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April 29, 2016

VIA EMAIL AND OVERNIGHT MAIL

Oakland Community and Economic Development Agency
Planning and Zoning Division
Attn: Peterson Vollmann, Planner III
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612
Email: pvollmann@oaklandnet.com

City Clerk
City of Oakland
One Frank H. Ogawa Plaza
Oakland, CA 94612
Email: cityclerk@oaklandnet.com

Re: **2400 Valdez Street Project (PLN15-336) Appeal to Oakland City Council**

Dear Mr. Vollmann and City Clerk:

We write on behalf of **Oakland Residents for Responsible Development** to appeal the Oakland Planning Commission's April 20, 2016 decision to approve and adopt the CEQA findings for the 2400 Valdez Project ("Project"). The Project is proposed on a 1.1-acre site in the western portion of the city of Oakland, generally bounded by 26th Street immediately to the north, Valdez Street to the west, 24th Street to the south, and an automotive business as well as parking lots to the east.

This appeal letter demonstrates that the Commission's decision was not supported by the evidence in the record. Furthermore this appeal letter raises each and every issue that is contested, and includes all arguments and evidence in the record previously presented to the Planning Commission as required by Section

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17.134.070 of the Oakland Planning Code. We previously filed comments on the Project on April 19, 2016.¹

We reviewed the April 20, 2016 letter from the City's consultant, ICF International,² as well as the April 20 letter from the Applicant,³ with the help of experts Matt Hagemann and Jessie Jaeger. Their attached technical comments are submitted as support for this appeal letter.⁴

I. THE CITY MAY NOT RELY ON CEQA EXEMPTIONS OR AN ADDENDUM FOR PROJECT APPROVAL

The Commission relied on three CEQA provisions to approve the Project without an Environmental Impact Report ("EIR"). Those provisions include the Community Plan Exemption,⁵ Qualified Infill Exemption,⁶ and Addendum to the Broadway Valdez District Specific Plan ("BVDSP").⁷ Each of the exemptions apply only when a Project does not have impacts peculiar to the proposed project that are new or more significant than previously analyzed or can be substantially mitigated by uniformly applicable development policies or standards. The Project fails to meet these requirements because, as explained in our April 19 comments, the Project's greenhouse gas ("GHG") impacts are highly significant and the City has failed to incorporate the Standard Conditions of Approval ("SCAs") that would apply to those impacts under the BVDSP. Thus, the impact is not mitigated at all, and is more significant than previously analyzed under the BVDSP, which assumed that significant GHG impacts would be mitigated.

In addition, the City failed to quantify the health risk impacts during construction. Because the BVDSP did not quantify project-level health risks, as

¹ See Letter and Attachments from Laura Horton to the Oakland Planning Commission and Peterson Vollman re: Comments on the Addendum for the 2400 Valdez Street Project (PLN15-336), April 19, 2016, **Attachment A**.

² See Letter from ICF International to Peterson Z. Vollmann re: 2400 Valdez Project – Response to Comment Letter from Adams Broadwell Joseph & Cardozo, April 20, 2016 (hereinafter, "Consultant Letter"), **Attachment B**.

³ See Letter from Jennifer Renk to Chairman Jim Moore and Members of the Planning Commission re: 2400 Valdez—PLN15-336, April 20, 2016, **Attachment C**.

⁴ See Letter from Matt Hagemann and Jessie Jaeger, SWAPE, to Laura Horton re: Response to Comments on the 2400 Valdez Street Project, April 27, 2016 (hereinafter, "SWAPE Letter"), **Attachment D**.

⁵ CEQA Guidelines Section 15183.

⁶ CEQA Guidelines Section 15183.3.

⁷ CEQA Guidelines Section 15164.

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explained in our previous letter, the absence of any previous project-specific analysis undermines the City's determination that SCAs would mitigate the impact.

Finally, as explained in our previous comments, the City failed to adequately analyze and substantially mitigate the hazardous conditions on the Project site that may impact to worker and public health.

Moreover, as we explained in detail in our comments, the City may not rely on an addendum for Project approval. CEQA allows addendums 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."⁸ In any case, however, the decision must be supported by substantial evidence. Here, the City's decision to prepare an addendum, rather than a subsequent or supplemental EIR for the Project is not supported by substantial evidence. We previously noted that the City's CEQA Analysis did not simply provide "some changes or additions" to the EIR; rather, it included over 2,000 pages of analysis for a large development project that was not specifically analyzed in the BVDSP. Furthermore, the Project will have new or more severe significant impacts than previously analyzed in the BVDSP EIR.

