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November 7, 2017

Via Email and Hand Delivery

Mayor Libby Schaaf
Mr. Larry Reid, Council President
Honorable Members of the City Council
City of Oakland
Oakland City Hall, Hearing Room 1
1 Frank H. Ogawa Plaza,
Oakland, California 94612

Email: [REDACTED]

Via Email Only:

Heather Klein, Planner IV [REDACTED]
Scott Gregory, Contract Planner [REDACTED]

**Re: Agenda Item No. S9.2: Oak Knoll Project And City Owned
Barcelona Parcel (File Numbers 17-0208, 17-0209, 17-0210,
17-0211)**

Dear Mayor Schaaf, Mr. Reid, Honorable Members of the City Council:

We are writing on behalf of **Oakland Residents for Responsible Development** ("Oakland Residents")¹ regarding Agenda Item No. S9.2, 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 the Project in October 2016, written comments to the Landmarks Preservation Advisory Board ("LPAB") on May 8, 2017, written and oral comments to the Planning Commission on June 21, 2017 and October 18, 2017, and written and oral comments to the Community & Economic Development 3426-028acp

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Community Plan Project (“Project”) and the City-owned Barcelona Parcel, including the Community & Economic Development Committee’s (“CED Committee”) recommendation that the City Council approve the Project, certify the Final Supplemental Environmental Impact Report (“FSEIR”), and adopt four pieces of legislation related to the Project.²

We have reviewed the Agenda Report (“Staff Report”) and Supplemental Agenda Report (“Supplemental Report”) for Agenda Item No. S9.2 in conjunction with our consultants. Our review of the Reports demonstrates that the City has failed to adequately respond to comments and evidence submitted by Oakland Residents and other members of the Project demonstrating that the Project is likely to have significant, unmitigated environmental impacts. The City has also failed to resolve several issues of public concern that constituents have raised throughout the Project’s permitting process. The Project has outstanding issues related to traffic impacts, potentially significant air quality impacts from overlapping construction phases, and biological resources that must be addressed in a revised SEIR before the City Council can consider approving the Project.

In particular, the Staff Reports ask the City Council to adopt a statement of overriding considerations due to the Project’s significant and unavoidable impacts to air quality and traffic. However, neither the Staff Report, Supplemental Staff report, proposed Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (“SCA/MMRP”), or the Project’s proposed CEQA findings require the City to adopt all feasible mitigation measures that would reduce the

Committee (“CED Committee”) on October 31, 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 City Council actions include recommended adoption of the following pieces of legislation for the Project: (1) A Resolution (A) Certifying The Environmental Impact Report And Adopting Related CEQA Findings, Including Adoption Of A Statement Of Overriding Considerations; (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; (3) A Resolution (A) Certifying The Supplemental Environmental Impact Report And Adopting Related CEQA Findings And (B) Amending The General Plan; and (4) An Ordinance (A) Adopting CEQA Findings, Including Certification Of The Supplemental Environmental Impact Report And (B) Rezoning. See Supplemental Staff Report, p. 1.

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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.

The City has also failed to revise the October 19, 2017 Tree Permit Decision from the City's Public Works department ("Tree Permit") to reduce the number of protected trees authorized for removal from the Barcelona Parcel by at least 80 trees. The City has no current plans to develop the Barcelona Parcel. Therefore, the City is not authorized to issue a permit to the Applicant to remove protected trees from the portions of the Parcel that are no longer part of the Project.

The City cannot approve the Project until it fully complies with CEQA and the City's municipal code. We urge the City Council to reject the proposed Project approvals, continue this hearing, and remand the Project to Staff to remedy the deficiencies in the FSEIR and Project permits before conducting any further hearings on 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 COUNCIL MUST ADOPT REVISIONS TO THE PROJECT'S CONDITIONS OF APPROVAL TO PREVENT SIGNIFICANT IMPACTS FROM OVERLAPPING 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.³

Oakland Residents' October 18, 2017 comments to the Planning Commission explained that the language of Conditions 23 and 24 were a significant departure from the Project Description included in the FSEIR, and would have allowed 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 if they so desired. This could potentially result 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 Smith⁴ 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.⁵ Conditions 23 and 24 represented a significant departure from the Project Description included in the FSEIR, which analyzed sequential, non-overlapping construction of Phases 1, 2, and 3.⁶

In response to Oakland Residents' comments, the Planning Commission recommended adding language to Conditions 23 and 24 to limit Project construction

³ See 10/18/17 Revised Conditions of Approval No. 23 and 24 (emphasis added).

⁴ Mr. Smith's technical comments and curriculum vitae are attached hereto as Exhibit B.

⁵ See 10/18/2017 comments, Exhibits A and B.

⁶ *Id.*

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to occur in sequential phases “without exceeding the phasing assumptions of the FSEIR.”⁷ The current Staff Report omitted this revised language.

The Supplemental Staff Report attempts to correct this error by incorporating restrictive language into renumbered Condition 24 (formerly Condition 23), which governs Phase I construction, as follows:

The Developer shall have the right to develop the Project at such time as Developer deems appropriate, **consistent with these conditions and without exceeding the phasing assumptions of the SEIR**; however Developer may not proceed with development of Phase 2 or 3 until all public improvements for Phase 1 are complete.⁸

However, the Supplemental Staff Report fails to incorporate the same restrictive language into renumbered Condition 25 (formerly Condition 24), which governs Phase 2 and Phase 3 construction. Condition 25 still proposes to allow the Developer to construct the Phase 2 and Phase 3 residential and retail improvements at any time, so long as the public improvements required for all 3 phases are completed first. Condition 25 states:

The Developer shall have the right to develop Phases 2 and 3 of the Project at such time as Developer deems appropriate; however Developer may not proceed with development of Phases 2 or 3 until all public improvements for Phase 1 (see Condition #23 above) are completed, and...specific Phase 2 and 3 public improvements.⁹

Condition 25 therefore continues to allow the overlapping construction that was discussed in Oakland Residents’ prior comments, and which is likely to result in significant, unmitigated impacts. As discussed below, if overlapping construction is allowed, it will result in significant construction emissions which exceed Air District significance thresholds. In order to avoid this significant impact, the Council must require construction of Phase 2 and Phase 3 to follow the same

⁷ See October 18, 2017 Planning Commission hearing, Commission deliberations and recommendations of Planner Scott Gregory.

⁸ Supplemental Staff Report, Attachment B, Condition 24 (new language in **bold and underline**).

⁹ *Id.*, Condition 25 (emphasis added).

sequential structure that was analyzed in the FSEIR, and which is being required for Phase 1.

A. Overlapping Construction Phases Would Result in Significant, Unmitigated 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 No Staff Report has quantified this potentially significant impact.

SWAPE performed an independent analysis of the Project’s overlapping construction emissions of the Project’s residential and retail components. Consistent with the language of the revised Conditions of Approval, SWAPE’s analysis assumes that all public improvements required for Phases 1, 2, and 3 of the Project are completed by the time the residential and retail elements are constructed, and that the residential and retail elements from Phases 1, 2, and 3 are then simultaneously constructed (**Phase 1:** 232 townhomes and 100 single family homes; **Phase 2:** 263 homes; **Phase 3:** 340 homes).¹¹

SWAPE concludes that overlapping construction of the Project’s residential and retail components would significantly increase construction emissions over applicable significance thresholds set by the Bay Area Air Quality Management District (“BAAQMD”), even with existing mitigation, as follows:

Average Daily Construction Emissions (lbs/day)				
Activity	ROG	NO_x	PM10	PM2.5
Phase 1, Phase 2, Phase 3	13.9	78.9	3.61	0.61
BAAQMD Regional Threshold (lbs/day)	54	54	82	54
Threshold Exceeded?	No	Yes	No	No

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¹⁰ FSEIR, 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 FSEIR, p. 4.2-23.

¹² Exhibit A, p. 3.

As demonstrated above, when construction emissions are evaluated assuming that all three construction phases are developed together, the Project's construction-related NO_x emissions total 78.9 lbs/day, which exceeds the 54 pounds per day (lb/day) threshold set forth by BAAQMD. This demonstrates that, unless both Conditions 24 and 25 restrict Project construction to the sequential phasing analyzed in the FSEIR, the Project is likely to result in significant air quality impacts which were not previously disclosed in the FSEIR, and for which the City has not provided any mitigation.

The Council cannot approve the Project unless and until these impacts are fully mitigated.

A. 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. 24 and 25 (formerly Conditions 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,¹³ Mr. Smith explained that, if Conditions of Approval No. 24 and 25 are approved without restrictive language to require sequential phase construction, 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.¹⁴ 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

¹³ See Staff Report, Attachment 2-S, Public Comments, 10/18/17 comments of Daniel T. Smith.

¹⁴ *Id.*, p. 2.

MMRP requirements that presently allow off-site traffic improvements to occur at later stages of the Project.¹⁵

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, unless restrictive language is incorporated, Conditions of Approval No. 24 and 25 may 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 concurrent construction conditions.¹⁶

In order to ensure that Project phasing does not result in significant traffic impacts that were not analyzed in the FSEIR, the City Council should incorporate revisions to Conditions 24 and 25 which restrict the Applicant from any overlapping construction of the Project phases.

