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April 10, 2019

**Via Email and U.S. mail**

Chair Carla Hansen and Planning Commission Members  
 c/o Mr. Sean Moss  
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**Re: April 17, 2019 Appeal Hearing to Planning Commission of  
 Design Review Board Action on Wednesday, March 6, 2019,  
 Polaris Apartments (formerly Baxter Creek Apartments) – Tier  
 II Design Review, Application No. PL17-0028**

Dear Mr. Moss and Members of the Planning Commission:

We are writing on behalf of **El Cerrito Residents for Responsible Development** (“El Cerrito Residents”) regarding the upcoming April 17, 2019 appeal hearing before the Planning Commission on the Polaris Apartments project (formerly Baxter Creek Apartments), proposed by Charles Oewel, 11965 San Pablo LLC (“Applicant”), Application No. PL17-0028 (“Project”). El Cerrito Residents is appealing the March 6, 2016 decision by the Design Review Board to grant Tier II Design approval for the Project on two grounds.

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First, the approval was inconsistent with adopted plans, and the City's design review criteria applicable to development adjacent to the Ohlone Greenway. The Project proposes to construct a five-story wall immediately adjacent to the Ohlone Greenway, a public urban trail. This would create a darkened, tunneling effect for pedestrians on the Greenway, resulting in significant visual, aesthetic and safety impacts. This design is inconsistent with City policies regarding the Greenway as defined and described in the *El Cerrito General Plan* and *Ohlone Greenway Master Plan*.

Second, the approval violated the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.). CEQA requires the preparation of a project-specific environmental impact report ("EIR") for this Project because the record contains substantial evidence that the Project may result in the following significant impacts that were not evaluated and mitigated in the prior Specific Plan EIR:

(a) Significant visual, aesthetic and safety impacts from the proposed construction of a five-story wall immediately adjacent to the Ohlone Greenway and from the Project's inconsistency with City's *El Cerrito General Plan* and *Ohlone Greenway Master Plan* policies regarding development adjacent to the Greenway;

(b) Significant hazard impacts due to the Project's location on property that may be contaminated with pesticides due to its prior use as a nursery; and

(c) Significant health risks because the Project will increase already significant traffic emissions from Interstate-80 and other nearby congested streets, adding to the existing significant emissions in an area where air quality currently poses a health risk to residents due to Interstate-80 traffic emissions and the nearby Home Depot diesel generator.

The specific grounds for the appeal are set forth in our March 14, 2019 Appeal letter, a copy of which is attached as Exhibit A. For the Commission's convenience, we have also attached a copy of the key documents we cite in our appeal letter. The appeal, however, is based on the entire record of this proceeding.

- **Exhibit A:** Exhibit A is the March 14, 2019 Appeal Letter from Adams, Broadwell, Joseph & Cardozo, appealing the Tier II Design approval.

- **Exhibit B:** Exhibit B is an analysis of the Project's environmental impacts prepared by technical experts Matthew Hagemann and Hadley Nolan of Soil Water Air Protection Enterprise ("SWAPE Comments"). The SWAPE Comments were previously provided as Attachment 1 to our November 7, 2018 Comment Letter. Some of the issues raised in the SWAPE Comments were subsequently addressed by the City and/or the Applicant. These comments are cited here solely for the expert testimony provided regarding the potential contamination of the Project site due to its use as a nursery, at a time when persistent pesticides such as DDT were not yet banned. The relevant analysis is on pages 1-3.
- **Exhibit C:** U.S. EPA, *DDT – A Brief History and Status*, available at <https://www.epa.gov/ingredients-used-pesticide-products/ddt-brief-history-and-status/> (As cited in the SWAPE Comments, p. 2 and March 2019 Appeal Letter, p. 11).
- **Exhibit D:** Exhibit D is a diagram of the shadow study conducted at the Project site, Shadow Study, Material G-006. The diagram shows that the proposed five-story wall would darken the area immediately adjacent to the Ohlone Greenway. Shadow Study, Material G-006 is part of the Applicant's design review application package and was included as an attachment to the City's Design Review Board Tier II Staff Report (March 6, 2019).
- **Exhibit E:** Exhibit E is Material A-602, including images (A) and (D). These are renderings of the proposed five-story wall and its placement next to the Ohlone Greenway. These images show that the proposed five-story wall would be located immediately adjacent to the Ohlone Greenway. The wall is placed without a setback and creates a tunneling effect between the BART line and the proposed wall for pedestrians using this public trail. Material A-602 is part of the Applicant's design review application package and was included as an attachment to the City's Design Review Board Tier II Staff Report (March 6, 2019).
- **Exhibit F:** Exhibit F is excerpts from the City of El Cerrito, *El Cerrito General Plan* Chapter 4 (Land Use) available at [https://el-cerrito.org/DocumentCenter/View/1361/GPCHAPTER\\_4\\_2?bidId=](https://el-cerrito.org/DocumentCenter/View/1361/GPCHAPTER_4_2?bidId=). These excerpts demonstrate that the Project is inconsistent with General Plan land use policies concerning the Ohlone Greenway. These policies state that

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development should enhance the aesthetics of the Greenway, encourage recreational uses, and design features should consider crime prevention.

- **Exhibit G:** Exhibit G is excerpts from the City of El Cerrito, *Ohlone Greenway Master Plan Design Guidelines*, available at [https://el-cerrito.org/DocumentCenter/View/646/ogmp\\_d?bidId](https://el-cerrito.org/DocumentCenter/View/646/ogmp_d?bidId). The Design Guidelines promote increasing use of the Greenway, expanding use of the Greenway to a diversity of users, and using the Greenway to support a healthy community. Design along the Ohlone Greenway should include setbacks and low features to increase visibility, particularly in mid-block areas and areas immediately adjacent to aerial BART tracks.
- **Exhibit H:** Exhibit H is excerpts from the 11965 San Pablo Avenue TAC [Toxic Air Contaminant] Assessment (October 23, 2018), CEQA Checklist, Appendix A. The TAC Assessment was prepared for the Project. It found that toxic air contaminants from the I-80 freeway in the Project area would exceed safety thresholds, requiring imposition of mitigation measures.

Thank you for considering our appeal letter and supporting documents.

Sincerely,



Sara Dudley

SFD:ljl

Encl.