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April 1, 2019

Via Email and Hand Delivery

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Re: Appeal to City Council re 1750 Broadway (Application Number: PLN18369; APN: 008 062301300)

Dear Mr. Rivera, City Clerk:

We write on behalf of East Bay Residents for Responsible Development ("East Bay Residents") to appeal the Oakland Planning Commission's March 20, 2019 approval of the 1750 Broadway Project (Application Number: PLN18369; APN: 008 062301300) ("Project"), and the CEQA Checklist/Exemption Report ("CEQA Analysis") prepared for the Project by the City of Oakland ("City") pursuant to the California Environmental Quality Act ("CEQA").[1] This Appeal is taken from the following Planning Commission actions:

[1] Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.

1. Adoption/approval of the CEQA Findings.
2. Approval of the Project, including Major Conditional Use Permit ("Major CUP") and Regular Design Review, subject to the Findings, Conditions of Approval ("Conditions"), and Mitigation Monitoring and Reporting Program ("MMRP") that were attached to the Planning Commission Staff Report.
3. The approval of an additional Condition of Approval (#24) imposed at the Planning Commission hearing to consider the feasibility of adding a new lightwell on the north side of the new building.[2]

The Project includes the proposed construction of a 37-story building consisting of 307 market-rate residential units, approximately 5,000 square feet of retail space, and a five-level parking garage for 170 parking spaces. The Project site is located at 1750 Broadway, between 17th and 19th Streets (APN: 008 062301300), and is proposed by Applicant Rubicon Point Partners ("Applicant").[3]

This Appeal letter demonstrates that the Planning Commission's decision to approve the Project was not supported by substantial evidence in the record.[4] Specifically, our prior comments, as well as the comments of several local residents and other members of the public that were submitted to the Planning Commission, identified several flaws in the City's analysis, and provided new information and substantial evidence demonstrating that the Project will have new and more severe impacts than previously analyzed in the City's General Plan Land Use and Transportation Element and its Environmental Impact Report ("LUTE EIR"), the 2007-2014 Housing Element, 2015-2023 Housing Element and their EIRs ("Housing Element EIRs"), and the City's 2011 Renewal Plan Amendments / Redevelopment Plan and EIR ("Redevelopment Plan").[5] These issues were not resolved by the Commission prior to approval.

The City's CEQA Analysis purports to evaluate the Project's potential environmental impacts and consistency with these prior EIRs, and erroneously

[2] March 22, 2019 Planning Commission Decision Letter for Application Number: PLN18369; Property Location: 1750 Broadway; APN: 008 062301300 ("Decision Letter"), p. 1.
[3] March 20, 2019 Planning Commission Staff Report ("Staff Report"), p. 1.
[4] This Appeal is also accompanied with payment of the appeal fee of $1,891.08 in accordance with the City of Oakland Master Fee Schedule.
[5] CEQA Analysis, p. 3.

asserts that the Project is exempt from further CEQA review pursuant to a number of CEQA exemptions, including the Class 32 infill exemption under CEQA Guidelines Section 15332, the streamlining exemptions for urban infill development projects under CEQA Guidelines Sections 15183 and 15183.3. In the alternative, the CEQA Analysis asserts that it is a CEQA Addendum prepared pursuant to CEQA Guidelines Sections 15162, 15163, and 15164 to address minor technical changes and additions in the prior analysis that do not trigger the need for subsequent environmental review.[6] However, as explained more fully below, and in the comments of other local residents and members of the public that were presented to the Planning Commission, the CEQA Analysis fails to disclose, analyze, and mitigate the Project's new, significant, and more severe impacts on air quality, public health, and construction noise that will occur during the Project's minimum 28-month construction period,[7] and fails to disclose, analyze, and mitigate the Project's new, significant, and more severe impacts on public transit which are likely to occur, and potentially escalate, throughout the life of the Project.

The CEQA Analysis failed to adequately disclose and mitigate these impacts, in violation of CEQA and local land use requirements. The Commission failed to resolve these deficiencies, and failed to remand the Project to Staff to prepare an EIR, prior to approving the Project. The Planning Commission therefore lacked substantial evidence to support its decision to approve the Project and its adoption of CEQA findings for the Project. As explained herein, the City Council should vacate the Planning Commission's approvals and remand the Project to Staff to prepare a legally adequate EIR, before the Project can be presented to City decision makers for approval.[8]

This appeal letter and attachments raises each and every issue that is contested, and addresses "issues and/or evidence" that was previously presented to the Planning Commission prior to its approval of the Project, as specified Sections 17.134.070 and 17.136.090 of the Oakland Planning Code and allowed pursuant to

[6] CEQA Analysis, p. 3.
[7] CEQA Analysis, p. 51.
[8] PRC § 21094.5(a); 14 CCR § 15164(e); see *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.