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

The Tree Permit cannot be approved because it *failed to remove at least 80 trees from the Permit which are located on the Barcelona Parcel*. The City has no basis to authorize removal of trees from the Barcelona Parcel because the Parcel is no longer part of the Project and has removed it from the Project plans.

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.¹⁷ 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

¹⁵ *Id.*

¹⁶ *Id.*

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

longer be part of the Project.¹⁸ 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 Barcelona Parcel from the Project's development program.¹⁹

The Applicant had planned to remove 85 trees from the Barcelona Parcel.²⁰ However, since the Applicant has now abandoned plans to purchase the Barcelona Parcel, only 5 of those trees are slated to be removed to facilitate the Project's public improvements to the Barcelona Road Reservation.²¹ However, the Tree Permit fails to reflect removal of the Barcelona Parcel, and instead 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.*"²² The Project's PUD, PDP, FDP, and VTTM have all been revised to remove the Barcelona Parcel from the Project's development program.²³ Thus, the site plan for the Barcelona Parcel has been redesigned to eliminate *all planned development from the Parcel*. Furthermore, the City acknowledges that there is no specific development planned for the Parcel at this time. The City has no justification for issuing a permit to remove protected trees from the Barcelona Parcel when removal is not necessary to facilitate any project. The City therefore cannot make the necessary finding that "removal could be avoided by reasonable redesign of the site plan prior to construction."²⁴

The Tree Permit must be rescinded and revised to remove the Barcelona Parcel trees from the Tree Permit. If it is not revised, the Applicant will be granted a permit to illegally remove at least 80 trees from the Barcelona Parcel that are not necessary for the Project.

¹⁸ *Id.*

¹⁹ 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.").

²⁰ See 10/31/2017 letter of Anne Mudge to City Council, pp. 4-5.

²¹ *Id.*

²² Oak. Muni. Code Section 12.36.050(B).

²³ 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.").

²⁴ Oak. Muni. Code Section 12.36.050(B).

IV. THE FSEIR FAILED TO ACCURATELY DISCLOSE THE PROJECT'S IMPACTS ON FIRE PROTECTION SERVICES.

The FSEIR failed to disclose that the Project is likely to result in an increase in demand for fire protection and emergency medical response services that would require new or physically altered fire protection facilities in order to maintain acceptable performance objectives.

The FSEIR explains that the Oakland Fire Department (“OFD”) would provides fire protection services and emergency medical services for the Project.²⁵ OFD operates 25 fire stations and maintains a fleet of 24 engines, 7 trucks, and numerous other special operations, support, and reserve units throughout 3 battalions.²⁶ The FSEIR states that the Project site would be served by the existing OFD Stations 26 and 23 located about 1.7 and 2.5 miles, respectively, from the Project site,²⁷ or by Station 21, located on Skyline Boulevard about 5 miles from the Project site.²⁸

The Project would generate up to 935 residential units and approximately 2,236 new people within OFD’s Oak Knoll service area.²⁹ The FSEIR concludes that “this level of development and population would not result in the need for additional fire protection facilities in order to maintain acceptable performance objectives.”³⁰ However, the FSEIR failed to look at OFD’s current fire station-to-resident ratios, current OFD calls and response rates, OFD’s limited staffing at the stations in the Oak Knoll vicinity, and failed to address fire response at the Project site during times of routine fire station closures.

First, Oakland’s station-to-resident ratio is already well below national safety standards. The National Fire Protection Association (“NFPA”) recommends one fire

²⁵ FSEIR, p. 4.12-1.

²⁶ FSEIR, p. 4.12-1.

²⁷ FSEIR, p. 4.12-10

²⁸ FSEIR, p. 4.12-1.

²⁹ FSEIR, p. 4.12-9.

³⁰ FSEIR, p. 4.12-9.

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station for every 5000 residents.³¹ As of 2016, the City of Oakland's population was estimated to be approximately 420,000.³² With only 25 active fire stations, Oakland's current service ratio is over 16,000 residents to each fire stations – more than three times the national fire safety standard. Adding the additional 935 homes and 2236 new residents to the Project site will further exacerbate this deficiency. A new fire station is therefore necessary to enable the City to comply with applicable fire safety performance standards.

Second, the three fire stations which would service the Project site are already overburdened. OFD's 2016 year-end fire response memorandum³³ demonstrates that Station 26 responded to 3233 calls in 2016, Station 23 responded to 4648 calls in 2016; and Station 21 responded to 381 calls in 2016.³⁴ Thus, the two fire stations that are closest to the Project site average about 12 calls per day, and are already significantly burdened. The odds of one or both of them being unavailable if an Oak Knoll Project fire occurs are very high. The next closest station also averages about 11 calls per day, and could also be unavailable.

Finally, at any given time, up to 1/3 of OFD fire stations are out of service to conduct training or other departmental needs. Thus, it is possible that Stations 26, 23, and/or 21 may be out of service and unable to adequately respond to fires at the Project site at a time of need. The FSEIR failed to evaluate a scenario in which one or more of these fire stations would be unavailable to serve the Project, and failed to identify mitigation or alternative fire response plans in the event one or more of the Project area fire stations is unavailable. These are potentially significant impacts which must be addressed and mitigated in a revised SEIR prior to Project approval.

³¹ See Fire Service Features of Buildings and Fire Protection Systems, available at <https://www.osha.gov/Publications/OSHA3256.pdf>.

³² U.S. Census Bureau, "Population and Housing Unit Estimates". <https://www.census.gov/programs-surveys/popest/data/tables.2016.html>; see also https://en.wikipedia.org/wiki/Oakland,_California#cite_note-USCensusEst2016-14.

³³ See Exhibit C, OAKLAND FIRE DEPARTMENT, Inter-Office Memorandum 2016.

³⁴ *Id.*

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.³⁵ 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.”³⁶ The City must also certify find that the project’s benefits outweigh its environmental risks.³⁷

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.”³⁸ Oakland Residents previously commented that 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.

³⁵ 14 CCR sections 15090, 15091.

³⁶ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

³⁷ 14 CCR section 15093.

³⁸ 14 CCR sections 15090, 15091.

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.

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.³⁹

³⁹ See *City of Hayward v. Bd. Of Trustees of Cal. State University* (2015) 242 Cal. App 4th 833, 857.

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.⁴⁰ 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 ramps.⁴¹ 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.⁴²

Mr. Smith also proposes additional feasible mitigation to address the Project's significant impacts to I-580 mainline facilities.⁴³ The SEIR finds that the Project would have significant traffic impacts on freeway mainline sections of I-580 in the Project vicinity. However, because Caltrans has no current committed plans to improve the I-580 mainline facilities in this vicinity, the SEIR concludes that the Project's impacts are significant and unavoidable. Mr. Smith explains that Caltrans has existing programs to accept fair share funding commitments towards

⁴⁰ See Oakland Residents' 6/21/17 Comments, Exhibit B, p. 3.

⁴¹ DSEIR, p. 4.13-69.

⁴² See Oakland Residents' 6/21/17 Comments, Exhibit B, p. 3.

⁴³ See Exhibit B, p. 3.

funding subsequent roadway improvements. Mr. Smith concludes that the City should add a mitigation measure which required the Applicant to make a fair-share contribution to Caltrans, in accordance with fair share procedures detailed in *Caltrans Guide for the Preparation of Traffic Impact Studies*, towards funding future I-580 improvements that would address the Projects significant impacts on this major roadway.⁴⁴

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 these proposed mitigation measures.

C. The City Continues to Improperly Apply Mitigation Measures to Unmitigated Project Impacts.

The SCAs which are incorporated into the FSEIR and SCA/MMRP are intended to prevent the occurrence of or to minimize the significance of potential environmental effects.⁴⁵ However, the FSEIR incorrectly applied these mitigation measures to the Project's unmitigated impacts in several key impact areas, including air quality, public services (police and fire), and traffic.⁴⁶

The application of mitigation to the Project's unmitigated impacts violates CEQA's requirement that the lead agency must first determine the extent of a project's impacts before it may apply mitigation measures to reduce those impacts.⁴⁷ As a result, the FSEIR failed to accurately disclose the extent of the Project's impacts in these areas. The FSEIR therefore lacks substantial evidence to support a finding that the Project's mitigation measures fully mitigate the Project's significant impacts, since the pre-mitigation impact was never disclosed. The FSEIR must be revised to disclose the severity of all potentially significant impacts prior to mitigation before the Council can conclude that the FSEIR provides substantial evidence to support the requisite CEQA findings for Project approval.

⁴⁴ *Id.*

⁴⁵ FSEIR, p. 2-14.

⁴⁶ *Id.*

⁴⁷ 14 CCR § 15370; *Lotus v. Dep't of Transp.* (2014) 223 Cal.App.4th 645, 651-52.

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VI. CONCLUSION

For the reasons discussed herein, Oakland Residents respectfully requests 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:acp

From: Alisha C. Pember [REDACTED]
Subject: Agenda Item No. S9.2: Oak Kno Project and C ty Owned Barce ona Parce (fi e Numbers 17-0208, 17-0209, 17-0210, 17-0211)
Date: November 7, 2017 at 3:57 PM
To: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Cc: Chr st na Caro [REDACTED]

Good afternoon,

Please see the attached Comments re the above-referenced matter.

Supporting attachments will follow in a separate email.

If you have any questions, please contact Christina Caro.

Thank you.

Alisha Pember

Alisha C. Pember
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