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February 27, 2019

Via Email and Overnight Mail

President Richard Valle and Honorable Members,
Board of Supervisors of Alameda County
1221 Oak Street, Suite 536
Oakland, CA 94612
c/o Clerk of Board, Board of Supervisors, Anika Campbell-Belton
Email c/o Anika.campbell-belton@acgov.org

Via Email Only

Albert Lopez, Planning Director: Albert.Lopez@acgov.org
Rodrigo Orduña, Planner: Rodrigo.orduna@acgov.org

Re: Appeal of Planning Commission February 19, 2019 Approval of Tract Map Subdivision (TR-8488), and Final Addendum to the 2004 San Lorenzo Village Center Specific Plan EIR (Village Green Mixed-Use Project) (PLN2018-00086/TR-8488) (Demmon Partners, Mitch Mckinzie)

Dear President Valle, Honorable Board Members, Mr. Lopez and Mr. Orduña:

We are writing on behalf of **Alameda County Residents for Responsible Development** (“Alameda County Residents”) to appeal the Planning Commission’s February 19, 2019 approval of the Tract Map Subdivision (TR-8488) and the Final Addendum to the 2004 San Lorenzo Village Center Specific Plan EIR (“Addendum”) for the Village Green Mixed-Use Project, PLN2018-00086/TR-8488 (“Project”).¹ The Project includes the proposed development of 163 rental housing units, 11,524 square feet of indoor retail space, and 660 square feet of outdoor retail space, on the west side of

¹ The Project was considered as Agenda Item I-3 at the February 19, 2019 Planning Commission hearing.

Hesperian Boulevard, between Paseo Grande and Via Mercado in the San Lorenzo area of unincorporated Alameda County (“Project”).

I. ACTIONS BEING APPEALED

Alameda County Residents appeals the following actions taken by the Planning Commission at its February 19, 2019 hearing on the Project:²

1. Certification of the Village Green Mixed-Use Final Addendum to the 2002 San Lorenzo Village Center Specific Plan EIR (“Addendum”), prepared pursuant to the California Environmental Quality Act (“CEQA”)³; and
2. Approval of a Tentative Tract Map (“TTM”) prepared pursuant to the Subdivision Map Act (“SMA”)⁴.

II. APPEAL PROCEDURE

This appeal is timely filed within 10 days of the Planning Commission’s February 19, 2019 actions approving the Project.⁵ As discussed below and in the attached Exhibit 1, this appeal provides written notice to the Board of Supervisors (“Board”) of the appeal and an explanation of the basis for the appeal.⁶ The County

² See generally, Alameda County Planning Commission, February 19, 2019 Staff Report.

³ Pub. Resources Code, § 21000 et seq.

⁴ Gov. Code, § 66410 et seq.

⁵ Alam. County Code § 16.08.100; see also § 17.54.070. Our review of the Alameda County Code indicates that the Code does not contain any specific provisions governing appeals of environmental review documents (such a form, deadlines, or fee schedule), nor does the Planning Department promulgate any guidance. Planning Director Mr. Lopez confirmed with the undersigned by telephone that: (1) the County does not have appeal procedures specific to CEQA actions; (2) the Planning Commission was the final decision maker with regard to the Addendum for the Project; and (3) appeals should be made in writing to the Board within 10 days of the Planning Commission action (here, March 1, 2019). Therefore, this letter and the attached Exhibit 1 provide such written notice and basis.

⁶ *Id.*

has established a \$250.00 fee to file an appeal of Planning Department actions.⁷ A check in that amount is enclosed.

With regard to TTM appeal procedures, Alameda County Code, section 16.08.100 (D) provides that “[a]ny interested person” may appeal a decision “on a form to be provided by the county planning department.” However, Alameda County’s website does not offer a form for a TTM appeal.⁸ County staff Maria Palmeri advised the undersigned by telephone on February 25, 2019 and February 26, 2019 that the Planning Department does *not* have a form for this appeal.⁹ Ms. Palmeri confirmed that, due to the absence of a form, any written letter addressed to the Board, notifying the Board of the approvals sought to be appealed and the basis for that appeal, satisfies this requirement. Alameda County Code section 16.08.10 further provides that any appeal must be made within 10 days (here, by March 1, 2019). An appeal can also be filed with the Planning Department acting “as an agent of the clerk of the board for [this] purpose[.]”¹⁰ Finally, Alameda County Code section 16.08.10 provides that the Board “may, in its discretion, reject the appeal within fifteen (15) days or set the matter for public hearing. If the board rejects the appeal, the appellant shall be notified of such action by the clerk of the board of supervisors.”¹¹ This letter and the attached Exhibit 1 provide such written notice and basis.

III. INTEREST OF APPELLANT

Alameda County Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public impacts associated with Project development. Alameda County Residents includes the **International Brotherhood of Electrical Workers Local 595; Plumbers & Steamfitters Local 342; Sheet Metal Workers Local 104; Sprinkler Fitters Local 483** and their members and their families; and other individuals that live and/or work in Alameda County, including San Lorenzo resident James Correa.

⁷ Alam. County Code § 17.54.070; Oral Communication with Maria Palmeri, Planning Department, February 26, 2019.

⁸ See <https://www.acgov.org/clerk/forms.htm>.

⁹ Oral communication, February 25, 2019 and February 26, 2019.

¹⁰ Alam. County Code § 16.08.10.

¹¹ *Id.*

Alameda County Residents appeared at the February 19, 2019 Planning Commission hearing and presented written and oral comments in opposition to the Project. Alameda County Residents' written comments included three exhibits: 1) Exhibit A, a detailed technical report by Kaitlyn Heck of Soil Water Air Protection Enterprise ("SWAPE Report"); 2) Exhibit B, the California Public Utilities Commission's San Bruno Incident Report; and 3) Exhibit C, a newspaper article discussing a recent gas explosion on San Francisco's Geary Boulevard (collectively "February 2019 Comment Letter"). The February 2019 Comment Letter is attached as **Exhibit 1** to this letter.

IV. GROUNDS FOR APPEAL

A. Addendum

Alameda County Residents appeals the certification of the Addendum on the basis that the County violated CEQA by failing to prepare a subsequent or supplemental environmental impact report ("EIR") to the 2004 San Lorenzo Village Green Specific Plan EIR, for all of the reasons explained in detail in the February 2019 Comment Letter.¹² In particular, the Comment Letter explains that: 1) the Addendum fails to accurately disclose and analyze the Project's potentially significant air quality impacts by relying on unsubstantiated input parameters to estimate Project emissions; 2) the Addendum fails to include an adequate health risk analysis; 3) the Addendum fails to accurately disclose and analyze the Project's potentially significant GHG impacts; 4) the Addendum fails to incorporate all feasible mitigation measures to reduce GHG emissions to less than significant levels; and 5) the Addendum fails to consider significant new information of substantial importance concerning fire risk and safety in the Project vicinity.¹³

The February 2019 Comment Letter, including in particular the comments of Ms. Heck, provides substantial evidence demonstrating that the Addendum fails to comply with CEQA, and that a subsequent EIR is required, due to substantial changes in circumstances and new information demonstrating that the Project will result in new or more significant environmental effects than previously analyzed,

¹² See generally, Exhibit 1, February 2018 Comment Letter, pp. 9-30

¹³ *Id.* at pp. 15-35, Exhibit A.

without incorporating all feasible mitigation measures to reduce significant effects to less than significant levels.

With this appeal, Alameda County Residents asks that the Board rescind the Planning Commission's certification of the Addendum, and remand the Project to County Staff to prepare and circulate a legally adequate project-level EIR for public review and comment which fully discloses and analyzes these potentially significant effects, including all changed circumstances and new information related to the Project, and considers all feasible alternatives and mitigation measures to reduce the Project's potentially significant effects to the fullest extent feasible, as required by CEQA. In the absence of this analysis and mitigation, the County lacks substantial evidence to support the findings made by the Planning Commission that the Project would not result in significant impacts to air quality, greenhouse gas emissions, and risk exposing people to hazards, as a result of changes in the Project, changed circumstances, or new information of significant importance which was not known, and could not have been known, at the time the 2004 Specific Plan EIR was certified.¹⁴

B. Tentative Tract Map.

Alameda County Residents appeals the approval of the TTM on the basis that the Planning Commission failed to make the required findings under the SMA to approve a TTM.¹⁵ As explained in detail in the February 2018 Comment Letter, the Government Code, section 66474, subdivisions (e) and (f) provide that the local agency "shall deny approval of a tentative map" if it makes any of the listed findings, including that the design "likely to cause substantial environmental damage" or "is likely to cause serious public health problems." Here, the Project is likely to have these effects. Thus, the Planning Commission's approval of the TTM was improper. As the February 2018 Comment Letter explains, at the very least, the County should have made specific findings under this provision.¹⁶

¹⁴ *Id.*

¹⁵ *Id.* at pp. 31-34.

¹⁶ *Id.* at pp. 31-33.

Furthermore, under Government Code, section 66474.2, subdivision (c), the County was required to make specific findings when, as here, the approval requires a change in stated policies.¹⁷ At issue here is the 2004 Specific Plan policy which limits density allocation to 150 units in subarea 5 of the Village Green planning area. To provide for the units requested, the Addendum and TTM reflects a reallocation of density from other subareas. This policy change requires written findings under the SMA.¹⁸ The Planning Commission failed to make these required findings.

V. CONCLUSION

This letter and the attached Exhibit 1 are submitted in lieu of a form to provide notice to the Board that Alameda County Residents is appealing the above-cited approvals. Please note that prior to a scheduled hearing on this matter before the Board, Alameda County Residents will file a detailed appeal letter, which may include additional supporting evidence.

We appreciate your consideration of this appeal. Please confirm in writing that this appeal has been accepted for consideration and public hearing by the Board.

Sincerely,



Sara Dudley

SFD:ljl

Enclosures: Exhibit 1: Letters
\$250 Check for Appeal Filing Fee

¹⁷ *Id.* at pp. 33-34.

¹⁸ *Id.*