100 Grand Avenue because there were no known distances between potential projects and potential noise-sensitive receptors at the time the *BVDSP EIR* was prepared. Additionally, the *BVDSP CEQA* analysis did not anticipate the prolonged, semi-permanent construction period that would be associated with the current 88 Grand Avenue Project due to the fact that it would be markedly higher (64%) than the normal height limit in the BV-D-2 district. Finally, the *Addendum* does not contain sufficient, project-level information necessary to ascertain if SCA-NOI-2 will be effective, particularly with regard to the prolonged and unanticipated construction schedule needed here to construct a project that is 64% higher than anticipated in the *BVDSP EIR*.

As the calculations in this letter demonstrate, the construction noise data contained in the *BVDSP EIR*, when applied to the instance of the 88 Grand Avenue Project, indicate that construction noise will, in fact, create a significant noise impact on neighboring residents in The Grand apartments at 100 Grand Avenue.

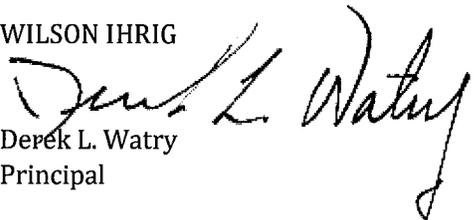
\* \* \* \* \*

Please contact me if you have any question about this review and comments on construction noise from the 88 Grand Avenue Project.

Very truly yours,

WILSON IHRIG

Derek L. Watry  
Principal



## **DEREK L. WATRY**

*Principal*

Since joining Wilson Ihrig in 1992, Derek has gained experienced in many areas of practice including environmental, construction, forensic, architectural, and industrial. For all of these, he has conducted extensive field measurements, established acceptability criteria, and calculated future noise and vibration levels. In the many of these areas, he has prepared CEQA and NEPA noise technical studies and EIR/EIS sections. Derek has a thorough understanding of the technical, public relations, and political aspects of environmental noise and vibration compliance work. He has helped resolve complex community noise issues, and he has also served as an expert witness in numerous legal matters.

### **Education**

- M.S. Mechanical Engineering, University of California, Berkeley
- B.S. Mechanical Engineering, University of California, San Diego
- M.B.A. Saint Mary's College of California

### **Project Experience**

#### ***12<sup>th</sup> Street Reconstruction, Oakland, CA***

Responsible for construction noise control plan from pile driving after City received complaints from nearby neighbors. Attendance required at community meetings.

#### ***525 Golden Gate Avenue Demolition, San Francisco, CA***

Noise and vibration monitoring and consultation during demolition of a multi-story office building next to Federal, State, and Municipal Court buildings for the SFDPW.

#### ***911 Emergency Communications Center, San Francisco, CA***

Technical assistance on issues relating to the demolition and construction work including vibration monitoring, developing specification and reviewing/recommending appropriate methods and equipment for demolition of Old Emergency Center for the SFDPW.

#### ***Central Contra Costa Sanitary District, Grayson Creek Sewer, Pleasant Hill, CA***

Evaluation of vibration levels due to construction of new sewer line in hard soil.

#### ***City of Atascadero, Review of Walmart EIR Noise Analysis, Atascadero, CA***

Review and Critique of EIR Noise Analysis for the Del Rio Road Commercial Area Specific Plan.

#### ***City of Fremont, Ongoing Environmental Services On-Call Contract, Fremont, CA***

Work tasks primarily focus on noise insulation and vibration control design compliance for new residential projects and peer review other consultant's projects.

#### ***City of Fremont, Patterson Ranch EIR, Fremont, CA***

Conducted noise and vibration portion of the EIR.

#### ***City of King City, Silva Ranch Annexation EIR, King City, CA***

Conducted the noise portion of the EIR and assessed the suitability of the project areas for the intended development. Work included a reconnaissance of existing noise sources and receptors in and around the project areas, and long-term noise measurements at key locations.

***Conoco Phillips Community Study and Expert Witness, Rodeo, CA***

Investigated low frequency noise from exhaust stacks and provided expert witness services representing Conoco Phillips. Evaluated effectiveness of noise controls implemented by the refinery.

***Golden Gate Park Concourse Underground Garage, San Francisco, CA***

Noise and vibration testing during underground garage construction to monitor for residences and an old sandstone statue during pile driving for the City of San Francisco.

***Laguna Honda Hospital, Clarendon Hall Demolition, San Francisco, CA***

Project manager for performed vibration monitoring during demolition of an older wing of the Laguna Honda Hospital.

***Loch Lomond Marina EIR, San Rafael, CA***

Examined traffic noise impacts on existing residences for the City of San Rafael. Provided the project with acoustical analyses and reports to satisfy the requirements of Title 24.

***Mare Island Dredge and Material Disposal, Vallejo, CA***

EIR/EIS analysis of noise from planned dredged material off-loading operations for the City of Vallejo.

***Napa Creek Vibration Monitoring Review, CA***

Initially brought in to peer review construction vibration services provided by another firm, but eventually was tapped for its expertise to develop a vibration monitoring plan for construction activities near historic buildings and long-term construction vibration monitoring.

***San Francisco DPW, Environmental Services On-Call, CA***

Noise and vibration monitoring for such tasks as: Northshore Main Improvement project, and design noise mitigation for SOMA West Skate Park.

***San Francisco PUC, Islais Creek Clean Water Program, San Francisco, CA***

Community noise and vibration monitoring during construction, including several stages of pile driving. Coordination of noise and ground vibration measurements during pile driving and other construction activity to determine compliance with noise ordinance. Coordination with Department of Public Works to provide a vibration seminar for inspectors and interaction with Construction Management team and nearby businesses to resolve noise and vibration issues.

***San Francisco PUC, Richmond Transport Tunnel Clean Water Program, San Francisco, CA***

Environmental compliance monitoring of vibration during soft tunnel mining and boring, cut-and-cover trenching for sewer lines, hard rock tunnel blasting and site remediation. Work involved long-term monitoring of general construction activity, special investigations of groundborne vibration from pumps and bus generated ground vibration, and interaction with the public (homeowners).

***Santa Clara VTA, Capitol Expressway Light Rail (CELR) Bus Rapid Transit (BRT) Update EIS, CA***

Reviewed previous BRT analysis and provide memo to support EIS.

***Shell Oil Refinery, Martinez, CA***

Identified source of community noise complaints from tonal noise due to refinery equipment and operations. Developed noise control recommendations. Conducted round-the-clock noise measurements at nearby residence and near to the property line of the refinery and correlated results. Conducted an exhaustive noise survey of the noisier pieces of equipment throughout the refinery to identify and characterize the dominant noise sources that were located anywhere from a quarter to three-quarters of a mile away. Provided a list of actions to mitigate noise from the noisiest pieces of refinery equipment. Assisted the refinery in the selection of long-term noise monitoring equipment to be situated on the refinery grounds so that a record of the current noise environment will be documented, and future noise complaints can be addressed more efficiently.

***Tyco Electronics Corporation, Annual Noise Compliance Study, Menlo Park, CA***

Conducted annual noise compliance monitoring. Provided letter critiquing the regulatory requirements and recommending improvements.

***University of California, San Francisco Mission Bay Campus Vibration Study, CA***

Conducted measurements and analysis of ground vibration across site due to heavy traffic on Third Street. Analysis included assessment of pavement surface condition and propensity of local soil structure.

# EXHIBIT D

# ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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*Of Counsel*

\*Admitted in Colorado

December 26, 2019

### Via Email and U.S. Mail

William Gilchrist  
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### Via Email Only

Pete Vollmann, Planner, [PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov),  
David Guillory, Records Coordinator, [DGuillory@oaklandca.gov](mailto:DGuillory@oaklandca.gov)

**Re: Failure to Provide Timely Access to Public Records Related to  
88 Grand Avenue Project (PLN18406) and Request for  
Extension of the Public Comment Period**

Dear Mr. Gilchrist, Mr. Vollmann, Mr. Guillory, and Ms. Simmons:

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents")<sup>1</sup> concerning the 88 Grand Avenue Project (PLN18406), including the proposed Regular Design Review for New Construction, Minor Conditional Use Permit for Transfer of Development Rights, and Tentative Parcel

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<sup>1</sup>Oakland Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public impacts associated with Project development. Oakland Residents includes City of Oakland residents, the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, their members and their families, and other individuals that live and/or work in the City of Oakland and Alameda County.

4782-002j

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Map (collectively, "Project") proposed by KTG Architecture/88 Grand MC, LLC/Seagate Properties ("Applicant") before the City of Oakland ("City"). We respectfully request that the City:

1. Provide ***immediate access*** to all outstanding Project records and Project-related correspondence requested in our December 6, 2019 Public Records Act request, which documents have been improperly withheld from timely production under the Public Records Act;<sup>2</sup>
2. Provide ***immediate access*** to all public records requested in our December 20, 2019 Public Records Act request, including but not limited to all documents referenced, incorporated by reference, and relied upon in the City's December 2019 CEQA Analysis for the Project; and
3. Extend the public comment period for the Project, which currently closes on December 30, 2019, by ***at least 17 additional days from the date that it makes all outstanding public records available to Oakland Residents.***
4. Given the short time remaining before the current December 30, 2019 comment deadline, **we request a response to this letter by the close of business on December 27, 2019.**

The City has failed to provide timely access to duly requested public records related to the Project, and has failed to identify any statutory basis for an extension of time to respond. The City has advised us that it will not respond to outstanding record requests until December 30, 2019 – the same date that the City's public comment period on the Project closes.<sup>3</sup> Oakland Residents intends to file comments with the Planning Department related to the Project and the City's CEQA Analysis for the Project. The City's failure to provide access to documents in its own record for the Project makes it impossible for Oakland Residents to meaningfully comment on the Project and the CEQA Analysis prior to the close of the current public deadline of December 30, 2019. Accordingly, as described in detail below, we ask that the City provide immediate access to all outstanding Project-related public

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<sup>2</sup> Gov. Code, §§ 6250, et seq.

<sup>3</sup> See Zoning Manager Public Notice for 88 Grand Project, attached hereto as **Exhibit A**.

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records, and extend the public comment period by at least 17 days from the date on which we are provided access to the outstanding records.

On December 6, 2019 Oakland Residents submitted a request for access to “any and all public records referring or related to the 88 Grand Avenue Project since the date of our last request on July 19, 2019 (“December 6 PRA Request”).<sup>4</sup> The December 6 PRA Request was assigned PRA Request No. 19-6001 by the City’s public records department.<sup>5</sup> The City’s initial response to the December 6 PRA Request stated that documents would be provided on December 16, 2019.<sup>6</sup>

On December 10, 2019, our office emailed Mr. Vollman to inquire when the documents responsive to the December 6 PRA Request would be provided by the City.<sup>7</sup> On December 11, 2019, Mr. Vollman advised our office that “I am going to my e-mail archives to get everything ready to be forwarded.”<sup>8</sup> On or about December 11, 2019, the City provided some of the requested records, but responded that emails relative to our December 6 PRA Request required further review.<sup>9</sup> The City’s public records database stated that outstanding responsive records would be made available by December 16, 2019.<sup>10</sup>

On December 13, 2019, the City released the Zoning Manager Public Notice, notifying the public of the availability of a CEQA Analysis for the Project. The comment period for the Project currently ends on **December 30, 2019.**<sup>11</sup>

The City did not mail or email Oakland Residents a copy of the public notice, as required by our January 28, 2019 *Request for Mailed Notice of CEQA Actions and Hearings – 88 Grand Avenue, (PLN18406)*, and Oakland Residents was unable to

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<sup>4</sup> See December 6, 2019 Public Records Act request, attached hereto as Exhibit B.

<sup>5</sup> See December 2019 Oakland CA Public Records correspondence attached hereto as Exhibit C, p. 1 (“Re: Public Records Act Request – 88 Grand Avenue Project Received: December 6, 2019”).

<sup>6</sup> *Id.*, (“Re: Public Records Act Request – 88 Grand Avenue Project Due: December 16, 2019”).

<sup>7</sup> See December 2019 Email correspondence between ABJC and P. Vollman, attached hereto as Exhibit D.

<sup>8</sup> *Id.*

<sup>9</sup> See Exhibit C.

<sup>10</sup> *Id.*

<sup>11</sup> See Exhibit A.

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locate the public notice on the City's website.<sup>12</sup> On December 18, 2019, counsel for Oakland Residents emailed Mr. Vollman, asking for confirmation as to whether the City had issued a public notice for the comment period. In response, Mr. Vollman provided an electronic copy of the public notice on December 18, 2019.<sup>13</sup>

On or about December 18, 2019, we received a further update from the City, stating that our December 6 PRA Request had been assigned a new number, PRA Request No. 19-6177.<sup>14</sup> The December 18 correspondence stated that responsive documents would not be provided until **December 30, 2019** (the same date on which the Project's public comment period ends).<sup>15</sup> The December 18, 2019 response did not identify any "unusual circumstances" supporting a further extension of time to respond to our December 6 PRA Request, as required by the Public Records Act.<sup>16</sup>

On December 20, 2019, Oakland Residents submitted a second Public Records Act request to the City seeking an update to our December 6 PRA Request, as well as a access to all documents relied upon in the CEQA Analysis ("December 20 PRA Request").<sup>17</sup> To date, the City has not responded or assigned a PRA Request number to the December 20 PRA Request.<sup>18</sup>

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<sup>12</sup> The January 28, 2019 Request for Mailed Notice was filed pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152 and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

<sup>13</sup> See December 18, 2019 C. Caro email correspondence with P. Vollman, attached hereto as Exhibit D.

<sup>14</sup> Review of the City's NextRequest system records indicates that December 6, 2019 request was entered twice. See <https://oaklandca.nextrequest.com/requests/19-6177> and <https://oaklandca.nextrequest.com/requests/19-6001>.

<sup>15</sup> See Exhibit C, p. 2, Exhibit E.

<sup>16</sup> Govt. Code § 6253(c).

<sup>17</sup> See Exhibit F.

<sup>18</sup> On December 18, 2018, in response to direct email requests from our office, Mr. Vollman provided five documents cited in the CEQA Analysis, including traffic exhibits, CalEEMod air emissions modeling, and the Phase I and Phase II Environmental Site Assessments. No other documents cited, referenced, incorporated by reference, or relied upon in the CEQA Analysis have been provided in response to our December 20 PRA Request as of the date of this letter.

December 26, 2019

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The City's response to both the December 6 PRA Request and December 20 PRA Request therefore remain late and incomplete, in violation of the Public Records Act and Oakland Residents' due process right to comment on the Project during the City's public comment period. The Public Records Act requires public records to be "open to inspection at all times during the office hours of the state or local agency" and provides that "every person has a right to inspect any public record."<sup>19</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the public review period invalidates the public review process, and that such a failure must be remedied by permitting additional public comment.<sup>20</sup> It is also well settled that CEQA documents may not rely on hidden studies or documents that are not provided to the public.<sup>21</sup>

In this case, Oakland Residents requested relevant records related to the Project before the City's public comment period on the Project had begun, and during the course of the public comment period. Yet, the City states that it will not provide access to the requested records until after the close of the comment period. The records requested by Oakland Residents related directly to the City's permitting and CEQA review process for the Project, and include reference materials that are vitally important to the public's evaluation of the adequacy of the City's analysis of the Project's environmental and health risk impacts to workers, future residents, and the surrounding community, and to the Project's consistency with City plans and City permitting procedures.

By failing to make public records related to the Project available during the City's public comment period, the City is violating Oakland Residents' due process rights to comment on the Project, including, in particular, Oakland Residents' right to present all necessary issues and evidence to the Planning Department prior to filing an appeal to the Planning Commission.<sup>22</sup> Pursuant to the Oakland Municipal Code ("OMC"), should a member of the public wish to appeal the Zoning Manager's decision, the appeal "must raise every issue that is contested along with all the arguments and evidence previously entered into the record during the previously

---

<sup>19</sup> Gov. Code § 6253(a).

<sup>20</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>21</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

<sup>22</sup> See e.g. Oakland Municipal Code ("OMC") secs. 17.136.040(C)(4), 17.134.040(B)(1).

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mentioned ten (10) day comment period.”<sup>23</sup> The OMC also states that an appeal of a Regular Design Review decision is “limited to issues and/or evidence presented to the Director prior to the close of the written comment period”<sup>24</sup> Therefore, in order to protect the Oakland Residents’ right to appeal the Planning Director’s decision, Oakland Residents must have access to all facts and evidence in the City’s Project record prior to the close of the comment period.

Accordingly, we respectfully request that the City extend the public review and comment period for the CEQA Analysis by ***at least 17 additional days from the date on which it makes all outstanding responsive public records available for our review.***

Thank you for your consideration of our requests. Please contact me if you have any questions.

Sincerely,



---

Sara Dudley

SFD:ljl

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<sup>23</sup> Zoning Manager Public Notice. We note that the Notice states that the comment period is 10 days, but that the City provides a 17-day comment period.

<sup>24</sup> See OMC §§ 17.136.040(C)(4), 17.136.080.

# EXHIBIT A



# CITY OF OAKLAND Bureau of Planning – Zoning Division

250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031

Phone: 510-238-3911 Fax: 510-238-4730

## ZONING MANAGER PUBLIC NOTICE

1.

**Location:** "88" GRAND AVENUE, OAKLAND, CA 94612

**APN:** 008 065600400, 008 065600100

**Proposal:** To develop a new 35 story residential building containing 275 dwelling units above ground level retail. The proposal includes the Transfer of Development Rights for residential density from 2250 Broadway, which contains an existing office building, to the "88" Grand Avenue tower site. The proposal will be taking advantage of the affordable housing density bonus by including 14 very-low income units and requesting a concession for parking and a development waiver for height.

**Applicant / Phone Number:** Jessica Musick / (510) 272-2910

**Owner:** 80 Grand MC, LLC.

**Case File Number:** PLN18406

**Planning Permits Required:** Regular Design Review for new construction, Minor Conditional Use Permit for Transfer of Development Rights, and a Tentative Parcel Map to merge and re-subdivide two lots, including one lot that will include new condominiums for the new construction (TPM10922).

**General Plan:** Central Business District

**Zoning:** D-BV-2

**Environmental Determination:** A detailed CEQA Analysis was prepared for this project which concluded that the proposed project satisfies each of the following CEQA provisions:  
15183 - Projects consistent with a community plan, general plan, or zoning;  
15183.3 - Streamlining for in-fill projects; and/or 15164 - Addendum to the 2014 certified Broadway Valdez District Specific Plan EIR; Each of which provides a separate and independent basis for CEQA compliance. The CEQA Analysis document may be reviewed at the Planning Bureau offices at 250 Frank Ogawa Plaza, 2<sup>nd</sup> Floor or on-line at: <https://cao-94612.s3.amazonaws.com/documents/88-Grand-CEQA-Analysis.pdf>

**Historic Status:** Not a historic property – vacant parking lot

**City Council District:** 3

**Action to be Taken:** Pending

**Finality of Decision:** Appealable to Planning Commission

**For Further Information:** Contact case Planner Peterson Vollmann at (510) 238-6167 or by email:

[Pvollmann@oaklandca.gov](mailto:Pvollmann@oaklandca.gov)

Your comments and questions, if any, should be directed to the **Bureau of Planning – Zoning**, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, California 94612-2031 within **17 calendar days of the posting of this notice**. A decision will be made on the application after this date. If you challenge a decision on this case on appeal and/or in court, you will be limited to issues raised in correspondence delivered to the **Bureau of Planning – Zoning** prior to the close of the public comment period. If you wish to be notified of the decision on this case, please indicate the case number and submit a self-addressed stamped envelope for each to the **Bureau of Planning – Zoning**, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland, California 94612-2031.

Please note that the description of the application found above is preliminary in nature and that the project and/or such description may change prior to a decision being made. Except where noted, once a decision is reached by the Zoning Manager on these cases, they are appealable to the Planning Commission or the Commission's Residential Appeals Committee. **Such appeals must be filed within ten (10) calendar days of the date of decision by the Zoning Manager and by 4:00p.m.** An appeal shall be on a form provided by the **Bureau of Planning – Zoning**, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Case Planner. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City of Oakland or wherein the decision is not supported by substantial evidence and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to file a timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise every issue that is contested along with all the arguments and evidence previously entered into the record during the previously mentioned ten (10) day public comment period. Failure to do so will preclude you from raising such issues during the appeal hearing and/or in court.

**POSTING DATE:** December 13, 2019  
**COMMENTS DUE DATE:** December 30, 2019

***IT IS UNLAWFUL TO ALTER OR REMOVE THIS NOTICE WHEN POSTED ON SITE***

# EXHIBIT B

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
DANIKA L. DESAI  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
AARON M. MESSING  
WILLIAM C. MUMBY  
CAMILLE G. STOUGH

MARC D. JOSEPH  
Of Counsel

\*Admitted in Colorado

December 6, 2019

**Via Email and U.S. Mail**

LaTonda D. Simmons, City Clerk  
City of Oakland  
One Frank H. Ogawa Plaza  
First and Second Floors  
Oakland, CA 94612  
**Email:** [lsimmons@oaklandnet.com](mailto:lsimmons@oaklandnet.com)

William Gilchrist  
Director, Planning & Building  
City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 2114  
Oakland, CA 94612  
**Email:** [wgilchrist@oaklandnet.com](mailto:wgilchrist@oaklandnet.com)

**Via Email Only**

Pete Vollmann, [PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)

**Re: Public Records Act Request – 88 Grand Avenue Project  
(PLN18406)**

Dear Ms. Simmons, Mr. Gilchrist and Mr. Vollmann:

We are writing on behalf of Oakland Residents for Responsible Development (“Oakland Residents”) to request any and all public records referring or related to the 88 Grand Avenue Project (“Project”) by KTG Architecture (“Applicant”), ***since the date of our last request on July 19, 2019.*** This request includes, but is not limited to, any and all file materials, correspondence, resolutions, memos, notes, analysis, staff reports, electronic mail messages, files, maps, charts, and/or any other documents related to the Project.

We are making this request pursuant to the California Public Records Act (“Act”),<sup>1</sup> and request the above documents pursuant to section 6253(a) of the Act. In addition, we request these materials pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access to

<sup>1</sup> Gov. Code, §§ 6250, et seq.  
3567-004j

December 6, 2019

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information concerning the conduct of the government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information be narrowly construed.

In addition to all public records since our July 19, 2019 request, we specifically seek the following documents that were identified in the City's September 19, 2019 Public Records Act response, but were not included:

- 4 RE\_88 Grand – DRC Submittal #2.pdf (email dated June 7, 2019), which has a link to “88 Grand Submittal” with goes to a folder, 2019-06-06 - City Submittal #2, which does not open.
- 20 RE\_88 Grand - DRC submittal #2.pdf (email dated June 5, 2019), which has a link to which has a link to “88 Grand Submittal” which goes to a folder, 2019-05-23 - City Submittal #2, which does not open.

If any of the requested documents are available in electronic format, please send them to us using a file transfer program such as Dropbox. If the electronic documents are 10 megabytes (MB) or less (or can be broken into chunks of 10 MB or less), please email them as attachments. We reserve the right to have a copy service make copies of any and all of the requested documents depending on the volume.

Oakland Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of Oakland residents; the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County.

3567-004j

December 6, 2019

Page 3

Please use the following contact information for all correspondence regarding these requests:

Janet Laurain  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Ste. 1000  
South San Francisco, CA 94080  
[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)  
Phone: (650) 589-1660

Thank you for your assistance with this matter.

Sincerely,



Janet Laurain  
Paralegal

JML:ljl

3567-004j

# EXHIBIT C



Wed 12/11/2019 12:42 PM

Oakland CA Public Records <support@nextrequest.com>

[External Message Added] Oakland, CA public records request #19-6001

To Janet M. Laurain

You forwarded this message on 12/11/2019 12:58 PM.

If there are problems with how this message is displayed, click here to view it in a web browser.

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Oakland, CA Public Records

**Hi there**

A message was sent to you regarding record request #19-6001:

emails are being collected and will be uploaded once reviewed...David



<http://oaklandca.nextrequest.com/requests/19-6001>

Public Records Request OAKLAND, CA MAKE REQUEST ALL REQUESTS DOCUMENTS

< Request #19-6001 >

OPEN



Re: Public Records Act Request - 88 Grand Avenue Project (PLN18405)

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents") to request any and all public records referring or related to the 88 Grand Avenue Project ("Project") by KTOY Architecture ("Applicant"), since the date of our last request on July 19, 2019. This request includes, but is not limited to, any and all file materials, correspondence, resolutions, memos, notes, analysis, staff reports, electronic mail messages, files, maps, charts, and/or any other documents related to the Project.

We are making this request pursuant to the California Public Records Act ("Act"), and request the above documents pursuant to section 6253(a) of the Act.

[View more](#)

Received December 6, 2019 via email

Due December 16, 2019

Departments Planning & Building

Documents

(none)

Staff

Point of Contact David Gullory

Department Assignment

Planning & Building

December 6, 2019, 2:54pm

Request Opened

Request received via email

December 4, 2019, 2:54pm

< Request #19-6177

OPEN



Department Assignment  
Planning & Building

December 18, 2019, 1:45pm

Request Opened

Request received via mail

December 18, 2019, 1:45pm

Re: Public Records Act Request- 88 Grand Avenue Project (PIN18406)

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents") to request any and all public records referring or related to the 83 Grand Avenue Project ("Project") by NTGY Architecture ("Applicant"), since the date of our last request on July 19, 2019. This request includes, but is not limited to, any and all file materials, correspondence, resolutions, memos, notes, analysis, staff reports, electronic mail messages, files, maps, charts, and/or any other documents related to the Project.

We are making this request pursuant to the California Public Records Act ("Act"), and request the above documents pursuant to section 6253(a) of the Act. In addition, we request these materials pursuant to Article I, section 3(o) of the California Constitution, which provides a constitutional right of access.

[Read more](#)

Received December 18, 2019 via mail  
Due December 30, 2019  
Departments Planning & Building  
Requester Janet Laurain  
jlaurain@adamsbroadwell.com  
650-589-1680

Documents

Public (none)  
Requester (none)

Staff

Point of Contact David Gullory

HELP PRIVACY TERMS CITY OF OAKLAND

Janet

From: Oakland CA Public Records <support@nextrequest.com>  
Sent: Wednesday, December 18, 2019 1:45 PM  
To: Janet M. Laurain <jlaurain@adamsbroadwell.com>  
Subject: Your Oakland, CA public records request #19-6177 has been opened.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on the request --

Oakland, CA Public Records

Hi there

Your record request #19-6177 has been submitted.  
You can see it anytime at the link below.

[View Request 19-6177](#)

<http://oaklandca.nextrequest.com/request/19-6177>



POWERED BY NEXT REQUEST

The All in One Records Request Platform

Questions about your request? Reply to this email or sign in to contact staff at Oakland, CA.

Technical support: See our [help page](#)

# EXHIBIT D

## Christina Caro

---

**From:** Vollmann, Peterson <PVollmann@oaklandca.gov>  
**Sent:** Wednesday, December 18, 2019 2:57 PM  
**To:** Christina Caro  
**Cc:** Janet M. Laurain; Guillory, David  
**Subject:** RE: 88 Grand Avenue Project (3567) Oakland PRA #19-6001  
**Attachments:** DOC121819.pdf; 2017.04.14 City of Oakland Transportation Impact Review Guidelines-Land Use Projects.pdf

I let Janet know that the public notice period was beginning on Friday and I was assuming you were aware that our comment periods are always 17 days. Attached is the copy of the public notice that was posted at the site – the comment period runs through December 30<sup>th</sup>. I have also attached the Transportation Impact Review Guidelines. I will request the additional materials from our consultant.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

**From:** Christina Caro [mailto:[c Caro@adamsbroadwell.com](mailto:c Caro@adamsbroadwell.com)]  
**Sent:** Wednesday, December 18, 2019 1:48 PM  
**To:** Vollmann, Peterson <PVollmann@oaklandca.gov>; Vollmann, Peterson <PVollmann@oaklandca.gov>  
**Cc:** Janet M. Laurain <[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)>  
**Subject:** 88 Grand Avenue Project (3567) Oakland PRA #19-6001  
**Importance:** High

Pete:

We have not received a public notice for the comment period on the 88 Grand Project. Was this sent out last Friday? Can you please forward us a copy of the public notice by email? What is the comment deadline?

Also, I reviewed the CEQA Analysis and weblinks you provided to Janet. A number of documents and studies that are referenced and relied upon in the CEQA Analysis are missing. Can you please forward us copies of the following documents by email ASAP:

- CalEEMod Air Quality modeling files. (referenced in Air Quality / GHG sections, p. 60 etc)
- Farallon Consulting, 2017. Phase I Environmental Site Assessment Report, 80 Grand Avenue, Oakland, California, October 10. (ref. CEQA Analysis, p. 68)
- Baseline Environmental Consulting, 2019. Phase II Environmental Site Assessment, 88 Grand Avenue, Oakland, California. April (ref CEQA Analysis, p. 70)
- City of Oakland Transportation Impact Review Guidelines dated April 14, 2017 (Ref. CEQA Analysis, p. 91)
- MTC Model results at [analytics.mtc.ca.gov/foswiki/Main/PlanBayAreaVmtPerCapita](http://analytics.mtc.ca.gov/foswiki/Main/PlanBayAreaVmtPerCapita) and accessed in December 2018. Source: Fehr & Peers, 2018. (ref. CEQA Analysis, p. 92 – traffic/transportation section)

Thank you. Christina

Christina M. Caro  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Suite 1000  
South San Francisco, CA 94080  
Tel: (650) 589-1660  
Fax: (650) 589-5062  
[ccaro@adamsbroadwell.com](mailto:ccaro@adamsbroadwell.com)

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**From:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Sent:** Wednesday, December 11, 2019 12:35 PM  
**To:** Janet M. Laurain <[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)>  
**Cc:** Guillory, David <[DGuillory@oaklandca.gov](mailto:DGuillory@oaklandca.gov)>  
**Subject:** RE: Public Records Act Request - 88 Grand Avenue Project (3567) Oakland PRA #19-6001

Janet-

I am going to my e-mail archives to get everything ready to be forwarded. The link I provided you in the prior e-mail was to the plans that you had requested from the applicant's e-mail that no longer had the active link. As for the CEQA document, we just posted it yesterday and we will be putting out the public notice this Friday. Here is the link on our website to view the CEQA document:

<https://www.oaklandca.gov/documents/current-environmental-review-documents-2011-2019>

Also, you can access all other application paperwork on our online permit database at the link below. You just enter the case number (PLN18406) and when it comes up you can check attachments for the records, including application, plans, and past staff reports. The current plans that are going out for notice post DRC are the ones dated 9-3-19.

<https://aca.accela.com/OAKLAND/Cap/CapHome.aspx?module=Planning&TabName=Planning>

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

**From:** Janet M. Laurain [<mailto:jlaurain@adamsbroadwell.com>]  
**Sent:** Tuesday, December 10, 2019 11:30 AM  
**To:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Cc:** Guillory, David <[DGuillory@oaklandca.gov](mailto:DGuillory@oaklandca.gov)>  
**Subject:** RE: Public Records Act Request - 88 Grand Avenue Project (3567) Oakland PRA #19-6001

Pete,

Since the City is planning to act this month on the 88 Grand Avenue project, can you please tell us when the documents responsive to our December 6<sup>th</sup> request for immediate access to public records will be posted in Next Request (PR #19-6001)?

Also, what is the status of the CEQA determination?

Thank you.

Janet Laurain

Janet M. Laurain, Paralegal  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080  
(650) 589-1660  
[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)

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**From:** Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Sent:** Friday, December 6, 2019 2:53 PM  
**To:** Lorrie J. LeLe <[lilele@adamsbroadwell.com](mailto:lilele@adamsbroadwell.com)>  
**Cc:** Janet M. Laurain <[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)>; Guillory, David <[DGuillory@oaklandca.gov](mailto:DGuillory@oaklandca.gov)>  
**Subject:** RE: Public Records Act Request - 88 Grand Avenue Project (3567)

Lorrie and Janet-

I received the records request and I have forwarded it on to City staff that sets these up in our on-line records request tracking system. I saw your comment in the letter about the DRC plans in the e-mail from the applicant in June, which had the expired link. These were the plans that went to the DRC hearing on June 26, 2019. You can view them along with the staff report on Accela or on the Planning Commission webpage in the link below:

<https://cao-94612.s3.amazonaws.com/documents/June-26-2019-Design-Review-Committee-Item-02-PLN18406-at-88-Grand-Ave.pdf>

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

**From:** Lorrie J. LeLe [<mailto:lilele@adamsbroadwell.com>]  
**Sent:** Friday, December 6, 2019 11:30 AM  
**To:** Simmons, LaTonda <[LSimmons@oaklandca.gov](mailto:LSimmons@oaklandca.gov)>; Gilchrist, William <[WGilchrist@oaklandca.gov](mailto:WGilchrist@oaklandca.gov)>; Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>  
**Cc:** Janet M. Laurain <[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)>; Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** Public Records Act Request - 88 Grand Avenue Project (3567)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Please find attached PRA request for the 88 Grand Avenue Project. (PLN18406)

If you have any questions, please contact Janet Laurain directly.

Thank you,

***Lorrie LeLe***

Legal Assistant

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Sacramento, CA 95814

[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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# EXHIBIT E

< Request #19-6177

OPEN



Re: Public Records Act Request- 88 Grand Avenue Project (PLN18406)

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents") to request any and all public records referring or related to the 88 Grand Avenue Project ("Project") by KTG Architecture ("Applicant"), since the date of our last request on July 19, 2019. This request includes, but is not limited to, any and all file materials, correspondence, resolutions, memos, notes, analysis, staff reports, electronic mail messages, files, maps, charts, and/or any other documents related to the Project.

We are making this request pursuant to the California Public Records Act ("Act"), 1 and request the above documents pursuant to section 6253(a) of the Act. In addition, we request these materials pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access

[+ Read more](#)

Received December 18, 2019 via mail

Due December 30, 2019

Departments Planning & Building

Requester Janet Laurain  
jlaurain@adamsbroadwell.com  
650-509-1660

Department Assignment

Planning & Building

December 18, 2019, 1:45pm

Request Opened

Request received via mail

December 18, 2019, 1:45pm

Documents

Public (none)

Requester (none)

Staff

Point of Contact David Guillory

HELP

PRIVACY

TERMS

CITY OF OAKLAND

Janet

From: Oakland CA Public Records <support@nextrequest.com>

Sent: Wednesday, December 18, 2019 1:45 PM

To: Janet M. Laurain <jlaurain@adamsbroadwell.com>

Subject: Your Oakland, CA public records request #19-6177 has been opened.

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

Oakland, CA Public Records

Hi there

Your record request #19-6177 has been submitted. You can see it anytime at the link below.

[View Request 19-6177](#)

<http://oaklandca.nextrequest.com/requests/19-6177>



POWERED BY NEXTRREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at Oakland, CA.

Technical support: See our [help page](#)

# EXHIBIT F

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 360  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
DANIKA L. DESAI  
SARA F. DUDLEY  
THOMAS A. ENSLOW  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
KENDRA D. HARTMANN\*  
KYLE C. JONES  
RACHAEL E. KOSS  
NIRIT LOTAN  
AARON M. MESSING  
WILLIAM C. MUMBY  
CAMILLE G. STOUGH

MARC D. JOSEPH  
*Of Counsel*

*\*Admitted in Colorado*

December 20, 2019

**Via Email and U.S. Mail**

LaTonda D. Simmons, City Clerk  
City of Oakland  
One Frank H. Ogawa Plaza  
First and Second Floors  
Oakland, CA 94612  
**Email:** [lsimmons@oaklandnet.com](mailto:lsimmons@oaklandnet.com)

William Gilchrist  
Director, Planning & Building  
City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 2114  
Oakland, CA 94612  
**Email:** [wgilchrist@oaklandnet.com](mailto:wgilchrist@oaklandnet.com)

**Via Email Only**

Pete Vollmann, [PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)

**Re: Public Records Act Request – 88 Grand Avenue Project  
(PLN18406)**

Dear Ms. Simmons, Mr. Gilchrist and Mr. Vollmann:

We are writing on behalf of Oakland Residents for Responsible Development (“Oakland Residents”) to request any and all public records referring or related to the 88 Grand Avenue Project (“Project”) by KTG Y Architecture/88 Grand MC, LLC/Seagate Properties (“Applicant”), ***since the date of our last request on December 6, 2019***, including but not limited to, all documents referenced and/or relied upon in the December 2019 CEQA Analysis.

We are making this request pursuant to the California Public Records Act (“Act”),<sup>1</sup> and request the above documents pursuant to section 6253(a) of the Act. In addition, we request these materials pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access to information concerning the conduct of the government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to

<sup>1</sup> Gov. Code, §§ 6250, et seq.  
4782-001j

December 20, 2019  
Page 2

provide the greatest access to government information and further requires that any statute that limits the right of access to information be narrowly construed.

If any of the requested documents are available in electronic format, please send them to us using a file transfer program such as Dropbox. If the electronic documents are 10 megabytes (MB) or less (or can be broken into chunks of 10 MB or less), please email them as attachments. We reserve the right to have a copy service make copies of any and all of the requested documents depending on the volume.

Oakland Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes: City of Oakland residents; the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County.

Please use the following contact information for all correspondence regarding these requests:

Janet Laurain  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Ste. 1000  
South San Francisco, CA 94080  
[jlaurain@adamsbroadwell.com](mailto:jlaurain@adamsbroadwell.com)  
Phone: (650) 589-1660

Thank you for your assistance with this matter.

Sincerely,



Janet Laurain  
Paralegal

JML:ljl

4782-001j

# EXHIBIT C

**From:** [Vollmann, Peterson](#)  
**To:** [Lorrie J. LeLe](#); [rmerkamp@oakland.ca.gov](mailto:rmerkamp@oakland.ca.gov); [Mulry, Brian](#)  
**Cc:** [Sara F. Dudley](#)  
**Subject:** RE: Comments - 88 Grand Avenue Project (4782)  
**Date:** Tuesday, January 7, 2020 3:59:45 PM

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Yes, I received it.

**Peterson Z. Vollmann** | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Phone: (510)238-6167 | Fax: (510)238-4730 | Email: [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov) | Website: <https://www.oaklandca.gov/>

**From:** Lorrie J. LeLe [mailto:[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com)]  
**Sent:** Tuesday, January 7, 2020 3:54 PM  
**To:** [rmerkamp@oakland.ca.gov](mailto:rmerkamp@oakland.ca.gov); Vollmann, Peterson <[PVollmann@oaklandca.gov](mailto:PVollmann@oaklandca.gov)>; Mulry, Brian <[BMulry@oaklandcityattorney.org](mailto:BMulry@oaklandcityattorney.org)>  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** RE: Comments - 88 Grand Avenue Project (4782)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Following up to make sure you received our comments from yesterday by email.

Thank you,

*Lorrie LeLe*

Legal Assistant  
Adams Broadwell Joseph & Cardozo  
520 Capitol Mall, Suite 350  
Sacramento, CA 95814  
[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916. 444.6201 Ext. 10 | Fax: 916.444.6209 |

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**From:** Lorrie J. LeLe  
**Sent:** Monday, January 6, 2020 2:37 PM  
**To:** [rmerkamp@oakland.ca.gov](mailto:rmerkamp@oakland.ca.gov); [pvollmann@oaklandca.gov](mailto:pvollmann@oaklandca.gov); [bmulry@oaklandcityattorney.org](mailto:bmulry@oaklandcityattorney.org)  
**Cc:** Sara F. Dudley <[sdudley@adamsbroadwell.com](mailto:sdudley@adamsbroadwell.com)>  
**Subject:** Comments - 88 Grand Avenue Project (4782)

Please find attached Comments submitted on behalf of Oakland Residents for Responsible Development regarding the 88 Grand Avenue Project (PLN 18-406). The original will be hand-

delivered today.

If you have any questions, please contact Sara Dudley directly.

Thank you,

***Lorrie LeLe***

Legal Assistant

Adams Broadwell Joseph & Cardozo

520 Capitol Mall, Suite 350

Sacramento, CA 95814

[ljlele@adamsbroadwell.com](mailto:ljlele@adamsbroadwell.com) | Phone: 916.444.6201 Ext. 10 | Fax: 916.444.6209 |

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# EXHIBIT D



**CITY OF OAKLAND**  
**BASIC APPLICATION FOR DEVELOPMENT REVIEW**  
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031  
Zoning Information: 510-238-3911  
www.oaklandnet.com/planning

**CERTAIN APPLICATIONS ARE ACCEPTED BY APPOINTMENT ONLY!**  
Please call (510) 238-3940 to schedule an appointment if your project involves any of the following:  
• Conditional Use Permit      • Parcel Map Waiver      • 1,000 sq. ft. or more of new floor area/footprint  
• Variance      • Tentative Parcel/Tract Map      • Additions ≥ 100% of existing floor area/footprint  
• Regular Design Review      • New dwelling unit(s)      • Creek Protection Permit (Category 3 or 4)  
**Applicants must cancel at least 24 hours in advance of appointment or pay a cancellation fee.**  
All other projects may be submitted to the zoning counter without an appointment.  
Submit applications for Small Project Design Review to station #12 at the zoning counter by signing the sign-up sheet.

**1. TYPE OF APPLICATION**  
(Check all that apply)

- |   |   |
|---|---|
| <p><b>Development Permits</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conditional Use Permit (CUP) (Major or Minor)</li> <li><input type="checkbox"/> Variance (Major or Minor)</li> <li><input checked="" type="checkbox"/> Regular Design Review (DR)</li> <li><input type="checkbox"/> Small Project Design Review (DS) (Type 1, 2, 3)</li> <li><input type="checkbox"/> Special Project Design Review (SP) (West Oakland)</li> <li><input type="checkbox"/> Design Review Exemption (DRX)</li> <li><input checked="" type="checkbox"/> Tree Preservation or Removal Permit (T)</li> <li><input type="checkbox"/> Determination (DET)</li> <li><input type="checkbox"/> Planned Unit Development/Mini-Lot Development</li> </ul> | <p><b>Subdivision Applications</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Parcel Map Waiver (PMW) (Lot Line Adjustment/Merger)</li> <li><input checked="" type="checkbox"/> Tentative Parcel Map (TPM) (subdivision for 1-4 lots)</li> <li><input type="checkbox"/> Tentative Tract Map (TTM) (subdivision 5 or more lots)</li> </ul> <p><b>Other Applications</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Request for Environmental Review</li> <li><input type="checkbox"/> General Plan Amendment    <input type="checkbox"/> Rezoning</li> <li><input type="checkbox"/> Creek Protection Permit (separate application required)</li> <li><input type="checkbox"/> State Bill 35 Streamlining</li> <li><input type="checkbox"/> Other: _____</li> </ul> |
|---|---|

**2. GENERAL INFORMATION**

**APPLICANT'S NAME/COMPANY:** Jessica Musick / KTG Architecture + Planning

**PROPERTY ADDRESS:** 88 Grand Avenue

**ASSESSOR'S PARCEL NUMBER(S):** 008-0656-004 , 008 - 0656 - 001

**EXISTING USE OF PROPERTY:** Surface Parking Lot

**DESCRIPTION OF PROPOSAL** (including type of use, hours of operation, number of employees, etc., on additional sheets if needed.):  
Construct new mixed-use 35-story building including 275 residential units, 1 retail unit, automated parking structure

**TO BE COMPLETED BY STAFF**

<b>GENERAL PLAN LAND USE CLASS:</b> _____	<b>ZONING:</b> _____
<b>SPECIFIC PLAN:</b> <input checked="" type="checkbox"/> Broadway Valdez District <input type="checkbox"/> Central Estuary <input type="checkbox"/> Coliseum Area <input type="checkbox"/> Lake Merritt Station <input type="checkbox"/> West Oakland	
<b>FEES:</b>	<b>EXPECTED PROCESSING TIME<sup>1</sup>:</b>
APPLICATION FEE: \$ _____	<small><sup>1</sup>Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.  <sup>2</sup>For permit applications requiring public notice, a refundable security deposit is required for the on-site poster containing the public notice. Posters MUST be returned within 180 days and in good condition to claim a refund of the deposit.  <sup>3</sup>Expected processing time is only an estimate and is subject to change without notice due to staff workload, public hearing availability, and the completeness or complexity of the application.</small>
POSTER DEPOSIT <sup>2</sup> : \$ _____	
TREE PERMIT FEE: \$ _____	
CREEK PERMIT FEE: \$ _____	
<b>TOTAL FEES DUE:</b> \$ _____	

### 3. PROPERTY OWNER AND APPLICANT INFORMATION

Original signatures or clear & legible copies are required.

Owner: 80 Grand MC, LLC

Owner Mailing Address: 980 Fifth Avenue

City/State: San Rafael, CA

Zip: 94901

Phone No.: (415)455-0300

Fax No.: (415)453-2892

E-mail: bjohnson@seagateprop.com

#### To be completed only if Applicant is not the Property Owner:

I authorize the applicant indicated below to submit the application on my behalf.

Signature of Property Owner

Applicant (Authorized Agent), if different from Owner: Jessica Musick - KTG

Applicant Mailing Address: 1814 Franklin Street, Suite 400

City/State: Oakland, CA

Zip: 94612

Phone No.: (510)272-2910

Fax No.:

E-mail: fmetzger@ktgy.com

I understand that approval of this application does not constitute approval for any administrative review, Conditional Use Permit, Variance, or exception from any other City regulations which are not specifically the subject of this application. I understand further that I remain responsible for satisfying requirements of any private restrictions or covenants appurtenant to the property. I understand that the Applicant and/or Owner phone number listed above will be included on any public notice for the project.

I certify that I am the Applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies may result in the revocation of planning permits as determined by the Planning Director. I further certify that I am the Owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature above.

I certify that statements made to me about the time it takes to review and process this application are general. I am aware that the City has attempted to request everything necessary for an accurate and complete review of my proposal; however, that after my application has been submitted and reviewed by City staff, it may be necessary for the City to request additional information and/or materials. I understand that any failure to submit the additional information and/or materials in a timely manner may render the application inactive and that periods of inactivity do not count towards statutory time limits applicable to the processing of this application.

I understand that the proposed project and/or property may be subject to other laws, codes, regulations, guidelines, restrictions, agreements, or other requirements of other public agencies within or outside of the City of Oakland, and that the project and/or property may also be subject to requirements enforced by private parties, including but not limited to private easements/agreements and Covenants, Conditions and Restrictions (CC&Rs) of a homeowners association. I am aware that the City recommends that I become fully aware of any other potential requirements before I submit this application and that I comply with all other requirements prior to commencing the proposed project.

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY, THAT I HAVE READ THE ABOVE AND THAT ALL THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE AND CORRECT.

Signature of Owner or Authorized Agent

Date

9/8/18

### 4. PROJECT & LOT INFORMATION

CALCULATIONS	Existing Pre-Project	New Proposed	Total Post-Project	% Change
<b>Type/Size of Dwelling Units (Please fill in the number of each type)</b>				
Rooming Units				
Efficiency Units		83 units		
1-Bedroom Units		117 Units		
2-Bedroom Units		66 Units		
3-Bedroom Units		9 Units		
≥ 4-Bedroom Units				
<b>Total Number of Dwelling Units</b>		<b>275 Units</b>		
<b>Are Any of the Project Units Affordable? If Yes, Please Fill Out the Section Below (include number of each type)</b>				
Market-Rate/Unrestricted Dwelling Units (DU)				
Moderate-Income Restricted DU (80%-120% AMI)				
Low-Income Restricted DU (50%-80% AMI)				
Very Low-Income Restricted DU (30%-50% AMI)		14 Units		
Extremely Low-Income Restricted DU (<30% AMI)				
<b>Total Affordable Units</b>		<b>14 Units</b>		
<b>Total Affordable Units located Onsite:</b>		<b>14 units</b>		
<b>Other Types of Units/Rooms (if applicable) (not counted towards density) - include number of each type</b>				
Secondary Units				
Live/Work Units				
Work/Live Units				
Mobile Homes				
Hotel Rooms				
<b>Floor Area</b>				
Office Floor Area (square feet)				
Retail Floor Area (square feet)		1000 sf		
Industrial Floor Area (square feet)				
Other Non-Residential Floor Area (sq. ft.)				
<b>Total Non-Residential Floor Area (sq. ft.)</b>		<b>1000 sf</b>		
Residential Floor Area (sq. ft.)		311,000 sf		
<b>Total Res. &amp; Non-Res. Floor Area (sq. ft.)</b>		<b>312,000 sf</b>		
<b>Other Project Information</b>				
Total Building Footprint Area (square feet)		9,445 sf		
Building Height (feet)		374 feet		
Building Stories (number)		35 stories		
Total Lot Area (square feet)		22,182		
Number of Lots				
Parking Spaces (number)		45 spaces		
Bicycle Parking Spaces (number)		161 spaces		
New Landscape Square Footage (WELO see pg. 11)	n/a		n/a	n/a
Setback Slope (for hillside properties only)			n/a	n/a
Structure Slope (for hillside properties only)			n/a	n/a

### **Definitions For Table 4 on Page 3**

**"Building Height"** means the vertical distance measured from any point on top of the facility to a line directly below which meets finished grade on the outside perimeter of the facility, or intersects with a perpendicular plane connecting opposite points of finished grade at the outside perimeter of the facility.

**"Floor Area"** for all projects with one or two dwelling units on a lot means the total square footage of all levels of all buildings on the lot, measured horizontally from the outside surface of exterior walls and supporting columns, but excluding: (a) unenclosed living areas such as balconies, decks, and porches; (b) carports that are unenclosed on two or more sides; (c) 440 square feet within an attached or detached garage or carport that is enclosed on three sides or more; (d) non-habitable accessory structures of less than 120 square feet; (e) unfinished understories, attics and basements; and (f) finished basements if the height from finished grade at the exterior perimeter of the building to the finish floor elevation above is six (6) feet or less for at least 50% of the perimeter and does not exceed twelve (12) feet above grade at any point. For new floor area, only include new floor area located outside of the existing building envelope.

**"Floor Area"** for all projects except those with one or two dwelling units on a lot means the total of the gross horizontal areas of all floors, including usable basements and cellars, below the roof and within the outer surfaces of the main walls of principal or accessory buildings, or the center line of party walls separating such buildings, but excluding: (a) areas used for off-street parking spaces, loading berths, driveways, and maneuvering aisles; (b) areas which qualify as usable open space in Chapter 17.126; and (c) arcades, porticoes, and similar open areas which are located at or near street level of Nonresidential Facilities, are accessible to the general public, and are not designed or used as sales, display, storage, or production areas. For new floor area, only include new floor area located outside of the existing building envelope.

**"Footprint"** means the total land area covered by all structures on a lot, measured from outside of all exterior walls and supporting columns, including residences, garages, covered carports, and accessory structures, except that the following shall not be considered in determining footprint:

1. The portions of any uncovered and unenclosed decks, porches, landings, or patios, not including railings, which are less than thirty (30) inches above finished grade;
2. The portions of any uncovered and unenclosed balconies and stairways, including railings, which are less than six (6) feet above finished grade;
3. Eaves and roof overhangs; and
4. Trellises and similar structures which do not have solid roofs and which would not otherwise be included in this definition.

**"Market-Rate/Unrestricted Dwelling Units"** are residential units for which the rent/price is set by the real estate market and not limited to certain household incomes.

**"Restricted Dwelling Units"** are residential units for which the rent/price is legally restricted to households earning a certain income expressed as a percentage of the Area Median Income or AMI. For more information, visit the Housing and Community Development Department's website at <https://www.oaklandca.gov/services/housing-index-a-z/housing-policies-plans-and-data/rent-and-income-limits-for-affordable-housing>

**"Setback Slope"** means the slope between edge of pavement and the front setback line, at the midpoint and perpendicular to the front property line.

**"Structure Slope"** means the steepest slope across building footprint measured from one side of the building to another.

## **5. IMPERVIOUS SURFACE INFORMATION**

### **PROJECT CHARACTERISTICS: (check one)**

- (1) The project will create or replace 10,000 square feet or more of new or existing impervious surface area\* (not including projects involving one single-family dwelling).
- (2) The project will create or replace 5,000 square feet or more but less than 10,000 square feet of new or existing impervious surface area\* AND involves the following:
- Auto servicing, auto repair, or gas station;
  - Restaurant (full service, limited service, or fast-food); or
  - Uncovered parking (stand-alone parking lot or parking serving an activity; including uncovered parking garages).
- If you checked (1) or (2) the project is considered a "Regulated Project" and must comply with NPDES C.3 stormwater requirements. You must submit a completed Stormwater Supplemental Form and a Preliminary Post-Construction Stormwater Management Plan with your application (see page 12).
- (3) The project will create or replace 2,500 square feet or more but less than 5,000 square feet of new or existing impervious surface (including projects involving one single-family dwelling), unless the project meets the definition of (1) or (2) above.
- If you checked (3) site design measures to retain stormwater on-site are required. Refer to the City's "Overview of Provision C.3" for more information. <https://www.oaklandca.gov/documents/overview-of-provision-c-3-requirements-for-stormwater-management>
- (4) None of the above.

\* *Impervious Surface = Any surface that cannot be effectively (easily) penetrated by water. Permeable paving (such as permeable concrete and interlocking pavers) underlain with permeable soil or permeable storage material, and green roofs with a minimum of three inches of planting media, are not considered impervious surfaces. Do not include existing impervious surface to be replaced as part of routine maintenance/repair activities when calculating the amount of new/replaced impervious surface.*

## 6. TREE PRESERVATION ORDINANCE

Pursuant to the Tree Preservation Ordinance (§12.36 O.M.C.) a Tree Preservation/Removal Permit is required for any proposed construction activity (including buildings, driveways, paths, decks, construction vehicle routes, sidewalk improvements, & perimeter grading) within 10 feet of a Protected Tree, even if such trees are not being removed or if they are located on a neighbor's property.

### The following are Protected Trees:

- a. Any Coast Live Oak tree that is larger than 4 inches dbh\*
- b. Any tree (except Eucalyptus) that is larger than 9 inches dbh\* (Eucalyptus trees and up to 5 Monterey Pines per acre are not considered Protected Trees under this section. Monterey Pines must be inspected and verified by the Public Works Agency – Tree Division prior to their removal. Contact the Tree Division at (510) 615-5934 for more information or to schedule an inspection).
- c. Any tree of any size located in the public right-of-way (including street trees).

### I ATTEST THAT: (check one)

- (1) There are no existing Protected Trees anywhere on the subject property or within 10 feet of the proposed construction activities\*\* (including neighbor's properties or the adjacent public right-of-way).
- (2) There are Protected Trees on the subject property or within 10 feet of the proposed construction activities\*\*, and their location is indicated on the site plan and landscape plan **and** (check one);
- (a) No Protected Trees are to be removed and No construction activity\*\* will occur within 10 feet of any Protected Tree.
- (b) No Protected Trees are to be removed and Construction activity\*\* will occur within 10 feet of any Protected Tree.
- (c) Protected Trees will be removed.

If you checked (2b) or (2c), a Tree Preservation/Removal Permit is required. Please complete the section below.

DESCRIPTION OF TREES (Identification numbers and letters must be consistent with the Tree Survey, see submittal requirements in Section 8)

Trees proposed for removal			Trees not proposed for removal but located within 10 feet of Construction Activity**		
#	Species	dbh*	#	Species	dbh*
1	#266 - Hopseed Bush	10	A	#274 - London plane	11
2	#268 - African Fern Pine	17	B	#275 - London plane	9
3			C	#276 - London plane	11
4			D	#277 - London plane	7
5			E	#278 - London plane	18
6			F		
7			G		

Reason for removal/impacting of trees: Within proposed new building footprint

\* dbh: "diameter at breast height" is determined by measuring the trunk at 4'-6" from the ground. Multi-trunked trees are measured by combining the diameters of all trunks at 4'-6" from the ground.

\*\* Construction Activity: Any proposed building, driveway, path, deck, construction vehicle route, sidewalk improvement, grading, or demolition.

## 7. CREEK PROTECTION ORDINANCE

Pursuant to the Creek Protection, Storm Water Management and Discharge Control Ordinance (§13.16 O.M.C.) a Creek Protection Permit is required for any proposed construction activity occurring on a Creekside property. The extent to which your development will be regulated by the Creek Protection Ordinance depends upon the location and type of proposed work.

### WHAT IS A CREEK?

*"A Creek is a watercourse that is a naturally occurring swale or depression, or engineered channel that carries fresh or estuarine water either seasonally or year around."*

A creek must include the following two components:

1. The channel is part of a contiguous waterway. It is hydrologically connected to a waterway above or below the site or is connected to lakes, the estuary, or Bay. Creek headwaters, found at the top of watersheds, are connected in the downhill direction. Additionally, creeks in Oakland are often connected through underground culverts. Only the open sections of creeks are subject to the permit, and
2. There is a creek bed, bank and topography such as a u-shape, v-shape channel, ditch or waterway (identified through field investigation, topographical maps, and aerial photos). To help with identification in the field a creek may also have the following features (the absence of these features does NOT mean there is no creek):
  - A riparian corridor, which is a line of denser vegetation flowing downhill. This is sometimes missing due to landscaping or vegetation removal practices, landslide or fire.
  - The channel has a bed with material that differs from the surrounding material (i.e. more rocky, or gravelly, little or no vegetation).
  - There are man-made structures common to waterways, - for example bank retaining walls, trash racks, culverts, inlets, rip rap, etc.

### I ATTEST THAT: (check one)

- (1) **I do not know if there is a Creek on or near the proposed project site.** I have submitted a request for a Creek Determination by the City of Oakland (separate form and fee required).
- (2) **No Creek exists on or near the project site;** (check one)
- (a) Based on my review of the characteristics of the project site, as well as all relevant maps and plans, and the Creek Determination criteria provided in the "What is a Creek?" section above; or
- (b) Based on the attached report prepared by a relevant licensed professional.
- However, if the City determines that a Creek exists on or near the project site, a Creek Protection Permit is required.*
- (3) **A Creek DOES exist on or near the project site and;** (check one)
- (a) The proposed project only entails interior construction and/or alterations (including remodeling), and therefore requires a **Category 1 Creek Permit** (this is a no fee permit and only requires distribution of educational materials); or
- (b) The proposed project entails exterior work that does not include earthwork and is located more than 100 feet from the centerline of the Creek, and therefore requires a **Category 2 Creek Permit** (this permit requires a site plan and distribution of educational materials); or
- (c) The proposed project entails (a) exterior work that is located between 20 feet from the top of the Creek bank and 100 feet from the centerline of the Creek, and/or (b) exterior work that includes earthwork involving more than three (3) cubic yards of material located beyond 20 feet from the top of the Creek bank, and therefore requires a **Category 3 Creek Permit** (this permit requires a site plan and creek protection plan and may require environmental review); or
- (d) The project entails exterior work conducted from the centerline of the Creek to within 20 feet from the top of the Creek bank, and therefore requires a **Category 4 Creek Permit** (this permit requires a site plan and creek protection plan and may require environmental review and a hydrology report).

*The Creek Permit requirements for your project are subject to verification by the City of Oakland and may differ from what you have indicated above. Additionally, you are responsible for contacting and obtaining all required permits from the relevant state and federal permitting agencies for Category 3 and Category 4 Creek Permits.*

## 8. HAZARDOUS WASTE AND SUBSTANCES STATEMENT

**STATE GOVERNMENT CODE SECTION 65962.5 (f):** Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list.

Please refer to the following State-maintained websites:

<https://calepa.ca.gov/SiteCleanup/CorteseList/http://geotracker.waterboards.ca.gov/>

or contact the CalEPA at (916) 323-2514 to determine if your project is on any list of properties containing hazardous waste, toxic substances or underground fuel tanks. **NOTE: YOU MUST REVIEW ALL LISTS**

I have reviewed ALL the lists and my site does **not** appear on them (sign below). **City Verification Required**  
My site does appear on the list(s) (please complete the flowing statement and sign below).

### HAZARDOUS WASTE AND SUBSTANCES STATEMENT

Name of applicant: \_\_\_\_\_

Applicant's address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Address of site on list: \_\_\_\_\_

Local agency (city/county): \_\_\_\_\_

Specify any list pursuant to Section 65962.5 of the Government Code: \_\_\_\_\_

Regulatory identification number: \_\_\_\_\_

Date of list: \_\_\_\_\_

Status of regulatory action: \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Owner or Authorized Agent

9/8/18  
\_\_\_\_\_  
Date

## 9. RECYCLING SPACE REQUIREMENTS

Applicants are required to provide sufficient space for the storage and collection of recyclable materials to comply with Ordinance No. 11807 – Recycling Space Allocation Requirements. This space should be in addition to that provided for garbage service.

Affected projects:

1. New multifamily buildings in excess of five (5) units
2. New commercial and industrial projects that require a building permit
3. New public facilities
4. Additions and alternations for a single or multiple permits that add 30% or more to the gross floor area

Requirements:

For residential projects, two (2) cubic feet of storage per unit, with a minimum requirement of not less than ten (10) cubic feet. Additionally, Oakland Municipal Code Section 8.28.140 requires the provision of 32 gallons or 4.3 cubic feet of storage per unit for garbage. For affected commercial, industrial and public facility project, two (2) cubic feet of storage and collection space per each one thousand (1,000) square feet of the total gross building footage, with a minimum requirement not less than ten (10) cubic feet. For these projects, the space for storage and collection of garbage varies based on the type and operation of the facility. Space for storage of recyclables should be separated into the following categories: paper and cardboard (mixed together); plastic bottles, glass bottles and metal cans (mixed together); and organics/plant material.

## 10. GREEN BUILDING ORDINANCE

If GreenPoint Rater is required, this sheet must be filled in and signed by the GreenPoint Rater along with the checklist and is due at the Intake appointment or over the counter approval, the submittal will not be accepted if this is not complete at intake and the applicant will need to come back for another appointment.

If there is an addition and/or remodel that total over 1,000 square feet, the project is over 1,000 square feet, or there is a new unit; a GreenPoint Rater is required. Please read the guidelines from the code as listed below.

Pursuant to the Ordinance 'Sustainable Green Building Requirements for Private Development,' (Chapter 18.02 of the Oakland Municipal Code), a Green Building Permit is required for any proposed construction activity within certain categories. The extent to which your development will be regulated by the Green Building Ordinance depends upon the location, type of proposed work, and size of proposed work.

A. PROPERTY ADDRESS: 88 Grand Avenue

B. PROJECT TYPE OF DEVELOPMENT (check one):  New Construction  New Construction-Mixed Use  Addition  
 Existing Building  Tenant Improvement  Remodel  
 Historic  Landscape Project

C. TOTAL NEW AND ALTERED FLOOR AREA (square feet): \_\_\_\_\_

I, THE APPLICANT/OWNER, ATTEST THAT: (check one)

- (1) I have reviewed the Green Building Ordinance and the project **DOES NOT** fall within the list of applicable project types.
- (2) I have reviewed the Green Building Ordinance and the project **MUST** comply with the ordinance, AND I'm submitting the required additional green building materials with this application.
- (3) I have reviewed the Green Building Ordinance and the project must comply with the ordinance, AND I'm submitting the required additional green building materials with this application, but a GreenPoint Rater or LEED AP is not required as the project uses the Small Commercial Checklist or the Bay Friendly Basic Checklist.

D. Name of Greepoint Rater (required for Greenpoint Rated Projects)\*: \_\_\_\_\_

Name of LEED Accredited Professional (AP)(required for LEED projects) \* Lily Ciammaichella

MAILING ADDRESS: 1814 Franklin Suite 400

PHONE: (510)272-2910 E-MAIL: lciammaichella@ktgy.com

RATING SYSTEM: LEED V4.0 # OF POINTS THE PROJECT IS ANTICIPATED TO RECEIVE: 50

E. GREEN BUILDING FEATURES NOT SHOWN ON PLANS BUT PART OF CHECKLIST (include additional sheets if needed): \_\_\_\_\_

I, hereby certify under the penalty of perjury that I have reviewed the project and appropriate checklist and attest that to the best of my knowledge the proposed project would likely comply with the City of Oakland's Green Building Ordinance and attain green building certification. I, hereby further certify under the penalty of perjury, that I: 1) have no vested financial interest in the project other than my green building services, 2) have reviewed the project and appropriate green building checklist, and 3) attest that to the best of my knowledge the proposed project would likely comply with City of Oakland's Green Building Ordinance and attain green building certification.

X Lily Ciammaichella  
Signature of the GreenPoint Rater or LEED Accredited Professional

10/8/2010  
Date

This permit is issued pursuant to all provisions of City of Oakland Ordinance No. 13040 C.M.S., "Sustainable Green Building Requirements for Private Development." This permit is granted upon the express condition that the permittee shall be responsible for all claims and liabilities arising out of work performed under this permit or arising out of permittee's failure to perform the obligations with respect to this permit. The permittee shall, and by acceptance of this permit agrees to defend, indemnify, save and hold harmless the City, its officers and employees, from and against any and all suits, claims or actions brought by any reason for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under this permit or in consequence of permittee's failure to perform the obligations with respect to this permit. Violations of the provisions of the Green Building Ordinance are subject to fines and penalties specified under Section 20-3.030 of the Ordinance.

TO BE COMPLETED BY CITY STAFF:

CASE NUMBER(S): \_\_\_\_\_ CASE PLANNER'S NAME: \_\_\_\_\_

Note to Case Planner: Please route a copy of this form to the green building coordinator in the Planning and Zoning Division.



## 12. SUBMITTAL REQUIREMENTS: WHAT TO SUBMIT

The following information and drawings must be included in the submittal package for your application. Planning staff reserves the right to require additional plans and information as needed for certain development proposals.

**The following items are required for ALL applications unless otherwise noted.**

**Each and every item is required at the time of application submittal.**

**APPLICATIONS WITH MISSING ITEMS WILL NOT BE ACCEPTED.**

**All fees are due at the time of application submittal.**

(1) **Basic Application for Development Review**

This application form signed and completed (including impervious surface, protected tree, creek information, the Hazardous Waste and Substances Statement, and green building sections). Original signatures or clear & legible copies are required.

(2) **Supplemental Forms and Findings**

Explanation describing how the proposal complies with City requirements (forms provided by staff).

DRX, DS, DR, or SP supplemental findings.

CUP and/or Variance supplemental findings.

TPM/TTM supplemental findings.

Other extra CUP or DR findings, such as alcohol, ground floor use, extra units, telecom (mini, micro, macro), etc.

Specific Plans Design Guidelines Checklist (Broadway Valdez District, Central Estuary, Lake Merritt Station, or West Oakland).

Affordable Housing Density Bonus Requirements and Checklist.

(3) **Assessor's Parcel Map**

Available at the City of Oakland Engineering Services or Zoning counters, the County Assessor's Office, 1221 Oak St. or the County Assessor's website at <http://acgov.org/MS/prop/index.aspx>

(4) **Photographs** (Photographs placed in a secure envelope or mounted on a board folded to a size no larger than 9" x 12")

Color photographs showing the existing structure or lot as seen from across the street and from the front, side and rear property lines. Label each photograph with the view pictured (e.g., front, side, rear, across the street).

Color photographs showing the 20 nearest neighbors from the street (5 nearest lots on either side, 10 nearest lots across the street). Label each photograph with the address pictured.

(5) **Plans** (see supplemental requirements for all Tentative Parcel Map (TPM), Tentative Tract Map (TTM), Parcel Map Waiver (PMW) applications).

• **Two (2)** stapled and folded sets of full-sized plans and **Two (2)** additional sets of reduced plans (11" x 17") are required for all applications. For Major Permits, a color 11"x17" rendering **MUST** be submitted.

• For all projects that will require a presentation before a Board or Commission you will be required to provide **fifteen (15) color** sets of your final plans sized at 11"x17" at least **three weeks** before your scheduled hearing date or as directed by Planning staff.

• Fold plans to 9" x 12" maximum size. Plans must be on sheets no greater than 24" x 36".

• Include north arrow, date prepared and scale.

• Acceptable drawing scales are: 1/4" = 1', 3/16" = 1', 1/8" = 1', and 1" = 10'. Other scales may be appropriate, but should be discussed with Planning staff before filing. Also, please limit the range of scales used, so Planning staff can more easily analyze your project in relation to adjacent properties.

• Include the name and phone number of person preparing the plan(s). As appropriate or required, include the stamp and "wet signature" of any licensed architect, landscape architect, surveyor and/or civil engineer preparing final plans.

• Show all encroachments over the public Right-of-Way.

• All submittals are required to provide an electronic submission of the all required submittal items at time of intake. Plan sets will have two copies submitted, one (1) low resolution and one (1) high resolution in .PDF format. Each item will be scanned separately and clearly identified. For each revision of the project, the applicant will be required to submit both a paper and electronic submittal of all the material being revised as directed by Planning staff.

(a) **Survey** (required only for the following project types listed below)

• Must be no more than 3 years old from the time of submittal – date of survey must be included.

• Must be prepared by a California State licensed Land Surveyor or by a Civil Engineer with a license number below 33966 (licensed prior to January 1, 1982).

• **Include the wet stamp and signature** of the Land Surveyor or Civil Engineer who prepared the survey.

• Include the applicable surveyor's statement in accordance with the Professional Land Surveyors Act.

• In addition to paper copies, the survey must also be submitted on a CD.

Required for all new buildings, including Secondary Units Type 2 and >100% footprint additions to existing buildings (except small non-habitable buildings):

- Full boundary & topographic survey with field-verifiable monuments set or found by the surveyor.
- Location, dimensions, and dimensions to property lines of all existing buildings and similar structures.

Required for any building or addition within any required setback:

- Applicable line survey with field-verifiable monuments set or found by the surveyor.
- Location, dimensions, & dimensions to property line of existing buildings & similar structures adjacent to relevant property line.

Required for any building or addition located on a lot with a slope of 20% or more:

- Site topography for all areas of proposed work and for all existing driveways, buildings, and similar structures.
- Location and dimensions for all existing driveways, buildings, and similar structures.

- (b) **Site Plan**
  - Location and dimensions of all property boundaries.
  - Location and dimensions of all existing and proposed buildings, decks, stairs, and patios.
  - Dimensions of all existing and proposed building setbacks from property lines.
  - Location of building footprints and approximate height of buildings on adjacent lots.
  - Location, dimensions, and paving materials of all adjacent sidewalks, curbs, curb-cuts (including curb-cuts on adjacent neighbor's lots), and streets.
  - Location and dimension of all existing and proposed driveways, garages, carports, vehicle parking spaces, bicycle parking spaces, maneuvering aisles, wheel-stops, pavement striping/markings, and directional signage. Indicate existing and proposed paving materials.
  - Location, height, and building materials of all existing and proposed fencing and walls.
  - Location, height (including top and bottom elevation measurements), and building materials of all existing and proposed retaining walls.
  - Location and size (dbh) of all existing trees and indication of any trees to be removed, include trees on neighboring properties that are within 10 feet of construction.
  - Location of drainage ways, creeks, and wetlands (check with the Engineering Services Division for this information)
  - Roof plan showing roof slope and direction, and location of mechanical equipment, ducts, and vents.
  - For projects located on a lot with a slope of 20% or more: Show existing and proposed topographic contours overlaid with proposed roof plan and indicating roof ridge spot elevations.
  - For multi-family residential projects: Show the location, dimension, slope, and site area of all existing and proposed Group Usable Open Space and Private Usable Open Space, including a summary table of site area.
  - For projects in all Residential, Commercial, and Industrial Zones, including the CIX-1A Zone, show any building to be demolished both historic and non-historic.
  - Location and size of storage area for recycling containers (see page 7 for more information).
- (c) **Landscape Plan** (required for new buildings, new dwellings, and residential additions of more than 500 sq. ft.)
  - Indicate any existing landscaping and new landscaping.
  - Indicate the size, species, location, and method of irrigation for all plantings.
  - Include the square footage of new landscaping, if over 500 square feet or over 2,500 square feet of new landscaping please provide all requirements per the Water Efficiency Landscape Ordinance (WELO), visit <https://water.ca.gov/LegacyFiles/wateruseefficiency/docs/MWELQ09-10-09.pdf>
  - Include all existing and proposed groundcovers, driveways, walkways, patios, and other surface treatments.
- (d) **Floor Plan**
  - Include complete floor plan of all floors of entire building, including existing and proposed work.
  - Label all rooms (e.g., bedroom, kitchen, bathroom), and include dimensions of room sizes.
  - Show the location of all existing and proposed doors, windows, and walls.
  - Location of and distance to all adjacent property boundaries.
  - For non-residential projects: show all existing and proposed seating areas, mechanical/kitchen equipment, and/or other major functional components of the proposed project.
- (e) **Elevations** (required only for new construction, additions, or exterior alterations)
  - Show all structure elevations (front, sides and rear) that will be affected by the proposed project.
  - For additions/alterations: label existing and new construction, as well as items to be removed.
  - Identify all existing and proposed exterior materials - including roofing, roof eaves, eave brackets, siding, doors, trim, sills, windows, fences, and railings. Show details of proposed new exterior elements.
  - Show any exterior mechanical, duct work, and/or utility boxes.
  - Include dimensions for building height and wall length.
- (f) **Cross Sections** (required only for buildings or additions located on a lot with a slope of 20% or more)
  - Include all critical cross sections, including at least one passing through the tallest portion of the building.
  - Include floor plate and roof plate elevation heights.
  - Location of and distance to all adjacent property boundaries.
  - Label the location of the cross-sections on the site plan.

- (g) **Tree Survey** (required only for projects which involve a Tree Preservation/Removal Permit [see page 5])
  - Three (3) folded full-sized plans are required (in addition to the plans required under No. 5 above).
  - Fold plans to 9" x 12" maximum size. Plans must be on sheets no greater than 24" x 36".
  - Include north arrow, date prepared and scale (Tree Survey should be drawn to the same scale as the Site Plan).
  - Include the name & phone number of person preparing the plan(s). As appropriate or required, include the stamp & "wet signature" of any licensed architect, landscape architect, surveyor and/or civil engineer preparing final plans.
  - For new construction on an undeveloped lot, include the stamp and "wet signature" of the licensed architect, landscape architect and/or civil engineer preparing the survey.
  - Indicate the size (dbh), species, and location of all protected trees within 30 feet of development activity on the subject lot, regardless of whether or not the protected trees are included on any tree preservation/removal permit application.
  - Label all protected trees that are located within 10 feet of construction (including trees located on neighbor's properties or the adjacent public right-of-way) with the matching number or letter from the Tree Preservation/Removal Permit application (see section 6 of this application).
- (h) **Shadow Study (for DS-III projects and other two-story DR projects for one- and two-units)**
  - Include a roof plan of proposed house/addition with adjacent homes and show the shadows at different times of the day as shown in the Design Review Manual for One- and Two-Unit Residences on page 2.1 and 2.2.
- (i) **Grading Plan** (required only if the project proposes any site grading)
  - Show proposed grading plan and/or map showing existing and proposed topographic contours (this may be combined with the Site Plan for small projects with only minor grading).
  - Include an erosion & sedimentation control plan.
  - Include a summary table of all proposed excavation, fill, and off-haul volumes.

**The following are required only for non-residential, mixed-use, and/or multi-family residential projects.**

- (j) **Sign Plan** (required only for non-residential and mixed-use projects)
  - Include fully dimensioned color elevations for all proposed signs.
  - Indicate proposed sign location(s) on site plan
  - Indicate proposed material(s) and method of lighting for all proposed signs.
- (k) **Lighting Plan** (required only for non-residential, multi-family residential, and mixed-use projects)
  - Show the type and location of all proposed exterior lighting fixtures (this may be combined with the Site Plan for small projects).
- (l) **Materials & Color Board** (required only for non-residential, multi-family residential, and mixed-use projects involving new construction or an addition/alteration that does not match existing materials and colors).
  - Limit board(s) to a maximum size of 9" x 12". Large projects (generally more than 25 dwelling units or 50,000 square feet of floor area) should also submit a large sized materials & color board (24" x 36") for use at public hearings.
  - Include samples of proposed exterior building materials and paint colors.
  - Include manufacturer's brochures as appropriate.
- (m) **Three-dimensional Exhibits** (required only for large projects with more than 25 dwelling units or 50,000 square feet of floor area).
  - Provide color perspective drawings showing the project from all major public vantage points, or provide a scale model of the proposed project.
- (6) **Preliminary Post-Construction Stormwater Management Plan\*** (required only for "Regulated Projects" subject to NPDES C.3 stormwater requirements [see page 4 for more information])
  - Show location and size of new and replaced impervious surface.
  - Show directional surface flow of stormwater runoff.
  - Show location of proposed on-site storm drain lines.
  - Show preliminary type and location of proposed site design measures, source control measures, and stormwater treatment measures.
  - Show preliminary type and location of proposed hydromodification management measures (if applicable).

\* Please refer to the Stormwater Supplemental Form for more information concerning NPDES C.3 requirements. The Stormwater Supplemental Form must also be submitted with the application.
- (7) **Preliminary Title Report or deed not more than 60 days old** (required for all Tentative Parcel Map (TPM), Tentative Tract Map (TTM), Parcel Map Waiver (PMW), Rezoning, and General Plan Amendment applications, and any application where the owner information does not match the current Alameda County Assessor's records)
- (8) **Fees** (all fees are due at the time of application submittal)
  - Additional fees may be required if the project changes or based on staff's environmental determination.

- (9) **Additional Telecom Information Required** (See full requirements in Chapter 17.128 in the Oakland Planning Code)
  - For the whole parcel, indicate the total number of existing and proposed antennas and equipment cabinets, their location, and the carriers they serve (please include all wireless carriers). Also indicate area, height, and width of all equipment cabinets and antennas (existing and proposed).
  - Additional Telecom CUP & DR findings for either: Mini, Micro, Macro, Monopole, or Tower (See definitions in 17.10.860).
  - Include Radio Frequency emissions report (RF), see Section 17.128.130 for requirements.
  - If a revision, please include previous approved case number if applicable and can be obtained.
  - If swapping out & replacing existing antennas, include existing & proposed heights of antennas (per Federal Section 6409).

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**For any questions regarding this application, visit the Zoning Counter or call the Zoning Information Line:**

**Zoning Counter:**

250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor Oakland CA 94612  
Mon, Tues, Thurs & Friday: 9am-Noon & 2pm-4pm  
Wednesday 9:30am-Noon & 2pm-4pm

**Zoning Information Line:**

(510) 238-3911  
Mon, Tues, Thurs & Friday: 9am-Noon & 2pm-4pm  
Wednesday 9:30am-Noon & 2pm-4pm

To obtain an electronic PDF fillable copy of this form please visit  
<https://www.oaklandca.gov/documents/development-review-basic-application>

# EXHIBIT E



**California Emissions Estimator Model®**  
Appendix D  
Default Data Tables

Prepared for:  
**California Air Pollution Control Officers Association  
(CAPCOA)**

Prepared by:  
**BREEZE Software, A Division of Trinity Consultants  
Dallas, Texas  
in collaboration with  
South Coast Air Quality Management District and the  
California Air Districts**

Date:  
**September 2016**

Table 3.5 OFFROAD Emission Factor Based on Engine Tier

Tier	Low HP	High HP	CO, g/bhp-hr	NOx, g/bhp-hr	PM10, g/bhp-hr	PM2.5, g/bhp-hr	ROG, g/bhp-hr
Tier 1	25	49	4.1	5.26	0.48	0.48	1.74
	50	74	6.9	6.54	0.552	0.552	1.19
	75	119	6.9	6.54	0.552	0.552	1.19
	120	174	6.9	6.54	0.274	0.274	0.82
	175	299	6.9	5.93	0.108	0.108	0.38
	300	599	6.9	5.93	0.108	0.108	0.38
	600	750	6.9	5.93	0.108	0.108	0.38
Tier 2	25	49	4.1	4.63	0.28	0.28	0.29
	50	74	3.7	4.75	0.192	0.192	0.23
	75	119	3.7	4.75	0.192	0.192	0.23
	120	174	3.7	4.17	0.128	0.128	0.19
	175	299	2.6	4.15	0.088	0.088	0.12
	300	599	2.6	3.79	0.088	0.088	0.12
	600	750	2.6	3.79	0.088	0.088	0.12
Tier 3	25	49	4.1	4.63	0.28	0.28	0.29
	50	74	3.7	2.74	0.192	0.192	0.12
	75	119	3.7	2.74	0.192	0.192	0.12
	120	174	3.7	2.32	0.112	0.112	0.12
	175	299	2.6	2.32	0.088	0.088	0.12
	300	599	2.6	2.32	0.088	0.088	0.12
	600	750	2.6	2.32	0.088	0.088	0.12
Tier 4 Interim	25	49	4.1	4.55	0.128	0.128	0.12
	50	74	3.7	2.74	0.112	0.112	0.12
	75	119	3.7	2.14	0.008	0.008	0.11
	120	174	3.7	2.15	0.008	0.008	0.06
	175	299	2.6	1.29	0.008	0.008	0.08
	300	599	2.6	1.29	0.008	0.008	0.08
	600	750	2.6	1.29	0.008	0.008	0.08
Tier 4 Final	25	49	4.1	2.75	0.008	0.008	0.12
	50	74	3.7	2.74	0.008	0.008	0.12
	75	119	3.7	0.26	0.008	0.008	0.06
	120	174	3.7	0.26	0.008	0.008	0.06
	175	299	2.2	0.26	0.008	0.008	0.06
	300	599	2.2	0.26	0.008	0.008	0.06
	600	750	2.2	0.26	0.008	0.008	0.06
	751	2000	2.6	2.24	0.016	0.016	0.06

**Source:**

ARB. 2011. The Carl Moyer Program Guidelines. Available at:

[http://www.arb.ca.gov/msprog/moyer/guidelines/2011gl/2011cmpgl\\_3\\_27\\_13.pdf](http://www.arb.ca.gov/msprog/moyer/guidelines/2011gl/2011cmpgl_3_27_13.pdf)