Therefore, our previous comments and this appeal letter demonstrate that the City may not rely on exemptions or an addendum for Project approval.

II. THE CITY'S RESPONSE STILL FAILS TO ADEQUATELY ANALYZE PROJECT-SPECIFIC GREENHOUSE GAS EMISSIONS AND INCORPORATE CONDITIONS AND MEASURES IDENTIFIED IN THE BROADWAY VALDEZ DISTRICT SPECIFIC PLAN

We previously commented that the City fails to provide support for its conclusion that the Project would have a less than significant GHG impact, and therefore no SCAs are necessary. We demonstrated that the City's GHG analysis was flawed because it failed to include certain demolition material in its model, and it ignored Applicant-provided data on energy use, substantially underestimating the Project's GHG impact.

⁸ *Id.*

The City's consultant responded by clarifying that the Project "would require excavation of only up to 42,000 cubic yards (cy) of material."⁹ However, the consultant fails to address the discrepancy noted by SWAPE between the energy and natural gas usage values used within the two air models provided with the Project's CEQA Analysis. As a result, SWAPE concludes that "the air pollution model prepared in the GHG analysis is still inaccurate and cannot be relied upon to determine Project significance."¹⁰

SWAPE conducted an updated analysis, taking into account the consultant's clarification regarding the excavation of material. After correcting the excavation inputs and providing a more detailed explanation of the City's flawed energy use inputs, SWAPE still finds that the GHG emissions will exceed both of the applicable numerical thresholds for GHG significance (see tables below).¹¹ As such, a GHG Reduction Plan must be prepared under the SCAs identified in the BVDSP EIR.

Total Project Emissions		
Greenhouse Gas Emissions (MT CO₂e/Yr)		
Activity	CEQA Analysis	SWAPE Analysis
Construction	65	65
Operation	1,962	20,942
Total	2,027	21,007
Significance Threshold	1,100	1,100
Exceeds Threshold?	Yes	Yes

⁹ Consultant Letter, p. 4.

¹⁰ SWAPE Letter, p. 1.

¹¹ *Id.*, at 3 – 5.

Total Project Emissions		
Greenhouse Gas Emissions Per Service Population (MT CO₂e/SP/Yr)		
Activity	CEQA Analysis	SWAPE Analysis
Construction	65	65
Operation	1,962	20,942
Total	2,027	21,007
Service Population	466	466
Emissions Per Service Population	4.3	45.1
Significance Threshold	4.6	4.6
Exceeds Threshold?	No	Yes

The City's consultant states that the "emissions per service population estimate of 45.1 MT CO₂e/sp/year presented in the Adams Broadwell submittal are highly unusual for any kind of urban infill project."¹² However, SWAPE explains that "the reason the Project's GHG emissions are so high is not due to an error within our updated model. . . Rather, it is due to the Project-specific Energy Use and Natural Gas values provided within the CEQA Analysis."¹³ Therefore, SWAPE finds that unless the Applicant can provide new, Project-specific Energy Use and Natural Gas values that are different to the ones provided in the CEQA Analysis, "the emission estimates generated within [the] updated model are most representative of the Project's operational emissions."¹⁴

Contrary to the City's conclusions, substantial evidence shows that the Project will have a significant GHG impact. Therefore, the City should prepare a revised air pollution model for public review in an EIR in order to accurately assess the Project's GHG impact, and incorporate all feasible mitigation measures, including the City's SCAs, available to reduce those impacts to less than significant levels.

¹² Consultant Letter, p. 5.

¹³ SWAPE Letter, p. 5.

¹⁴ *Id.*, at 5.

III. THE CITY'S RESPONSE STILL FAILS TO QUANTIFY THE PROJECT-SPECIFIC HEALTH RISK

We previously commented that the City's CEQA Analysis completely fails to evaluate the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter ("DPM") emissions released during Project construction. We explained that SWAPE's analysis of the Project's construction health risk demonstrated that the Project would exceed local air district thresholds of significance, which was not identified or analyzed in the CEQA Analysis.

The City's consultant attempts to address our concerns on this matter, stating that a health risk screening was conducted for the Project and that the BVDSP EIR specifies that the construction health risks would be minimized through SCAs. However, as SWAPE explains, this justification is unsupported for several reasons.

First, the City's consultant still confuses the operational health risk assessment, which is included as Attachment E to the CEQA Analysis, with a construction health risk assessment, which was not conducted within the CEQA Analysis at all. SWAPE finds that the CEQA Analysis completely fails to assess the health risk impacts from construction-related DPM emissions. As we previously noted, the City's failure to quantify the risk associated with Project construction is inconsistent with guidance set forth by the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing recommendations for health risk assessments in California.¹⁵ OEHHA recommends that all short-term projects lasting longer than two months be evaluated for cancer risks to nearby sensitive receptors.¹⁶ SWAPE explains that "[t]his recommendation reflects the most recent health risk assessment policy, and as such, the health risk for Project construction should be quantified and evaluated against the numerical significance threshold established by the Bay Area Air Quality Management District ("BAAQMD").¹⁷

Second, the consultant's statement that "the construction health risks would be minimized" through SCAs fails to justify the omission of an actual health risk

¹⁵ "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

¹⁶ *Id.* at 8-18.

¹⁷ SWAPE Letter, p. 6.

assessment. Without it, the City not only fails to disclose all potential impacts associated with the Project, but also fails to provide substantial evidence to support its determination that SCAs would be effective in reducing emissions to below a level of significance. As a result, the Project's health risk assessment is incomplete, and should not be relied upon to determine Project significance.

Third, as we explained in our previous comments, the BVDSP did not address construction related exposures because "the specificity of detail necessary to conduct a health risk assessment [was] not available at the Specific Plan stage."¹⁸ The BVDSP EIR thus deferred the assessment of health risks from construction activities to the project level stage where project-specific impacts and mitigation measures could be determined. The City's consultant fails to provide support for its contention that "the BVDSP EIR does not require a stand-alone health risk assessment for construction-related impacts."¹⁹ Given the BVDSP's clear omission of project-specific health risk assessments, the City is required to conduct analysis of health risks on a project by project basis. Otherwise, the analysis would never be done, in violation of CEQA.

Therefore, the screening-level health risk assessment provided by SWAPE and discussed in our previous letter remains valid and its calculations undisputed by the City's consultant. The results of SWAPE's assessment demonstrate that construction-related DPM emissions may result in a potentially significant health risk impact.²⁰ As a result, a revised health risk assessment must be prepared and included in an EIR to examine the air quality impacts generated by Project construction using site-specific meteorology and specific equipment usage schedules.

IV. THE CITY'S RESPONSE STILL FAILS TO ADEQUATELY ANALYZE AND MITIGATE PROJECT-SPECIFIC HAZARDS

We previously commented that the City failed to adequately mitigate and analyze the hazardous conditions on the Project site. Specifically, we cited concerns that no regulatory agencies were engaged to provide oversight of the Phase I and Phase II ESAs, and therefore the conclusions reached in the CEQA Analysis are unreliable for decision-making. The City responded by stating that SCAs would be

¹⁸ BVDSP EIR, p. 4.2-27.

¹⁹ Consultant Letter, p. 3.

²⁰ SWAPE Letter, p. 7.

applied to the Project, per the requirements of the BVDSP, and that the impacts would be less than significant.

As explained by SWAPE, the City's SCAs fail to include provisions for the preparation of a soil management plan to govern safe handling of contaminated soils that have been documented at the Project site.²¹ SWAPE notes that the preparation of soil management plans "is routine to protect health of workers and the public and an EIR should be prepared to include requirements for such a plan, as mitigation."²²

The City's consultant states that soils will be excavated across the entire site to a depth of approximately 25 feet.²³ Furthermore, all soil to a depth of 25 feet will be excavated and properly disposed of offsite. The consultant then states that "the excavation and disposal of soil at the Site will comply with the protocols set forth in the Broadway Valdez Specific Plan EIR."²⁴

However, the BVDSP contains no specific provisions for the preparation of a soil management plan to ensure the safe excavation of soils at the project site under regulatory supervision.²⁵ SWAPE explains that the preparation of such plans is routine where there are concerns that the public or workers may come into contact with conditions that may pose a health hazard.²⁶ For example, at a 2014 Port of Oakland project, the following SCAs were incorporated.²⁷

4.D-1a: Prior to issuance of building permit, the project applicant shall notify the San Francisco Regional Water Quality Control Board (RWQCB) of planned construction activities. The applicant shall retain a qualified environmental consultant to prepare a Soil Management Plan to protect site workers and the environment. The Soil Management Plan should include pre-construction and pre-development controls, construction controls, and post construction controls along with any modifications or requests made by the

²¹ *Id.*

²² *Id.*

²³ Consultant Letter, Attachment A, p. 2.

²⁴ *Id.*

²⁵ SWAPE Letter, p. 7.

²⁶ *Id.*

²⁷ 195 Hegenberger Road Hotel EIR, http://www.portofoakland.com/pdf/environment/195_Hegenberger_DEIR-web.pdf, p. 2-5.

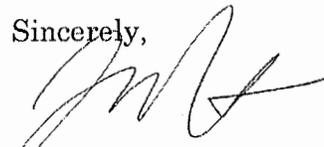
RWQCB or DTSC (overseeing agency) into project specifications. Construction controls shall include the preparation of a health and safety plan along with the requirement that all workers including subcontractors have OSHA 40-hour health and training. The health and safety plan shall include at a minimum, a summary of the known contaminants at the site, a copy of the Material Data Safety Sheets for each contaminant, a description of required personal protective equipment to be worn by site workers, protocol for the discovery of any suspected contaminated materials during excavation, a map of the nearest emergency medical facility, and emergency contact information.

SWAPE concludes that, consistent with other Oakland-area projects, an EIR should be prepared to include a requirement for the preparation of a soil management plan.²⁸ The plan must be prepared by qualified professionals for submittal to the RWQCB to ensure protection of public health.

V. CONCLUSION

The City's environmental analysis for the Project fails to satisfy the requirements of CEQA. As explained above and in our previous comments, the City has failed to adequately analyze and mitigate the Project's GHG emissions as required under the BVDSP; failed to analyze and mitigate the Project's health risks posed to the surrounding community, which are new or more severe than previously analyzed; and failed to adequately analyze hazards on the Project site. For these reasons, we urge the City Council to reject the Commission's Project approval and CEQA findings and order the preparation of an EIR for the Project.

Sincerely,



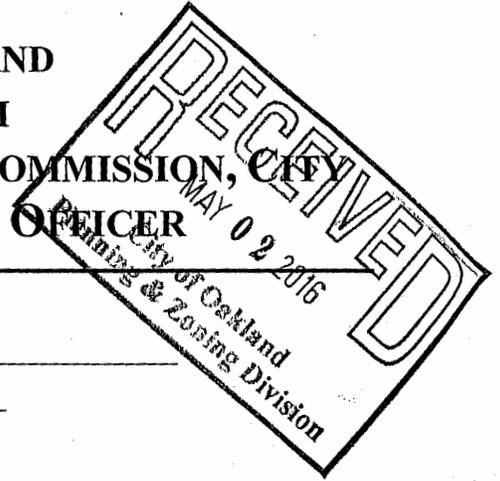
Laura E. Horton

LEH:ric
Attachments

²⁸ SWAPE Letter, p. 8.



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



PROJECT INFORMATION

Case No. of Appealed Project: PLN15-336
 Project Address of Appealed Project: 2400 Valdez Street
 Assigned Case Planner/City Staff: Peterson Z. Vollmann

APPELLANT INFORMATION:

Printed Name: Laura Horton Phone Number: 650-589-1660
 Mailing Address: 601 Gateway Blvd, Suite 1000 Alternate Contact Number: _____
 City/Zip Code S. San Francisco, 94080 Representing: Oakland Residents for Responsible Development
 Email: lhorton@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) _____

(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) CEQA Findings

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.

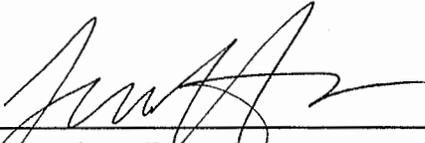
The appeal is based on the following: *(Attach additional sheets as needed.)*

Please see attached.

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

4/29/16

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: