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October 31, 2017

Via Email and Hand Delivery

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Re: **Agenda Item No. 1: Oak Knoll Mixed Use Community Plan
Project and City Owned Barcelona Parcel
(File Numbers 17-0208, 17-0209, 17-0210, 17-0211)**

Dear Chair Campbell Washington and Honorable Members of the Community & Economic Development Committee:

We are writing on behalf of **Oakland Residents for Responsible Development** ("Oakland Residents")¹ regarding Agenda Item No. 1, the Oak Knoll Mixed Use

¹ Oakland Residents, **also known as East Bay Residents for Responsible Development** ("EBRRD") submitted written comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for

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Community Plan Project (“Project”) and the City-owned Barcelona Parcel, including Council President Reid’s recommendations that the Community & Economic Development Committee (“CED Committee”) recommend that the City Council adopt four pieces of legislation related to the Project.²

Our review of the Staff Report for the CED Committee meeting and proposed legislation for the Project (collectively, “Staff Report”) demonstrates that the Staff Report fails to incorporate recent revisions to the Project that were adopted by the Planning Commission and requested by the Applicant, fails to address Project

the Project in October 2016, written comments to the Landmarks Preservation Advisory Board (“LPAB”) on May 8, 2017, and written and oral comments to the Planning Commission on June 21, 2017 and October 18, 2017. All prior comments are incorporated by reference. Oakland Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

² The proposed CED Committee actions include recommending adoption of the following pieces of legislation to the City Council:

- 1) A Resolution (A) Certifying The Environmental Impact Report And Adopting Related CEQA Findings, Including Adoption Of A Statement Of Overriding Considerations; (B) Amending The General Plan Land Use Diagram For The Oak Knoll Site To Match The Project's Parcel-By-Parcel Specificity And Existing Site Conditions; (C) Adopting Planned Unit Development Permit, Preliminary Development Plan And Design Guidelines, Final Development Plan For Master Developer Site Improvements, Final Development Plan For Club Knoll Relocation And Rehabilitation, Vesting Tentative Tract Map, Conditional Use Permit For Shared Access Facilities, Creek Permit, Tree P Permit And Other Development Related Land Use Permits For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard; And
- 2) An Ordinance (A) Adopting CEQA Findings, Including Certification Of Environmental Impact Report; And (B) Rezoning, Including New Zoning Districts, New Zoning Text And Zoning Map Changes For Oak Knoll Mixed Use Community Plan Project, Located On The Former Oak Knoll Naval Medical Center Property At 8750 Mountain Boulevard, Oakland; And
- 3) A Resolution (A) Certifying The Supplemental Environmental Impact Report And Adopting Related CEQA Findings And (B) Amending The General Plan From Hillside Residential And Resource Conservation To Detached Unit Residential For The City Owned Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland; And
- 4) An Ordinance (A) Adopting CEQA Findings, Including Certification Of The Supplemental Environmental Impact Report And (B) Rezoning From RH-3 Hillside Residential Zone -3 To The Proposed D-OK-1 Oak Knoll District Residential Zone - 1 And The D-OK-7 Passive Open Space Zoning For The City-Owned Barcelona Parcel Located At Barcelona Street And St. Andrews Road, Oakland. See CED Committee Staff Report, p. 1.

changes resulting from removal of the Barcelona Parcel, and fails to respond to comments regarding traffic impacts.

First, the Staff Report fails to incorporate revised language in Conditions of Approval Nos. 23 and 24 that was unanimously adopted by the Planning Commission (“Commission”) at the October 18, 2017 hearing for recommendation to the City Council. The Planning Commission’s revisions would restrict the ability that the Applicant would otherwise have to construct the Project phases “at such time as the Developer deems appropriate” by limiting Project development to the phasing structure analyzed in the FSEIR.³

Second, the proposed Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (“SCA/MMRP”) fail to incorporate mitigation measures that have been requested by the Applicant to address the Project’s unlawful deferment of fire safety mitigation plans. As a result, the SCA/MMRP continues to unlawfully defer its analysis and mitigation of potentially significant fire impacts without any meaningful performance standards in place.

Third, the Staff Report attaches an October 19, 2017 Tree Permit Decision from the City’s Public Works department (“Tree Permit”). The Tree Permit was issued the day after the Planning Commission hearing, but fails to mention the removal of the 5.4-acre Barcelona Parcel from the Project. As a result, the Tree Permit authorizes the removal of all 3,567 protected trees that were originally requested by the Applicant, and fails to include revised terms that would restrict the Applicant from removing the protected trees that are located on the Barcelona Parcel. The City has explained that it intends to retain title to the Barcelona Parcel, and is uncertain of its future plans to develop the Parcel. The City therefore lacks substantial evidence to support the removal of protected trees from the Barcelona Parcel that is authorized under the Tree Permit, and is unable to make the findings required under Municipal Code Section 12.36.050 to approve the Tree Permit.

Finally, the Staff Report asks the CED Committee to recommend that the Council adopt a statement of overriding considerations due to the Project’s significant and unavoidable impacts to air quality and traffic. However, the Staff Report, proposed SCA/MMRP, and proposed CEQA findings fail to adopt all feasible

³ See Proposed Conditions of Approval Nos. 23 and 24.

mitigation measures that would reduce the Project's significant impacts to less than significant levels, including mitigation measures recommended by Oakland Residents' traffic consultant. Without requiring all feasible mitigation, the Council is unable to make the requisite findings under CEQA that the City has mitigated all significant environmental impacts to the greatest extent feasible, and that any remaining significant environmental impacts are acceptable due to overriding considerations.

These errors must be corrected in a revised FSEIR and revised Project approvals before the CED Committee can make a recommendation to the City Council to approve the Project.

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 and public service impacts of the Project. The association includes Alan Guan, Risi Agbabiaka, Peter Lew, Bridgette Hall, Tanya Pitts, UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, 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.

Individual members of Oakland Residents and the its affiliated labor organizations live, work, recreate and raise their families in Alameda County, including the City of Oakland. They 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 an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. THE STAFF REPORT FAILS TO ADVISE THE CED COMMITTEE OF REVISED CONDITIONS OF APPROVAL THAT WERE RECOMMENDED BY THE PLANNING COMMISSION TO PREVENT SIGNIFICANT IMPACTS FROM PROJECT CONSTRUCTION

The October 18, 2017 Planning Commission Staff Report included revised Conditions of Approval Nos. 23 and 24 which would have provided that “the Developer shall have the right to develop the Project at such time as the Developer deems appropriate” so long as the public improvements for Phase 1 were complete.⁴

Oakland Residents’ October 18, 2017 comments to the Planning Commission explained that Conditions 23 and 24 would allow the Developer to front-end construction of the public improvements required for Phase 1 of the Project (street and creek improvements), then to thereafter construct the building developments of Phase 1 together with the building developments for Phases 2 and 3, potentially resulting in simultaneous construction of all three Project phases. Oakland Residents provided reports from air quality expert Hadley Nolan of SWAPE, and expert traffic engineer Daniel Smith⁵ which demonstrated that concurrent construction of Project phases would result in significant, unmitigated air quality and traffic impacts that were not analyzed in the FSEIR.⁶ Conditions 23 and 24 are also a significant departure from the Project Description included in the FSEIR, which analyzed sequential, non-overlapping construction of Phases 1,2, and 3.⁷

At the October 18, 2017 hearing, in response to Oakland Residents’ comments, Planning Staff proposed revisions to the text of Conditions of Approval Nos. 23 and 24 which would require the construction of Project phases to occur “without exceeding the phasing assumptions of the FSEIR.”⁸ This revision would effectively prohibit the Applicant from constructing multiple Project phases at the same time because the FSEIR analyzed Project construction in sequential, non-overlapping phases. The Planning Commission voted unanimously to approve this revised language, yet the CED Staff Report fails to discuss these revisions, and fails to incorporate the revised language into the proposed final Conditions of Approval.

⁴ See 10/18/17 Revised Conditions of Approval

⁵ Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

⁶ See 10/18/2017 comments, Exhibits A and B.

⁷ *Id.*

⁸ See October 18, 2017 Planning Commission hearing, Commission deliberations and recommendations of Planner Scott Gregory.

Instead, the Conditions of Approval Nos. 23 and 24 included the CED Staff Report contain the same language that the Planning Commission has already determined to be unlawful. Staff's failure to apprise the CED Committee and City Council of the Planning Commission's findings and recommendations violates Oakland Municipal Code requirements that the Planning Commission's recommendations on the Project be presented to the City Council for consideration.⁹

Failure to incorporate a restriction to ensure that Project construction does not "exceed[] the phasing assumptions of the FSEIR" is also likely to result in significant, unmitigated air quality and traffic impacts. We reincorporate our October 18, 2017 discussion of Conditions 23 and 24 below.