CEQA.[9] We previously filed comments on the Project on March 20, 2019 with the assistance of traffic engineer Daniel T. Smith Jr., P.E.[10] Local residents and members of the public submitted oral and written comments to the Planning Commission regarding the Project's significant construction noise impacts.[11] We also prepared this Appeal with the assistance of noise consultant Derek Watry, whose comments address the Project's construction noise impacts and need for additional mitigation identified by residents of 1770 Broadway,[12] and air quality and hazardous resources expert James J.J. Clark, PhD, whose comments address the issues previously raised by East Bay Residents regarding the CEQA Analysis' failure to accurately disclose and mitigate the Project's individual and cumulative public health risks to the surrounding community from exposure to toxic air contaminants ("TACs") during Project construction, and improper reliance on non-binding mitigation to reduce those impacts to less than significant levels.[13]

East Bay Residents urges the City Council to grant this Appeal and remand the Project to City Staff to prepare an EIR for the Project. The Project should not be rescheduled for a further public hearing until these issues have been addressed. East Bay Residents reserves the right to submit supplemental comments at any later hearings and proceedings related to the Project.[14]

I. STATEMENT OF INTEREST

East Bay 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

[9] Oak. Planning Code §§ 17.134.070.A; 17.136.090; PRC § 21177(a) (allowing members of the public to submit additional evidence to the lead agency regarding a project's CEQA compliance "until the close of the final hearing on the Project.").
[10] East Bay Residents' March 20, 2019 written comments to the Planning Commission are attached hereto as Exhibit A and incorporate by reference.
[11] Exemplary comments from residents of 1770 Broadway addressing construction noise impacts are attached hereto as Exhibit B and incorporated by reference.
[12] Mr. Watry's comments and curriculum vitae are attached hereto as Exhibit C and incorporated by reference.
[13] Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit D
[14] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Project. The association includes City of Oakland residents Jason Gumataotao, Kal Karn, and James O'Brien, labor organizations UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, their members and families, and other individuals that live and/or work in the City of Oakland and Alameda County.

Individual members of East Bay 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. East Bay 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. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which is satisfied by the CEQA Analysis. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[15] The EIR is the "heart" of this requirement.[16] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[17]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[18] An adequate EIR

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[15] 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[16] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.
[17] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[18] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

must contain facts and analysis, not just an agency's conclusions.[19] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[20]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[21] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[22] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[23] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.[24] A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[25] This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[26]

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine

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[19] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[20] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[21] CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[22] Pub. Resources Code §§ 21002.1(a), 21100(b)(3).
[23] *Id*., §§ 21002-21002.1.
[24] CEQA Guidelines § 15126.4(a)(2).
[25] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[26] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

whether to prepare an EIR or negative declaration, identify whether tiering or another appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared CEQA document could be used for the project, among other purposes.[27] The initial study must accurately describe the project, identify the environmental setting, identify environmental effects and show "some evidence" to support those conclusions, and a discussion of ways to mitigate the significant effects of the project, if any.[28] CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.[29] A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."[30] If the project has potentially significant environmental effects but those effects can be reduced to a level of insignificance by mitigation measures that the project's proponent has agreed to undertake, the lead agency may prepare a mitigated negative declaration ("MND").[31]

A. Subsequent CEQA Review.

When a previously approved project for which an EIR or an MND has been prepared is modified, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[32]

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[27] CEQA Guidelines §§ 15060, 15063(c).
[28] CEQA Guidelines § 15063(d) (emphasis added).
[29] *See, e.g.,* Pub. Resources Code § 21100.
[30] *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).
[31] PRC § 21080 (c)(2); 14 CCR § 15064(f)(2).
[32] Pub. Resources Code § 21166; CEQA Guidelines § 15162.

In assessing the need for subsequent or supplemental environmental review, the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events have occurred:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

  (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

  (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

  (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

  (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project

proponents decline to adopt the mitigation measure or alternative.[33]

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.[34] In any case, the decision must be supported by substantial evidence.[35] Here, the County's decision not to prepare a subsequent CEQA document for the Project is not supported by substantial evidence.

B. CEQA Infill Streamlining Exemptions

The City seeks to rely on narrow CEQA exemptions that allow approval of projects without an EIR in very narrow circumstances, CEQA Section 21094.5[36] and CEQA Guidelines Sections 15183 and 15183.3 (Qualified Infill)[37] (collectively, the "Infill Exemption"). The Infill Exemption provides that, if an EIR was previously certified for a planning level decision of a city or county, subsequent CEQA review may be limited to evaluating a project's effects on the environment that are either (A) specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) where substantial new information shows the effects will be more significant than described in the prior environmental impact report.[38] The Infill Exemption allows a lead agency to forego preparation of an EIR if neither of these situations occur, or if the lead agency determines that uniformly applicable development policies or standards adopted by the agency will substantially mitigate the new effects. A lead agency's determination pursuant to this section must be supported by substantial evidence.[39]

[33] CEQA Guidelines §§ 15162(a)(1)-(3).
[34] CEQA Guidelines § 15162(b).
[35] *Id*. §§ 15162 (a), 15164(e), and 15168(c)(4).
[36] Pub. Res. Code § 21094.5.
[37] 14 Cal. Code Regs. § 15183.3.
[38] Pub. Res. Code § 21094.5(a); 14 Cal. Code Regs. § 15183.3(a), (c).
[39] Pub. Res. Code § 21094.5(a).

C. Categorical Exemptions.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA called categorical exemptions.[40] Categorical exemptions apply to certain classes of activities that generally do not have a significant effect on the environment.[41] Public agencies utilizing such exemptions must support their determination with substantial evidence.[42] CEQA exemptions are narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language."[43] Erroneous reliance by a lead agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA.[44] "[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law."[45]

CEQA contains several exceptions to categorical exemptions. In particular, a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances,"[46] or where there is a reasonable possibility that the activity will have a significant effect on the environment, including (1) when "the cumulative impact of successive projects of the same type in the same place, over time is significant."[47] An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.[48]

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[40] PRC § 21084(a); 14 CCR §§ 15300, 15354.
[41] *Id.*
[42] PRC § 21168.5.
[43] *Mountain Lion Found. v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125; *McQueen*, 2 Cal.App.3d at 1148.
[44] *Azusa*, 52 Cal.App.4th at 1192.
[45] *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656).
[46] 14 CCR § 15300.2(c).
[47] 14 CCR § 15300.2(b).
[48] *Salmon Pro. & Watershed Network v. County of Marin* ("*SPAWN*") (2004) 125 Cal.App.4th 1098, 1198-1201.

III. THE COMMISSION'S RELIANCE ON PREVIOUS ENVIRONMENTAL ANALYSIS AND EXEMPTIONS VIOLATED CEQA

A. The Project is Not Consistent with CEQA Addendum and Infill Streamlining Exemption Requirements.

The City's reliance on CEQA Addendum and Infill Streamlining Exemptions to approve the Project without preparing an EIR is misplaced for several reasons. First, the CEQA Analysis does not simply consist of "minor changes or additions are necessary" as is allowed under the Addendum provision. Rather, it includes an entirely new substantive analysis for a large development project which was not specifically analyzed in the LUTE EIR, Housing Element EIR, or Redevelopment Plan. The City must discontinue this practice, which clearly violates CEQA. Moreover, as explained further below, the Project will result in new or more severe significant impacts than analyzed in the previous EIRs that require mitigation that is not included in the CEQA Analysis or the City's Standard Conditions of Approval ("SCAs") and MMRP. CEQA requires that the City's decision to forego preparation of an EIR, and reliance on an Addendum, must be supported by substantial evidence.[49] In this case, the City's decision not to prepare a subsequent or supplemental EIR for the Project is not supported by substantial evidence because of these unanalyzed and/or unmitigated impacts.

The City also relies on narrow CEQA exemptions that are inapplicable or not supported by substantial evidence. Specifically, the City relies on CEQA Guidelines Sections 15183 (Community Plan)[50] and 15183.3 (Qualified Infill)[51] for Project approval. 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 for three key reasons. First, the Project's health risks to local sensitive receptors from exposure during construction

[49] *Id*. §§ 15162 (a), 15164(e), and 15168(c)(4).
[50] CEQA Guidelines Section 15183.
[51] CEQA Guidelines Section 15183.3.

to diesel particulate matter ("DPM") emissions, a TAC, constitute significant impacts, and the Commission failed to require binding mitigation to reduce these impacts to less than significant levels. Second, the Project will have significant construction noise impacts on local sensitive receptors that the CEQA Analysis fails to disclose, and fails to adequately mitigate. Finally, the City also failed to analyze the Project's impacts on public transit, in violation of CEQA and local land use requirements, and failed to disclose the Project's new and more severe impacts on local transit systems than the impacts previously envisioned in the LUTE EIR, Housing Element EIR, or Redevelopment Plan.

For these reasons, the Commission lacked substantial evidence to support its findings that the Project would not have any significant, unmitigated impacts on the urban environment and the health and welfare of local residents. The City Council cannot uphold the Commission's unsupported findings. The City Council should vacate the Commission approvals and require the City to provide detailed analysis of the Project's impacts in a subsequent or supplemental EIR.

A. The Project Has Significant, Unmitigated Health Risks from Construction Emissions.

The CEQA Analysis includes a health risk assessment ("HRA") which admits that the Project will have potentially significant individual and cumulative impacts during Project construction from cancer risk to nearby sensitive receptors, as follows:[52]

[52] CEQA Analysis, HRA, p. C-7.

MAXIMUM HEALTH RISKS FROM PROJECT CONSTRUCTION

Health Risk at MEIR	Maximum Cancer Risk (in a million)	Chronic Risk (Hazard Index)	Maximum $PM_{2.5}$ concentration
Uncontrolled Scenario			
Residential Receptor - Infant	114	0.073	0.337
Residential Receptor - Child	23	0.073	0.337
Residential Receptor - Adult	3	0.073	0.337
With Tier 4 Equipment			
Residential Receptor - Infant	4.5	0.003	0.014
Residential Receptor - Child	0.9	0.003	0.014
Residential Receptor - Adult	0.13	0.003	0.014
Project-level Threshold	10	1.0	0.3
Significant?	**No**	**No**	**No**

The CEQA Analysis demonstrates that the Project's unmitigated TAC emissions will exceed BAAQMD's CEQA significance threshold of 10 in one million for Project impacts for both children (23 in one million) and infants (114 in one million). The impact on infants also exceeds BAAQMD's cumulative cancer risk threshold of 100 in one million.[53] These are significant impacts which require mitigation under CEQA.