In order to correct these errors, the CED Committee must incorporate the revisions adopted by the Planning Commission to limit Project construction to phased sequencing that does not exceed the phasing assumptions analyzed in the FSEIR. Alternatively, the CED Committee must recommend that the Council remand the FSEIR to Staff to prepare a new analysis and new mitigation measures to address the concurrent construction of Project phases that would be allowed if Conditions 23 and 24 remain unchanged.

A. Concurrent Construction of Project Phases Would Result in Significant, Unmitigated Air Quality Impacts from Construction Emissions.

The FSEIR analyzed construction emissions separately for each phase of the Project, and did not analyze emissions for overlapping or concurrently constructed Project phases,¹⁰ and no Staff Report has quantified this impact.

Conditions of Approval Nos. 23 and 24 are nearly identical to the phasing terms that were previously proposed for the Project's Development Agreement ("DA").¹¹ The original DA term would have allowed construction of two or more Project phases to overlap, potentially allowing all three phases of the Project to be constructed at the same time. SWAPE conducted a quantitative analysis of the

⁹ See e.g. Oak. Muni. Code Sec. 17.130.080.

¹⁰ DSEIR, p. 4.2-23 ("Emissions were estimated separately for each of the construction phases of the Project, and for both on-site crushing and off-site hauling scenarios under Phase I.").

¹¹ The Applicant has withdrawn its request for a Development Agreement.

construction emissions associated with overlapping construction of the Project's three phases as proposed in the DA, which is almost identical to the scenario contemplated under revised Conditions 23 and 24. SWAPE's analysis demonstrated that, if the three Project phases were constructed concurrently, the Project would result in significant, unmitigated air quality impacts with respect to ROG and NOx emissions, as follows (ROGs = 57.1 lbs/day, NOx = 120 lbs/day)¹²:

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO_x	PM10	PM2.5
Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
Threshold Exceeded?	Yes	No	Yes	No	No

SWAPE concluded that these emissions would exceed the 54 pounds per day (lb/day) significance thresholds set by BAAQMD, resulting in significant air quality impacts.¹³ The City failed to respond to these comments, and has not disputed SWAPE's conclusions regarding the significant air quality impacts that would result from concurrent construction of the Project phases.

Without the revisions adopted by the Planning Commission, Conditions 23 and 24 would create an almost identical scenario in which the Applicant could begin development of Phase 2 and Phase 3 at any time after the nominal street and creek improvements required for Phase 1 have been completed. This scenario was not analyzed in the FSEIR.

Each of the three Project phases involves substantial construction activities. The FSEIR explains that Phase 1 of the Project "would include removal of existing on site concrete pads and pipelines, creek improvements, grading and construction of roadways in the Village Center area of the site, development of the Village Center and construction of 232 townhomes and 100 single family homes as part of the residential development in the south and west portions of the site"¹⁴ Phase 2 involves the development of most of the Uplands neighborhoods, and Phase 3

¹² See SWAPE June 21, 2017 Comments re Oak Knoll, attached hereto, p. 3 and Exhibit A.

¹³ *Id.*

¹⁴ FSEIR, p. 4.2-23.

involves development of the North Creekside neighborhood.¹⁵ Phase 2 and 3 would involve grading and construction for 263 homes and 340 homes, respectively, as well as roadway development in the east, west, and north areas of the site. The earthwork volume for cut and fill is anticipated to be approximately 1 million cubic yards in Phase 2 and approximately 430,000 cubic yards in Phase 3.¹⁶

SWAPE subsequently reviewed the proposed Conditions of Approval Nos. 23 and 24 that were included in the October 18, 2017 Planning Commission Staff Report. SWAPE found Conditions 23 and 24 to be almost identical to the DA phasing proposal and concluded that, if Conditions 23 and 24 were approved as drafted, it would effectively allow the Developer to develop Phase 2 and Phase 3 concurrently with the Phase 1. SWAPE concluded that this would result in potentially significant construction emissions:¹⁷

As currently proposed, Conditions of Approval No. 23 and 24 would allow the same development schedule, save for the public improvements required for Phase 1, which would have to be constructed before any work is initiated on the other phases. Thus, construction emissions associated with concurrent Project phase construction under Conditions 23 and 24 would be equal to amounts we identified in our June 2017 comments (57.1 lbs/day of ROG, 190.7 lbs/day of CO, 120 lbs/day of NO_x, 29.1 lbs/day of PM₁₀, and 11.5 lbs/day of PM_{2.5}), minus the emissions associated with those public improvements...It is likely that any reductions in construction emissions associated with separating out the construction of public improvements of Phase 1 may not reduce the Project's ROG or NO_x emissions to less than significant levels.

The FSEIR did not separately quantify the construction emissions related to the public improvement portions of Phase 1 from the construction emissions associated with remaining portions of Phase 1 (construction of the townhomes and single family homes), and no Staff Report contains this analysis. Thus, the City has failed to demonstrate that the cumulative air quality impacts that would occur if Project phases were constructed concurrently, as proposed in Conditions of Approval No. 23 and 24, would be any less than the emissions identified in

¹⁵ FSEIR, p. 3-44.

¹⁶ FSEIR, p. 4.2-23.

¹⁷ See Staff Report, Attachment 2-S, Public Comments, 10/18/17 comments of SWAPE, pp. 3-4.

SWAPE's June 2017 comments. Moreover, because the FSEIR did not analyze concurrent construction, the air quality mitigation measures currently proposed in the FSEIR do not address the increased emissions from overlapping construction phases. Therefore, the City has no evidence on which to conclude that the Project's construction air quality emissions would be mitigated to less than significant levels with the existing mitigation measures described in the FSEIR if Conditions of Approval No. 23 and 24 are approved as drafted.

The CED Committee must recommend that the City Council adopt revisions to Conditions 23 and 24 that will restrict Project construction to the phasing assumptions analyzed in the FSEIR.

B. Concurrent Construction of Project Phases is Likely to Result in Significant, Unmitigated Traffic Impacts.

Traffic engineer Daniel Smith similarly concluded that Conditions of Approval No. 23 and 24 are likely to cause more severe construction-related traffic impacts than were disclosed in the FSEIR.

In his October 18, 2017 comments,¹⁸ Mr. Smith explained that, if Conditions 23 and 24 are approved, the Applicant may choose to front-end construction of the public improvements for Phase 1, and then simultaneously construct the remainder of Phase 1 together with Phases 2 and 3, resulting in considerably more severe construction traffic impacts than the impacts that were disclosed in the FSEIR.¹⁹ Mr. Smith explained that the FSEIR's traffic study analyzed a straight line growth in non-Project background traffic from the existing conditions to the Year 2040 projection. The traffic study then projected the growth of Project traffic related to the sequential time schedule for completion of the three phases of the Project, with Phase 1, Phase 2, and Phase 3 being completed at different times. Finally, the FSEIR selected the timing of the Project's required off-site traffic improvements based on the Project's projected contribution of traffic at each intersection during and following each Project construction phase, resulting in MMRP requirements that presently allow off-site traffic improvements to occur at later stages of the Project.²⁰

¹⁸ See Staff Report, Attachment 2-S, Public Comments, 10/18/17 comments of Daniel T. Smith.

¹⁹ *Id.*, p. 2.

²⁰ *Id.*

The FSEIR does not currently require the Project's off-site traffic mitigation measures to be constructed as part of the Project's Phase 1 public improvements. Hence, Conditions of Approval No. 23 and 24 would give the Applicant the right to develop the Project well in advance of the timeline for traffic mitigation measures that is currently defined in the FSEIR. Mr. Smith concluded that this revised phasing is likely to cause the public to experience significant traffic impacts that go unmitigated for years. Mr. Smith recommended that FSEIR be amended to require acceleration of traffic mitigation implementation to address the accelerated traffic impacts that are likely to occur under revised Conditions 23 and 24.²¹

The Staff Report fails to respond to Mr. Smith's comments. In order to ensure that Project phasing does not result in significant traffic impacts that were not analyzed in the FSEIR, the CED Committee must recommend that the City Council adopt revisions to Conditions 23 and 24 that will restrict Project construction to the phasing assumptions analyzed in the FSEIR.

III. THE SCAMMRP FAILS TO INCLUDE ADEQUATE PERFORMANCE STANDARDS FOR THE PROJECT'S FIRE SAFETY PLANS.

Both Oakland Residents and the International Association of Firefighters, Local 55 ("Firefighters") previously commented in June and September 2017 that *SCA HAZ-4: Fire Safety Plan* and *SCA HAZ-5: Wildfire Prevention Area – Vegetation Management* constitute unlawfully deferred analysis and deferred mitigation because they defer the creation of critical fire safety plans and Project features related to fire prevention until after Project approval, outside the purview of public comment.²²

In response to these comments, the City's Fire Prevention Bureau submitted a revised memo on September 29, 2017, listing over a dozen conditions which the Bureau recommended be required for the Project in order to ensure adequate site access and firefighting capability for fire personnel in the event of a fire emergency

²¹ *Id.*

²² See Oakland Residents 6/21/2017 Comments, pp. 17-18; Firefighters 9/7/2017 letter re Oak Knoll Mixed Use Community Plan Project; 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735; *Comtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy' v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.

at the Project site. These recommendations were adopted in proposed Condition of Approval 43. On October 18, 2017, the Applicant submitted a letter to the Planning Commission addressing the lack of performance standards in SCA HAZ-4 and SCA HAZ-5.²³ The Applicant asked that the Commission adopt two additional mitigation measures to “clarify and reinforce the requirements already encompassed by SCAs HAZ 4 and HAZ-5,” including the following:

SCA Implementation Measure HAZ-4.2: To further implement SCA HAZ-4 - Fire Safety, each Developer's Fire Safety Phasing Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the construction proposed by the Developer during each phase meets the requirements of the City's Fire Code (Municipal Code Chapter 15.12). The Plan's details must include, but are not limited to information addressing the following requirements:

- o Fire apparatus access by phase,
- o Fire protection water supply by phase,
- o Means of egress by phase, and
- o Storage of combustible materials during construction.

SCA Implementation Measure HAZ-5.1: To further implement SCA HAZ-5 - Wildfire Prevention Area - Vegetation Management, the Vegetation Management Plan shall demonstrate to the satisfaction of the City's Fire Safety Division that the Project meets the requirements of Chapter 49 of the California Fire Code, as amended by the City through Municipal Code Chapter 15.12. Among other requirements, Chapter 49 includes requirements pertaining to maintaining defensible space, clearance of brush and vegetative growth from electrical transmission and distribution lines, and ignition source control.²⁴

The Staff Report fails to respond to the Applicant's request, and the SCA/MMRP fails to incorporate these additional mitigation measures. The City must revise and recirculate the FSEIR and SCA/MMRP to add the additional mitigation measures requested by the Applicant. Without these measures, the SCA/MMRP lacks any measureable performance standards to ensure that the

²³ See Attachment 2-S, Public Comments, October 18, 2017 letter from Sam Veltri to City re Oak Knoll.

²⁴ *Id.* at p. 4.

Project's fire safety plans will mitigate potentially significant fire impacts. The FSEIR should also be revised and recirculated to include full drafts of the Fire Safety and Wildfire Plans prior to Project approval.

IV. THE TREE PERMIT FAILS TO ACCOUNT FOR REMOVAL OF THE BARCELONA PARCEL

The Barcelona Parcel is a 5.4 acre, City-owned parcel located in the southwest corner of the site near Barcelona Street and St. Andrews Road. It had been considered for sale to the Applicant as part of an Exclusive Negotiating Agreement for the Project.²⁵ The October 18 Planning Commission Staff Report explained that the Applicant is no longer pursuing purchase of the Barcelona Parcel. The Report explained that the City intends to retain title to the Barcelona Parcel, but is uncertain of its future plans to develop the Parcel since it will no longer be part of the Project.²⁶

A. Protected Trees.

Oakland Residents submitted comments from biologist Scott Cashen at the Planning Commission's October 18, 2017 hearing, explaining that the Barcelona Parcel contains protected trees that were proposed for removal as part of the Project.²⁷ Neither the Planning Commission Staff Report nor the CED Staff Report included an updated Tree Removal Plan to account for removal of the Barcelona Parcel trees from the Plan. Instead, the City simply issued a Tree Permit which authorizes the removal of **all 3,567 protected trees** that were originally requested by the Applicant, with no explanation as to why the Barcelona Parcel trees were included in the Permit.

The City's Tree Ordinance requires that a tree removal permit application be denied if "removal could be avoided by reasonable redesign of the site plan prior to construction."²⁸ The Project's Planned Unit Development Permit ("PUD"), Preliminary Development Plan ("PDP"), Final Development Plan ("FDP"), and Vesting Tentative Tract Map ("VTTM") have all been revised to remove the

²⁵ 10/18/17 Commission Staff report, p. 3.

²⁶ *Id.*

²⁷ See Attachment 2-S, Public Comments, 10/18/17 Oakland Residents' Comments, Exhibit C.

²⁸ Oak. Muni. Code Section 12.36.050(B).

Barcelona Parcel from the Project's development program.²⁹ Thus, the site plan for the Barcelona Parcel has already been redesigned to eliminate *all planned development from the Parcel*, and the City acknowledges that there is no specific development planned for the Parcel at this time. The Tree Permit therefore violates the Tree Ordinance, and the City has no justification for issuing a permit to remove protected trees from the Barcelona Parcel. The Permit must be rescinded and an updated Tree Removal Plan prepared for the Project that removes the Barcelona Parcel trees from the Tree Permit.

B. On-Site Mitigation.

The Applicant's original Tree Removal Impact Mitigation Plan identifies a relatively large planting area within the Barcelona parcel that is intended as mitigation for the Project's impacts to biological resources. Because the Barcelona parcel is no longer a part of the Project, the Applicant can no longer use that planting area to help satisfy its on-site mitigation requirement under Mitigation Measure BIO-2. The Staff Report fails to address this issue, and fails to propose any replacement mitigation for the lost planting acreage. The FSEIR and SCA/MMRP must be amended to require replacement mitigation that will assure full compliance with Mitigation Measure BIO-2.

V. THE FSEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING OF OVERRIDING CONSIDERATIONS.

In order to approve the Project, the City must certify the FSEIR and make mandatory CEQA findings. Those findings include (1) that the FSEIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.³⁰ Where, as here, the Project will have a significant effect on the environment, the City may not approve the Project unless it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."³¹

²⁹ Planning Commission Staff Report, pp. 3, 4 ("The revised VTTM now shows the Barcelona parcel as remaining "Lands of the City of Oakland" and not a part of the Project.").

³⁰ 14 CCR sections 15090, 15091.

³¹ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

The City must also certify find that the project's benefits outweigh its environmental risks.³²

The FSEIR identifies significant and unavoidable impacts on traffic and air quality. In order to certify the FSEIR and approve the Project, the City Council must first determine and make findings that the FSEIR includes *all feasible mitigation measures* available to reduce those impacts to the greatest extent feasible before the impacts can be declared "significant and unavoidable."³³ As discussed below, and as Oakland Residents previously commented to the Planning Commission, the FSEIR fails to incorporate all feasible mitigation to reduce the Project's traffic impacts to less than significant levels. The City failed to respond to these comments, and failed to respond to, or incorporate, the additional traffic mitigations proposed by traffic engineer Daniel Smith to further reduce significant traffic impacts. These deficiencies are discussed below, and must be addressed in a revised FSEIR before the City Council can make the CEQA findings necessary to approve the Project.

A. The FSEIR Fails to Adopt Feasible Mitigation Recommended by Caltrans.

The FSEIR characterizes impacts Trans-1, Trans-2, Trans-3, Trans-5, Trans-8, Trans-9, Trans-10, Trans-12, and Trans-14 as significant and unavoidable because they involve impacts to transportation facilities not under the City of Oakland's jurisdiction.

In a letter dated October 12, 2016, Caltrans commented that the City and the applicant should implement feasible mitigations to these impacts as required Project mitigation on a fair share basis, operating through the Caltrans encroachment permit process. The FSEIR's response to Caltrans' comment was ambiguous, stating simply that "the City will coordinate with Caltrans and the Project applicant on design, funding, and timing for implementation of the mitigation measures that require coordination with Caltrans." This response is dismissive in that it fails to require any concrete actions by the Applicant to ensure that all necessary steps are taken to obtain Caltrans' approval of the off-site improvements.

³² 14 CCR section 15093.

³³ 14 CCR sections 15090, 15091.

The FSEIR subsequently concluded that all mitigation measures related to roadways under Caltrans jurisdiction cannot go through the Caltrans encroachment permit process until the FSEIR is certified, and that the traffic impacts which those measures are designed to mitigate are therefore significant and unavoidable. This conclusion is unsupported. The Caltrans encroachment permit process is structured to ensure that improvements or mitigation measures constructed by other jurisdictions or private parties on Caltrans facilities are operationally sensible, conform to State and (when applicable) U.S. Department of Transportation highway design standards or qualify for reasonable exceptions to design standards and assure that traveler and worker safety is reasonably protected during the construction period. Caltrans generally consults with the applicant agency following preparation of its CEQA document. The fact that Caltrans may not issue final approval for proposed traffic mitigations until after Project approval does not preclude the City from requiring a funding commitment for the mitigation measures from the Applicant as a condition for the FSEIR approval. The courts have upheld funding commitments for off-site traffic improvements as feasible mitigation.³⁴

In his June 2017 comments, traffic engineer Mr. Smith recommended that the FSEIR's MMRP be amended to require the Applicant to commit to specified amounts of fair share funding toward each mitigation measure to an escrow account for that purpose and coordinate with Caltrans regarding how any other fair share fees will be made good to enable implementation.³⁵ The City failed to revise the FSEIR to include this mitigation, and failed to provide any reasoning to reject it. The City therefore lacks substantial evidence to support a finding of overriding considerations with regard to the Project's traffic impacts.

B. Additional, Feasible Mitigation for Intersection Impacts.

Mitigation Measure Trans-6 at the intersection of Golf Links Road and Mountain Boulevard attempts to resolve traffic impacts by restriping lanes at the intersection, signaling it and coordinating the new signal with signals at the intersections of Golf Links Road with freeway ramps on both sides of I-580. However, as the FSEIR observes, the mitigation measure might result in queue blockages at the nearby intersections of Golf Links Road with both sets of I-580

³⁴ See *City of Hayward v. Bd. Of Trustees of Cal. State University* (2015) 242 Cal. App 4th 833, 857.

³⁵ See Oakland Residents' 6/21/17 Comments, Exhibit B, p. 3.

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ramps.³⁶ Mr. Smith commented that these blockages alone do not render traffic impacts at the intersection of Golf Links with Mountain “significant and unavoidable” as the FSEIR claims. Rather, Mr. Smith explained that there is sufficient undeveloped land to the east of Mountain Boulevard near Golf Links Road that the alignment of Mountain Boulevard could be shifted to the east, significantly increasing the separation between the intersection of Mountain with Golf Links and the intersection of Golf Links with the eastbound I-580 ramps, thereby potentially curing the queue blockage problem.³⁷

The City failed to respond to these comments, and failed to address this potentially feasible and effective mitigation measure. CEQA requires the environmental analysis to consider all feasible mitigation measures before declaring that an impact is significant and unavoidable. The FSEIR should be revised to analyze this proposed mitigation measure.

VI. CONCLUSION

For the reasons discussed herein, Oakland Residents respectfully requests that the CED Committee recommend that the City Council remand the Project to City Staff to make all necessary revisions to the FSEIR, Project permits, and proposed Project legislation that are necessary to bring the City’s proposed actions on the Project into compliance with CEQA and applicable land use laws.

Thank you for your consideration of these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:

³⁶ DSEIR, p. 4.13-69.

³⁷ See Oakland Residents’ 6/21/17 Comments, Exhibit B, p. 3.

Klein, Heather

From: Christina Caro <ccaro@adamsbroadwell.com>
Sent: Monday, October 30, 2017 9:35 PM
To: Campbell Washington, Annie; Reid, Larry; Gallo, Noel; Marqusee, Alexander G.; LGibsonMcElhaney@oaklandnet.com; Parker, Candice M
Cc: Office of the Mayor; Guillen, Abel; Kalb, Dan; Brooks, Desley; At Large; Thao, Sheng; Klein, Heather; sgregory@lamphier-gregory.com; Lorrie J. LeLe
Subject: CED Committee Agenda Item 1: Oak Knoll Mixed Use Community Plan Project and City Owned Barcelona Parcel
Attachments: 3426-027j - ORRD Comments to CED Committee _Oak Knoll_.pdf; Exh A - 2017 06 21 Oak Knoll PC Comments.pdf

Dear Chair Campbell Washington and Honorable Members of the Community & Economic Development Committee:

Attached please find the comments of Oakland Residents for Responsible Development regarding CED Committee Agenda Item No. 1 for the Committee's October 31, 2017 Special Meeting, the Oak Knoll Mixed Use Community Plan Project and City-owned Barcelona Parcel.

Hard copies of the comments and exhibits will be presented in person at tomorrow's CED Committee meeting. Thank you.

Christina M. Caro
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