The CEQA Analysis relies entirely on the nse of Tier 4 construction equipment to reduce the Project significant construction health risks to less than significant levels. However, the CEQA Analysis fails to adequately mitigate these risks because the City's reliance on Tier 4 construction equipment is not expressly required by either SCA AIR-3 or Conditions of Approval No. 13, the Construction Mitigation Plan ("CMP").

SCA AIR-3 contains two separate tracks which allow a project applicant to select either preparation of an HRA (SCA AIR-3.a.i) or agree to use Verified Diesel

[53] See CEQA Analysis, p. 48 (citing BAAQMD significance thresholds for TACs); see also BAAQMD California Environmental Quality Act Air Quality Guidelines (May 2017), at p. 2-2, available at https://www.google.com/search?source=hp&ei=ITyiXJutENL7-gSjn7aQCg&q=baaqmd+ceqa+&btnK=Google+Search&oq=baaqmd+ceqa+&gs_l=psy-ab.3..0l2j0i22i30l3.1123.7295..7757...0.0..0.74.747.12.....0....1..gws-wiz.....0..0i131.9isGEbDCYqA

Emission Control Strategies ("VDECS") for construction equipment, which may include, but does not require, Tier 4 engines (SCA AIR-3.a.ii).[54] Pursuant to SCA AIR-3.a.i, if the HRA concludes that the health risk exceeds acceptable levels, DPM reduction measures are then identified to reduce the health risk to "acceptable levels" as set forth under SCA AIR-3.a.ii. As explained by Dr. Clark, however, SCA AIR-3.a.ii's requirement to use VDECS does not bind the Applicant to the use of Tier 4 equipment. Rather, it simply offers the Applicant the opportunity to use the "most effective VDECS" available.[55] As Dr. Clark explains, "the wording of the SCA allows the Applicant, rather than the City, to determine whether 'available' equipment could include certified equipment that does not meet the Tier 4 requirement."[56] Condition No. 13 similarly requires preparation of a CMP, but does not expressly require the use of Tier 4 equipment.

Tier 4 equipment is not the only type of VDECS available.[57] There are also two levels of Tier 4 equipment currently available on the construction market – Tier 4 Interim and Tier 4 Final.[58] The CEQA Analysis assumes, with no supporting evidence, that the Project will use the most stringent Tier 4 Final equipment, which has limited availability and is harder to procure.[59] There is also no evidence in the record demonstrating that the Applicant has procured, or even committed to procure, the Tier 4 Final equipment. SCA AIR-3.a.ii requires that the Applicant's commitment to use VDECS "shall be verified through an equipment Inventory submittal and Certification Statement that the Contractor agrees to compliance."[60] However, neither the CEQA Analysis nor the Planning Commission Staff Report contain any such documentation.

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[54] See CEQA Analysis, Attachment C, SCA AIR-3.
[55] See Exhibit C, Clark Comments, p. 1.
[56] *Id.*
[57] See Emission Standards, Nonroad Diesel Engines, available at: https:ljwww.dieselnet.com/standards/us/nonroad.phQ#tier3.
[58] *Id.*
[59] See CEQA Analysis, Appendix C, Health Risk Analysis, CalEEMod Modeling, p. 2 ("All construction equipment used assumed to meet Tier 4 Final standards."). On limited availability of Tier 4 equipment, see "White Paper: An Industry Perspective on the California Air Resources Board Proposed Off-Road Diesel Regulations."Construction Industry Air Quality Coalition, *available at:* http://www.agc-ca.org/uploadedFiles/Member_Services/Regulatory-Advocacy-Page-PDFs/White_Paper_CARB_OffRoad.pdf.
[60] SCA AIR-3.a.ii.

Dr. Clark explains that the reduction in DPM assumed by use of Tier 4 equipment includes reductions of emissions of up to 93% during the construction phase (0.26 tons to 0.019 tons of DPM emitted).[61] This assumption is entirely unsupported. The CEQA Analysis and Conditions of Approval fail to include a condition requiring Tier 4 engines, and the record fails to contain any evidence demonstrating that the Applicant will procure Tier 4 equipment for the Project. As a result, the City cannot rely on SCA AIR-3 to conclude that the Project's construction health risk would be reduced to below levels of significance, and there is currently no binding mitigation required for the Project that will effectively mitigate its significant cancer risks to less than significant levels. The City's significance conclusions regarding health risk are therefore unsupported, and the impact remains significant and unmitigated, and the City's approach to its health risk analysis fails to ensure that the public health will be protected.

B. The Project Is Likely to Have Significant, Unmitigated Noise Impacts on Local Receptors during Project Construction.

Several members of the public commented to the Planning Commission that the Project is likely to have significant impacts on neighboring residents from construction noise during the Project's 2-3 year construction period, resulting in more severe impacts on neighboring residents than analyzed by the City. Residents also expressed concerns that these impacts will not be mitigated to less than significant levels by the City's proposed SCAs. In particular, residents of 1770 Broadway, the neighboring property to the Project site, submitted both oral and written comments explaining that "construction [of 1750 Broadway] is scheduled to last 28-36 months…The noise from this construction will render our apartments unlivable during that period."[62]

The CEQA Analysis incorrectly concludes that the Project will have less than significant construction noise impacts based on two unsupported assumptions. First, the CEQA Analysis assumes that, because the Project would be required to comply with various land use regulations, including the City's Noise Ordinance, Municipal Code nuisance standards, California Noise Insulation Standards, and Oakland General Plan, that noise impacts would necessarily be less than

[61] See Exhibit C, Clark Comments, p. 1.
[62] See Exhibit B, March 8, 2019 comments of 1770 Broadway resident J. Hornoff, p. 1.

significant.[63] Second, the CEQA Analysis assumes that implementation of SCA's NOI-1 though NOI-8 would reduce otherwise-significant construction noise impacts to a less than significant levels.[64] The City's reliance on these assumptions is unsupported and contrary to CEQA. By contrast, there is substantial evidence from local neighbors and noise consultant Mr. Watry demonstrating that the Project is likely to generate a substantial increase in ambient noise levels during Project construction that exceed noise levels existing without the Project, and that this increase remains substantial notwithstanding application of the SCAs to the Project.

1. Compliance With Noise Regulations Is Not Substantial Evidence of Less Than Significant Impacts.

The City relies on the Project's anticipated compliance with various land use regulations related to noise to conclude that the Project will not cause significant noise impacts in the first place. However, the City's reliance on compliance with regulations does not obviate the need for further analysis of noise impacts, nor does compliance with regulations provide any substantial evidence that the Project will not have significant noise impacts on surrounding sensitive receptors. The courts have held that compliance with noise regulations alone is insufficient to conclude that a project will not have significant noise impacts.

In *Keep our Mountains Quiet v. County of Santa Clara*,[65] neighbors of a wedding venue sued over the County of Santa Clara's failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors' homes and disrupted the use and enjoyment of their property.[66] Similar to the CEQA Analysis in this case, the County had prepared a mitigated negative declaration ("MND"), which employed the noise standards set forth in the County's noise ordinance and general plan as

[63] CEQA Analysis, pp. 39-41. The City relies on these "maximum" noise code violation standards as its significance thresholds to evaluate the severity of the Project's construction noise impacts
[64] CEQA Analysis, p. 47.
[65] *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.
[66] *Id*. at 724.

the County's thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.[67]

The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts.[68] In particular, citing *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, the Court explained that "the fact that residential uses are considered compatible with a [County noise ordinance maximum] noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA."[69] The Court further explained that, as required by CEQA Guidelines Appendix G, § XII, subd. (d), the CEQA lead agency is required to "consider both the increase in noise level and the absolute noise level associated with a project" in evaluating whether a project has significant noise impacts. The Court held that the evidence submitted by local residents and their expert attesting to significant noise impacts felt directly on their residences amounted to substantial evidence demonstrating that the project would have potentially significant noise impacts. The Court also held that the County's reliance on the project's compliance with noise regulations did not constitute substantial evidence supporting the County's finding of no significant impacts.[70]

Similarly here, the CEQA Analysis relies on the Project's purported compliance with local and State noise regulations to conclude that the Project will not result in significant construction noise impacts, and requires the Applicant to prepare a plan to have the Project maintain noise levels that do not exceed these

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[67] *Id.* at 732.
[68] *Id., citing Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project's effects can be significant even if "they are not greater than those deemed acceptable in a general plan"); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, ("CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan").
[69] *Id.*, citing (2001) 91 Cal.App.4th 1344, 1381, 111 Cal.Rptr.2d 598 ("*Berkeley Jets*").
[70] *Id.* at 732-734.

regulatory standards.[71] As in *Keep Our Mountains Quiet*, the City's reliance on compliance with noise regulations does not provide substantial evidence to support the City's conclusion that the Project will not have significant noise impacts. Indeed, even more egregious than the MND in *Keep Our Mountains Quiet*, the CEQA Analysis does not even contain a project-specific noise study on which the City purports to rely to support its contention that the Project will comply with these noise regulations.[72] Thus, the City has no evidence that the Project will not exceed regulatory standards, let alone substantial evidence that compliance with the standards alone would reduce potentially significant noise increases from Project construction to less than significant levels.

By contrast, residents of 1770 Broadway have commented that construction noise from the nearby 1900 Broadway Project, located a block from the Project site, has already had significant impacts on their residences, and that they expect construction of the adjacent 1750 Broadway Project will have even more significant impacts due to the fact that 1750 Broadway is closer to their homes than 1900 Broadway.[73] Mr. Watry explains that the City's own evidence regarding noise impacts from the Housing Element EIR and the Renewal EIR demonstrated that "Typical Construction Noise Levels" range from 77 to 89 dBAs.[74] As Mr. Watry explains, the City's own noise estimates for construction equipment therefore exceed the City's "Maximum Allowable Noise Level" standards of 60 to 85 dBAs which the CEQA Analysis claims will not be violated by the Project.[75]

The CEQA Analysis contains no study or analysis demonstrating that Project construction equipment would be any quieter than the "Typical Construction Noise Levels" cited in the Housing Element EIR and the Renewal EIR on which the CEQA Analysis relies. Mr. Watry also independently opines that the Project will have significant, unmitigated construction noise impacts on sensitive receptors at 1770 Broadway because the maximum allowable construction noise level "will be on the

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[71] CEQA Analysis, pp. 39-41, 46.
[72] *Keep our Mountains Quiet,* 236 Cal.App.4th at 732-733; Sierra Club v. County of Fresno, (2018) 6 Cal.5th 502, 521 (EIR's cursory analysis of health risk from ozone exposure was "patently inadequate" because "the reader had no idea" whether the amount of ozone produced by the project would result in health risks).
[73] See Exhibit B, pp. 1-2.
[74] See Exhibit C, Watry Comments, p. 3.
[75] See Exhibit C, Watry Comments, p. 3; CEQA Analysis, pp. 39-41.

order of 10 to 15 dBA higher at the property line," which he explains "will likely exceed the standard by 20 to 30 dB."[76] Mr. Watry's comments, the comments of Project neighbors, and the evidence of "typical" construction noise cited in the City's own prior CEQA documents, constitute substantial evidence demonstrating that the Project is likely to have significant construction noise impacts that the CEQA Analysis entirely fails to disclose.[77]

2. The SCAs Fail to Provide Binding, Effective Mitigation for Construction Noise.

The CEQA Analysis attempts to justify the omission of a Project-specific noise study by stating that the Project is subject to the City's SCAs related to construction noise levels.[78] Similar to its argument regarding compliance with noise regulations, the CEQA Analysis concludes that, because the Project will be required to comply with various mitigation measures and conditions set forth in SCA NOI-1 through SCA NOI-8, the Project "would not result in significant effects related to noise and vibration."[79] This conclusion is unsupported.

As discussed above, compliance with generally applicable standards, including the SCAs, does not, by itself, provide substantial evidence supporting a conclusion that construction noise impacts will be reduced to less than significant levels. Moreover, as explained by Mr. Watry, SCAs NOI-1 to NOI-8 include vague, uncertain, outdated and, in some instances, wholly inapplicable mitigation measures which may have little or no impact on reducing actual Project construction noise.[80] Additionally, some of the SCA noise mitigations are only vaguely required "where feasible."[81] Neither the City nor the Applicant has provided any evidence to the public demonstrating that the Applicant will "feasibly" be able to obtain the construction equipment specified by SCA NOI-2 prior to commencing construction. Thus, there is no substantial evidence in the record demonstrating that the "where feasible" mitigations will actually be applied to the

[76] See Exhibit C, Watry Comments, p. 3.
[77] *Keep our Mountains Quiet,* 236 Cal.App.4th at 733-734.
[78] CEQA Analysis, p. 41.
[79] CEQA Analysis, p. 41.
[80] See Exhibit C, Watry Comments, pp. 3-4.
[81] *Id*; see SCA NOI-2a and b.

Project. The "where feasible" noise mitigation is therefore uncertain and ineffective, in violation of CEQA.[82] The City's conclusion that SCAs NOI-1 through NOI-8 would effectively mitigate the Project's potentially significant noise impacts is therefore unsupported because the City lacks evidence to demonstrate that these measures will feasibly or effectively reduce construction noise to less than significant levels.

Finally, NOI-3 requires creation of a Construction Noise Management Plan for noise impacts that exceed 90 dBAs in order to "to further reduce construction impacts associated with extreme noise generating activities."[83] SCA NOI-3 effectively admits that some construction noise will exceed applicable noise regulation limits (which range from 60-80 dBAs), yet provides no mitigation for significant noise impacts between 60-90 dBA, a range which the City considers to be above even its own regulation-based significance thresholds. Thus, reliance on the noise SCAs alone does not assure that significant noise impacts will be mitigated to less than significant levels. The CEQA Analysis' conclusion that noise impacts will be less than significant is therefore unsupported.

3. Additional Mitigation is Necessary to Reduce Construction Noise Impacts to Less Than Significant Levels.

Mr. Watry explains that additional mitigation beyond the SCAs is necessary in order to reduce the Project's significant noise impacts on nearby receptors to less than significant levels. Mr. Watry proposes three additional noise attenuation measures which he explains can be feasibly applied to the Project to reduce the potentially massive construction noise impacts on the residents of the adjacent 1770 Broadway building to less significant levels, including (1) closing off lightwell with

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[82] A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available). "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. CEQA Guidelines § 15364. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. *Id*. at § 15126.4(a)(2).

[83] See sCA NOI-3a.

sound-blocking construction curtains; (2) covering windows facing construction with airtight "storm windows"; and (3) hanging construction noise curtains from scaffolding.[84] An illustration of these mitigation measures is included below:

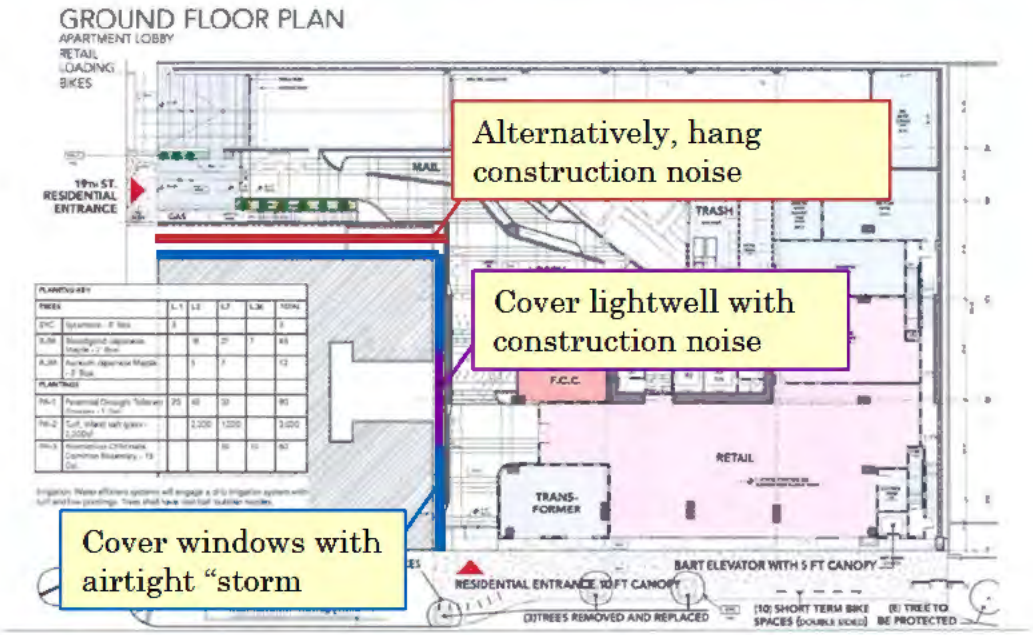

FIGURE 1 RECOMMENDED NOISE MITIGATION FOR 1770 BROADWAY[85]

The City shonld require that all of these measnres be incorporated as binding mitigation for the Project.

C. The CEQA Analysis Lacks Substantial Evidence to Support its Conclusion that the Project Will Not Have Significant Impacts on Public Transit.

The CEQA Analysis concludes that the Project will be adequately served by public transit, but fails to include an analysis of the Project's impacts on public

[84] See Exhibit C, Watry Comments, pp. 5-7.
[85] See Exhibit C, Watry Comments, p. 5.

transit that identifies current levels of impacted use of local public transit.[86] The City cannot rely on its prior EIRs to provide this missing analysis because the prior EIRs on which the CEQA Analysis purports to tier failed to address current overburdened Bay Area transit conditions. For example, the 1998 LUTE EIR, on which the CEQA Analysis relies, concluded that infill projects like the Project would less than significant land use and transportation impacts due to proximity to public transit.[87]

There is abundant evidence demonstrating that public transit in the City of Oakland, including in the transit corridors surrounding the Project site, are already at or above existing capacity.[88] Thus, it is unsupported for the City to conclude that the Project will not cause any new or more severe impacts on transit, or that the Project will be adequately served by existing transit. The City cannot rely on CEQA exemptions or a CEQA Addendum in the absence of this evidence. It is incumbent on the City to analyze, mitigate, or provide feasible alternatives for the Project's potentially significant impacts on public transit.

IV. THE PLANNING COMMISSION'S RELIANCE ON A CATEGORICAL EXEMPTION TO APPROVE THE PROJECT VIOLATED CEQA

The City's reliance on the Class 32 Infill Exemption is unsupported because there is substantial evidence demonstrating that the Project will have a significant individual and cumulative cancer risk from exposure of sensitive receptors to TAC emissions during Project construction, and potentially significant, unmitigated

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[86] See Exhibit D, Smith Comments, pp. 1-2.
[87] CEQA Analysis, p. 5.
[88] See e.g. Train strain: BART working on capacity issues as ridership rises to record levels, available at https://www.bart.gov/news/articles/2013/news20130117; January 2018, THE TRANSBAY CORRIDOR
CORE CAPACITY PROGRAM, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwiOktKQ95HhAhVRHTQIHSAKCVcQFjABegQICBAC&url=https%3A%2F%2Fwww.bart.gov%2Fsites%2Fdefault%2Ffiles%2Fdocs%2FBART%2520Core%2520Capacity_2018%2520TIRCP%2520App.pdf&usg=AOvVaw2_kPRW6dowt2i6FqKohQ01.

construction noise impacts.[89] This renders the City's reliance on the Class 32 Infill Exemption improper for three reasons.

First, the City's reliance on the Class 32 Infill Exemption is unsupported because the Project has significant air quality and noise impacts that render the Exemption facially inapplicable. The Class 32 Exemption may only be used for that "would not result in any significant effects relating to traffic, noise, air quality, or water quality."[90] As discussed above, the CEQA Analysis admits that the Project will have a significant, unmitigated cancer risk on infants that requires the use of Tier 4 mitigation to reduce to less than significant levels.[91] The comments of local residents and noise consultant Mr. Watry demonstrate that the Project is likely to have significant construction noise impacts that have not been adequately mitigated by application of SCA NOI-1 through SCA NOI-8. The Project therefore has significant air quality and noise impacts that render the Class 32 Infill Exemption facially inapplicable to the Project.

Second, the Project's significant cancer risk is an exception to the Class 32 Exemption. CEQA Guidelines Section 15300.2 prohibits categorical exemptions for projects with significant cumulative impacts or significant impacts due to unusual circumstances.[92] The CEQA Analysis admits that the Project will have a significant, unmitigated cancer risk on infants that requires the use of Tier 4 mitigation to reduce to less than significant levels. The concurrent current construction of two 35+ story buildings within a block of each other may also be considered an unusual circumstance resulting in a significant cumulative cancer risk to local sensitive receptors. These exceptions to the Class 32 Infill Exemption render it inapplicable to the Project.

Finally, the Project's CEQA Analysis and Conditions of Approval apply over 40 mitigation measures to the Project in order to reduce impacts to less than significant levels.[93] The CEQA Analysis explains that these Standard Conditions of

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[89] CEQA Analysis, p. 55; Appendix A, HRA, p, C-7.
[90] 14 CCR § 15332(d).
[91] CEQA Analysis, p. 55; Appendix A, HRA, p, C-7.
[92] 14 CCR § 15300.2(b), (c).
[93] See CEQA Analysis, Attachment A, *Standard Conditions of Approval and Mitigation Monitoring and Reporting Program*; Staff Report, Attachment B, Conditions of Approval, e.g. Nos. 13 and 14.

Approval and Mitigation Monitoring and Reporting Program ("SCA/MMRP") are applied to the Project pursuant to Section 15097 of the CEQA Guidelines, which requires that the Lead Agency "adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects."[94] The CEQA Analysis further explains that "[t]he SCAs are ***measures that would minimize potential adverse effects*** that could result from implementation of the Proposed Project."[95] Proposed Condition of Approval No. 14 applies all mitigation measures identified in the SCA/MMRP to the Project. Condition of Approval No. 13 applies SCA AIR-3 to the Project.

Mitigated categorical exemptions are prohibited under CEQA. An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects to less than significant levels.[96] The SCAs are mitigation measures designed to reduce the Project's potentially significant environmental impacts and impacts on public health that will otherwise result from the Project without mitigation. Therefore, the City may not rely on a categorical exemption to approve the Project. The City's improper attempt to include mitigation measures in a categorical exemption is contrary to law, and deprives the public of its statutory rights to participate and comment on the sufficiency of the mitigation measures proposed to be applied to the Project.

V. CONCLUSION

For the reasons stated herein, we urge the City Council to vacate the Planning Commission's approval of the Project, and remand the Project to Staff to prepare a revised environmental analysis in an EIR, as required by CEQA. The new analysis must identify and implement all feasible mitigation measures available to reduce the Project's potentially significant site-specific impacts to less than significant levels before the City reconsiders approving the Project.

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[94] CEQA Analysis, p. A-1.
[95] *Id*. (emphasis added).
[96] *SPAWN,*125 Cal.App.4th at 1102; *Azusa Land Recl. Co. v.Main San Gabriel Basin Watermaster* ("*Azusa*") (1997) 52 Cal. App.4th 1165, 1198-1201.

Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

Sincerely,

Christina M. Caro

CMC:ljl

Attachments

4218-002j

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

PROJECT INFORMATION

Case No. of Appealed Project: PLN18369

Project Address of Appealed Project: 1750 Broadway, Oakland

Assigned Case Planner/City Staff: Mike Rivera, Project Planner

APPELLANT INFORMATION: East Bay Residents for Responsible Development

Printed Name: c/o Christina Caro Phone Number: (650) 589-1660

Mailing Address: 601 Gateway Blvd. #1000 Alternate Contact Number: _____

City/Zip Code S. San Francisco, CA 94080 Representing: East Bay Residents for Responsible Development

Email: ccaro@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 / MMRP / CEQA Analysis and Exemptions

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.

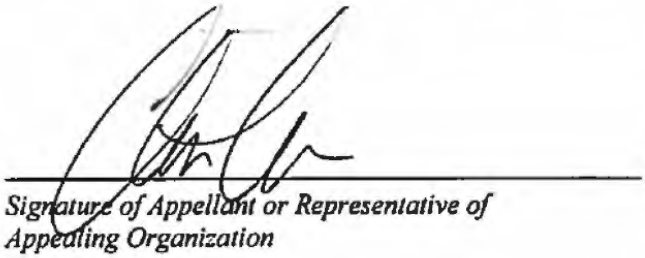
The appeal is based on the following: *(Attach additional sheets as needed.)*

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

4/1/2019

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: