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January 6, 2020

VIA EMAIL AND HAND DELIVERY

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VIA EMAIL ONLY

Mr. Brian P. Mulry, Deputy City Attorney
Email: bmulry@oaklandcityattorney.org

Re: Comments on 88 Grand Avenue Project, Application for Regular Design Review, Minor Conditional Use Permit, and Tentative Parcel Map (PLN 18-406)

Dear Mr. Merkamp, Mr. Vollman, and Mr. Mulry:

We are writing on behalf of Oakland Residents for Responsible Development ("Oakland Residents") concerning the development at 88 Grand Avenue, in Oakland, California ("City") proposed by KTGY Architecture, 80 Grand MC, LLC (listed as Owner) and/or Seagate Properties (collectively, "Applicants"). The Applicants are requesting Regular Design Review; a Minor Conditional Use Permit

("Minor CUP") for a Transfer of Development Rights ("TDR"); a Tentative Parcel Map; and an exemption from further environmental review under the California Environmental Quality Act ("CEQA")[1] ("Project"). The proposed Project would utilize two parcels located at 60 Grand Avenue and 2250 Broadway/80 Grand Avenue (collectively referred to as "88 Grand Avenue" in the Addendum), Assessors Parcel Number ("APN") 008-065600400 and 008-065600100.[2]

The proposed Project would be located within the plan area for the Broadway Valdez District Specific Plan ("BVDSP"), in the D-BV-2 Broadway Valdez District Retail – 2 Commercial Zone ("D-BV-2") zone. The 88 Grand Avenue CEQA Analysis ("Addendum") prepared by the City is proposed as an addendum to the Broadway Valdez District Specific Plan Environmental Impact Report ("BVDSP EIR"), as well as an exemption checklist document. In addition to claiming that the Project qualifies for an addendum to the BVDSP EIR, the Addendum proposes that environmental review for the Project proceed under CEQA exemptions for projects that are consistent with an adopted plan[3] and qualified in-fill development.[4]

Per Oakland Planning Code ("OPC"), Section 17.101C.050 and Table 17.101C.04, zoning for the D-BV-2 area is restricted to "a maximum of 24 stories and 250 feet in height" with "a residential density of one dwelling unit per 90 square feet of lot area."[5] The City concedes that, under this zoning, only 103 residential units would be permitted at the Project site.[6] However, the Applicants propose to develop a 35-story, 374-foot-high residential building (411 feet to the top of the mechanical structures) with 275 residential units, 1,000-square feet of ground-floor retail, and below-ground parking. The proposed Project would also include a diesel-powered emergency generator.

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[1] Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, ch. 3, § 15000 et seq. ("CEQA Guidelines").
[2] Addendum, p. 1; see also Notice of Limitation; Development Application, Transfer of Development Rights, Amendment re: Transfer of Development Rights.
[3] CEQA Guidelines, § 15183; see also 88 Grand Avenue Project, Zoning Manager Public Notice.
[4] CEQA Guidelines, § 15183.3; see also 88 Grand Avenue Project, Zoning Manager Public Notice.
[5] Oakland City Planning Commission, January 30, 2019 Design Review Committee Staff Report ("January 2019 Staff Report"), p. 3; see also *id.* pp. 3-4 (Zoning Analysis; Density Bonus for Affordable Housing).
[6] Addendum, p. 8 and Table II-1, p. 17 and Table II-2, p. 18.

Five percent (5%) of the Project's residential units are proposed to be reserved for Very Low Income Housing ("VLI"). The Applicants are seeking a density bonus under State law for including VLI housing. The density bonus would qualify the Applicants to receive one development waiver and one concession.[7] Consequently, the Applicants hope to receive a State density bonus in order to construct 20% more units, a waiver for building height, and a concession to reduce the number of required parking spaces.[8]

The Applicants are also requesting a Minor CUP to transfer development rights from 80 Grand Avenue (an existing office building) to 60 Grand Avenue (a parking lot). 80 Grand Avenue is a 12,926 square-foot parcel.[9] 60 Grand Avenue is a 9,256 square-foot parcel.[10] The 60 Grand Avenue parking lot would become the 88 Grand Avenue residential tower.[11] The parcels would be merged and re-subdivided with approval of the Tentative Parcel Map. The proposed Project would then have the residential development potential of a 22,182 square-foot lot.[12]

Thus, without the Minor CUP, Tentative Parcel Map and subsequent density bonus and wavier, the total permitted number of residential units at 60 Grand Avenue / 88 Grand Avenue under existing zoning would be 103 units, with a maximum building height of 250 feet. With the approvals proposed for the Project, the Applicants would be permitted to build 275 residential units in a 35-story building, at a height of 374-feet / 411 feet.

Oakland Residents and its experts have reviewed the Addendum and related documents that the City has made available. Based on our review, we have determined that Project fails to comply with the OPC and CEQA for the following reasons:

1. substantial changes are proposed in the Project from the project that was originally analyzed in the BVDSP EIR, which are likely to result in new and more severe environmental effects than previously analyzed;

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[7] See generally, Addendum, pp. 8-18.
[8] See generally, Addendum, pp. 8-18.
[9] Addendum, p. 17.
[10] Addendum, p. 5.
[11] Addendum, pp. 1 -18, (describing TDR, density bonus, and including illustrative figures).
[12] Addendum, p. 17.

2. significant changes have occurred with respect to the circumstances under which the Project would be undertaken, that are likely to result in new and more severe impacts to public transit than previously analyzed;

3. there is substantial evidence demonstrating that the proposed Project is likely to result in potentially significant impacts to air quality and public health, greenhouse gas emissions ("GHG"), traffic and noise which were not disclosed, analyzed, or mitigated in the BVDSP EIR, including, in particular, cumulative impacts to air quality;

4. the City is required to prepare an EIR for the Project; therefore, the City cannot approve the proposed Project with a Minor CUP, and a Major CUP is required; and

5. the City cannot make the required findings under the OPC to issue Design Review Approval, a Minor CUP, or a Tentative Parcel Map.

To comply with the law, the City must withdraw the Addendum and direct staff to prepare a subsequent or supplemental EIR for public review and comment.

We have prepared our comments on air quality, public health and GHG emissions with the assistance of air quality and GHG expert Paul E. Rosenfeld, Ph.D. of Soil Water Air Protection Enterprises, whose comments are included in the SWAPE Report. The SWAPE Report and Dr. Rosenfeld's expert curriculum vitae ("CV") are attached hereto as **Exhibit A.** We have prepared our comments on traffic and transportation with the assistance of Daniel T. Smith, Jr., P.E., principal at Smith Engineering & Management. The Smith Report and Mr. Smith's CV are attached hereto as **Exhibit B.** We have prepared our comments on noise impacts with the assistance of Derek Watry, acoustics, noise and vibration expert of Wilson Ihrig. The Watry Report and Mr. Watry's CV are attached hereto as **Exhibit C.** The attached expert reports are incorporated by reference into this comment letter as if fully set forth herein, and must be considered part of the record for this Project.

In addition, the City failed to make critical public records related to the proposed Project available for timely public review during the entire 17-day comment period, including documents cited and relied upon by the City in the

CEQA Addendum.[13] The City ultimately produced the missing documents on December 30, 2019, but declined to provide Oakland Residents the 17-day extension in the comment period we requested. Instead, the City provided a limited extension to January 6, 2019. As a result, Oakland Residents has had only 3 business days[14] to review more than 100 newly produced documents related to the Project before being required to submit written comments. Our review of the Project record remains ongoing. We continue to request an extension of the comment period, until **January 16, 2020** (17 days following the City's production of requested public records), and reserve the right to supplement these comments with additional comments, issues, and evidence following the close of the public comment period, and at later hearings and proceedings related to the Project.[15]

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 impacts of the Project. The association includes: City of Oakland residents; 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 the City of Oakland and Alameda County, including Michael Capps, Kahlil Larn and Jennifer Choi.

Individual members of Oakland Residents, including Michael Capps, Kahlil Larn and Jennifer Choi, and the affiliated labor organizations live, work, recreate and raise their families in the County of Alameda, City of Oakland, and surrounding areas. These members 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 a strong interest in enforcing the State's environmental laws that encourage sustainable

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[13] See Oakland Residents' December 27, 2019 Letter to City re Request for Extension in Public Comment Period attached hereto as **Exhibit D**; Gov. Code, § 6250 et seq.
[14] The New Years holiday fell in the middle of the 1-week extension provided by the City, further limiting Oakland Residents' and their experts' time to review the documents.
[15] Gov. Code, § 65009(b); Pub. Resources Code, § 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.

development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by causing building moratoriums or restrictions, making it more difficult and more expensive for business and industry to expand in the region, and making it less desirable for businesses to locate and for people to live there.

II. THE CITY MUST PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR WHICH DISCLOSES, ANALYZES, AND MITIGATES THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS TO AIR QUALITY, PUBLIC HEALH, GHG, NOISE AND TRAFFIC.

The City proposes to approve the Project as consistent with an adopted plan (the BVDSP)[16] under two alternative CEQA streamlining scenarios – by preparing an addendum to the BVDSP EIR, or alternatively, as a CEQA Checklist/Exemption Report pursuant to CEQA's streamlining provisions for qualified in-fill development ("Infill Exemption").[17] However, there is substantial evidence demonstrating that the proposed Project is not consistent with the BVDSP, and has environmental impacts that are specific to the Project which are new or more severe than previously analyzed in the BVDSP EIR. As a result, the Project cannot be approved pursuant to either a CEQA addendum or the Infill Exemption, and an EIR must be prepared.

The City must prepare an EIR for the Project for several reasons. First, the Project is not consistent with the zoned density for the Project's parcels, as required in order to qualify for CEQA streamlining. Second, there is substantial evidence demonstrating that the Project is likely to have significant environmental impacts on air quality, public health, from GHG emissions, noise, traffic, and on public transportation, which were not examined in the programmatic BVDSP EIR, or which are more severe than the impacts previously analyzed in the BVDSP EIR. Therefore, the City must withdraw the Addendum and conduct subsequent or supplemental environmental review in a project-level EIR which discloses, analyzes and mitigates the Project's potentially significant impacts, and considers environmentally-superior alternatives to the proposed Project.

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[16] Zoning Manager Public Notice, citing CEQA Guidelines, § 15183.
[17] Zoning Manager Public Notice, citing CEQA Guidelines, §§ 15164, 15183.3.

A. Legal Standard

CEQA has two basic purposes, neither of which the City has satisfied in this case. 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.[18] The EIR is the "heart" of this requirement,[19] and 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."[20] To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[21] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[22]

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.[23] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[24] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[25] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

i. Subsequent or supplemental environmental review

In situations such as the one here, where a program EIR has been prepared that could apply to a later project, CEQA requires the lead agency to conduct a two-

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[18] CEQA Guidelines, § 15002(a)(1); e.g., *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.

[19] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

[20] *County of Inyo v. Yorty, supra,* 32 Cal.App.3d at p. 810.

[21] CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

[22] See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

[23] CEQA Guidelines, § 15002(a)(2), (3); *Berkeley Jets,* 91 Cal.App.4th, at p. 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

[24] Pub. Resources Code, §§ 21002.1(a); 21100(b)(3).

[25] Pub. Resources Code, §§ 21002 - 21002.1.

step process to examine the later project to determine whether additional environmental review is required.[26]

First, the agency must consider whether the project will result in environmental effects that were not examined in the program EIR.[27] If the agency finds the activity would have environmental effects that were not examined in the program EIR, it must then prepare an initial study to determine whether to prepare an EIR or negative declaration to address those effects.[28] Second, if the agency determines the project is covered by the program EIR, it must then consider whether any new or more significant environmental effects could occur due to changes in circumstances or project scope, or new information that could not have been considered in the program EIR.

Specifically, Public Resources Code, Section 21166, provides that a subsequent or supplemental environmental impact report is required 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.**[29]

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[26] See CEQA Guidelines, 15168(c); S. Kostka & M. Zischke, Practice Under the California Environmental Quality Act 2d, § 10.16 (Mar. 2018).
[27] CEQA Guidelines, § 15168(c)(1).
[28] CEQA Guidelines, § 15168(c)(1).
[29] Pub. Resources Code, § 21166(a)-(c), emphasis added; see also CEQA Guidelines, § 15162(a) (same).

The CEQA Guidelines, Section 15162, subdivision (a) elaborates on the meaning of "new information of substantial importance," stating:

> (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.[30]

The lead agency makes this determination, based on substantial evidence in light of the whole record.[31]

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

[30] CEQA Guidelines, § 15162(a)(3)(A)-(D), emphasis added.
[31] CEQA Guidelines, § 15162(a).

documentation.[32] The City's decision not prepare a subsequent or supplemental EIR must be supported by substantial evidence.[33]

The Public Resources Code does not provide for addendums, but they are discussed briefly in the CEQA Guidelines, Section 15164:

> (a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
>
> (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.[34]

The City's decision to prepare an addendum must be supported by substantial evidence.[35]

ii. CEQA's infill exemption and streamlining provisions

The City seeks to rely on Public Resources Code, Sections 21083.3, and 21094.5 and CEQA Guidelines Sections 15183 and 15183.3 (Qualified Infill) (collectively, the "Infill Exemption").[36] This CEQA exemption allows approval of projects without an EIR, but only in very narrow circumstances.

To qualify under the Infill Exemption, the project must be consistent with site's density and intensity, as defined by its zoning, community plan, or general

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[32] CEQA Guidelines, § 15162(b).
[33] CEQA Guidelines, §§ 15162(a), 15164(e).
[34] CEQA Guidelines, § 15164(a), (b). Moreover, the Natural Resources Agency, which drafts the CEQA Guidelines, has described the purpose of an addendum as a method for making "minor changes" to an EIR. *Save Our Heritage Organization v. City of San Diego*, 28 Cal.App.5th 656, 664–665 (citing the Natural Resources Agency).
[35] CEQA Guidelines, § 15164(e).
[36] Addendum, p. 27 (citing exemptions) and Zoning Manager Public Notice (same); see also Pub. Resources Code, § 21094.

plan policies for which an EIR was certified.[37] *Only if* a project meets these criteria, can it be further analyzed under the Infill Exemption.

For qualifying projects, the environmental analysis may be limited and streamlined to evaluating a project's effects on the environment that are: 1) specific to the project or to the project site, and were not addressed as significant effects in the prior environmental impact report; 2) were not analyzed as significant effects in the prior EIR; 3) potentially significant off-site impacts; and 4) were previously identified significant effects, which as a result of substantial new information which was not known at the time the EIR was certified, are determined to be more significant than described in the prior environmental impact report.[38]

Thus, the Infill Exemption allows a lead agency to streamline environmental review as described above, only in narrow circumstances and for qualifying projects. A lead agency's determination to use the Infill Exemption must be supported by substantial evidence.[39]

CEQA also contains an exemption similar to the above, for transit-oriented residential development which is consistent with previously adopted plan, under CEQA Guidelines, Section 15182. To qualify for this exemption, the project must be "consistent with the general use designation, density, building intensity, and applicable policies specified for the project area. ..."[40]

As discussed in detail below and in the attached expert reports, the proposed Project does not qualify for the Infill Exemption because its density and intensity is not consistent with the parcel's zoning. Moreover, there is substantial evidence in the record demonstrating that the programmatic EIR prepared for the BVDSP did not disclose, analyze, or mitigate the proposed Project's potentially significant

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[37] CEQA Guidelines, § 15183(d)(1)(2) (project must be consistent with community plan adopted as part of a general plan, a "zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development," or a general plan for which an EIR was certified); Pub. Resources Code, § 21083.3(a) ("If a parcel has been zoned to accommodate a particular density" or such density has been designated in the adopted plan, then the project may qualify for CEQA streamlining).
[38] Pub. Resources Code, § 21083.3(b), 21094.5; CEQA Guidelines, § 15183(a),(b); see also CEQA Guidelines, § 15183.3(c)-(d).
[39] Pub. Resources Code, § 21094.5(a).
[40] CEQA Guidelines, § 15182(b)(1)(C), emphasis added.

impacts to human health or the environment. A project-level EIR is required which analyzes these impacts and considers environmentally-superior alternatives.

B. The Project is Inconsistent with the Density Established by Existing Zoning and Does Not Qualify for the Infill Exemption.

As noted above, to qualify for the Infill Exemption, CEQA requires that the project be consistent with the site's existing zoning.[41]

Here, the 60 Grand Avenue parcel is zoned for a density of development that would permit 90 units per acre, with a height limit of 250 feet.[42] As discussed above, the Applicants are requesting a TDR and associated discretionary permits in order to develop in order to substantially increase allowed density to 275 units in 35-story building, in a 374 / 411-foot building. The BVDSP does not authorize the Project's requested density and building height, and the BVDSP EIR did *not* analyze a project at this density or height at this site. Thus, the Project is inconsistent with existing zoning requirements, and was not analyzed in any prior EIR, both of which are mandatory prerequisites for relying on the Infill Exemption.[43] The City's reliance on future density bonus approvals does not satisfy these key elements of the Infill Exemption, and does not render the Project factually "consistent" with the BVDSP.

The Addendum concedes this lack of consistency in Attachment C (*Project Consistency with Community Plan or Zoning, Per CEQA Guidelines Section 15183*)[44] and Attachment D (*Infill Performance Standards, Per CEQA Guidelines Section 15183.3*).[45] Attachment C acknowledges that the proposed Project's height and density are not consistent with the applicable zoning. The City bases it's finding that the Project is consistent under CEQA Guidelines, Section 15183 because the Applicants anticipate receiving the State density bonus waiver described above.[46] Of course, the Minor CUP and related approvals would also be required. Attachment D

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[41] CEQA Guidelines, §§ 15183(a), (d)(1)(B), 15182(b)(1)(C); Pub. Resources Code, §§ 21083.3(a), 21094.5(c)(1)(A).
[42] OPC, Table 17.101C.04.
[43] 14 Cal. Code Regs. Sec 15183(d)(1), (2).
[44] Addendum, pp. C-1 to C-2.
[45] Addendum, pp. D-1 to D-5.
[46] Addendum, p. C-2.

reiterates the findings in Attachment C.[47] In this way, the City acknowledges that as currently permitted, the Project site is not zoned for this level development, is inconsistent with the BVDSP, and its findings of consistency are based on future approvals, not the status quo.

Nor does the BVDSP contemplate a TDR for the purpose of transferring density from an office building to a proposed residential project. The only reference to a TDR in the BVDSP is Policy IMP-5.1. Policy IMP-5.1 discusses potential revisions to the OPC in order to adaptively reuse historic buildings.[48] The 60 Grand Avenue parking lot is not an historic structure, so Policy IMP-5.1 is inapplicable.

the City's reliance on anticipated density bonus approvals to claim that the Project is currently "consistent" with existing zoning and land use plans so as to claim an exemption from CEQA is entirely unsupported and contrary to CEQA. CEQA requires that the lead agency determine the appropriate form of CEQA review at the time the project application is submitted, not based on speculative future approvals.[49] CEQA requires lead agency to analyze the 'whole' of the project – this includes all foreseeable discretionary approvals.[50] For example, in *Laurel Heights Improvement Association v. Regents of University of California*[51] the California Supreme Court rejected an EIR where the agency failed to consider the whole of the project. The agency defined the project as involving "only the acquisition and operation of an existing facility and negligible or no expansion of use of existing use at that facility."[52] However, the Court found that future expansion of the project was a reasonably foreseeable consequence of the project and would likely change the scope or nature of the initial project or its environmental

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[47] Addendum, p. D-5.
[48] BVDSP, pp. 87, 266.
[49] CEQA Guidelines, § 15063 (timing and process of initial study); Pub. Resources Code, §§ 21003.1 (early identification of environmental effects), 21006 (CEQA is integral to agency decision making).
[50] Pub. Resources Code, § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record"); CEQA Guidelines, § 15003(h) ("The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect" and citing *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 401 (*"Laurel Heights I"*)
[51] *Laurel Heights I, supra,* 47 Cal.3d 376.
[52] *Laurel Heights I, supra,* 47 Cal.3d at p. 388.

effects.[53] Here, approval of the Project's requested density bonus is a reasonably forseeable consequence of the Project. The City therefore has a duty to analyze the impacts of the increase in density (and other associated impacts) that would result from approval of the density bonus.

When viewed as a whole, there is not dispute that the Project exceeds applicable BVDSP zoning, density and height requirements. By ignoring the Project's facial inconsistency with these requirements, the potentially significant impacts associated with those inconsistencies escape environmental review. As a result, the City has both failed to comply with its CEQA obligations to disclose the nature and severity of the Project's impacts, and the City lacks substantial evidence to support its density bonus findings that the Project's proposed height waiver and additional density bonus units would not have a specific adverse impact upon public health and safety or the physical environment.[54]

The City may be attempting to rely on *Wollmer v. City of Berkeley*[55] to determine the Project's consistency with BVDSP zoning requirements based on the Project's pre-density bonus "base units" rather than on the actual size of the Project. This reliance is misplaced.

Wollmer applied to the CEQA Guidelines 15332 categorical in-fill exemption, and not the in-fill exemption relied on here, at CEQA Guidelines, Section 15183. The *Wollmer* Court relied on express language in the 15332 exemption which qualifies consistency determination based on whether the land use plan is "applicable" to the project. CEQA Guidelines, Section 15183 contains no such language, and does not qualify plan consistency with any discretionary decision by the lead agency as to whether the plan is, or is not, "applicable" to the Project once the density bonus is applied.

Moreover, the *Wollmer* court found that the applicable plan was the City of Berkeley's general plan, which did not contain a density restriction that would conflict with the proposed project. The court explains, "[t]he City's zoning ordinance does not specify a maximum density for the [district applicable to the proposed project] .... However, the land use element of the general plan specifies a maximum

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[53] *Laurel Heights I, supra,* 47 Cal.3d at p. 396.
[54] Gov. Code, § 65589.5(d)(2); see also OPC, §§ 17.107.100.B; 17.107.095.A.1.
[55] *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 ("*Wollmer*").

density of 44 to 88 persons (20 to 40 dwelling units) per acre for the area within the land use classification that includes the [applicable] District...."[56] The court went on to explain that "the City does not apply the general plan density standards to specific parcels. Instead, it applies the standards to larger areas of a land use classification surrounding a proposed project."[57] As opposed to a general plan, "'[a]llowable densities and uses in each zoning district are established in the more detailed and specific Zoning ordinance.'"[58] Using this approach, the *Wollmer* court found that the project was consistent with applicable plan - the general plan - because the project would create a density of "approximately 19 units per acre, which is well below the general plan standard of 40 units per acre."[59]

Here, the City *does* have a zoning ordinance which applies to the specific parcel where the proposed Project would be located within the Oakland Planning Code. The development standards in the OPC dictate that the height and density for proposed projects in the D-BV-2 zone is 250 feet and with a density of 103 units for a parcel of this size.[60] The Addendum disregards these clear and mandatory requirements of the OPC by simply contending that "the project sponsor anticipates receiving a concession from the City to reduce the allowable amount of parking spaces to 45 as a part of the California State Density Bonus Law. Therefore, the height and parking of the project complies with the BVDSP."[61]

The Supreme Court, as well as the Courts of Appeal, have held that CEQA exemptions must be narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language."[62] The Supreme Court has also consistently held that CEQA exemptions are not to be implied,[63] and that other statutes do not implicitly preempt CEQA or exempt proposed projects from CEQA review – even if the other statute has environmental safeguards of its own. Instead, CEQA must be harmonized with other statutes and a proposed project must comply with both CEQA and any other applicable statute.[64]

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[56] *Wollmer, supra,* 193 Cal.App.4th at p. 1345.
[57] *Wollmer, supra,* 193 Cal.App.4th at p. 1345.
[58] *Wollmer, supra,* 193 Cal.App.4th at p. 1345, citing the Berkley General Plan.
[59] *Wollmer, supra,* 193 Cal.App.4th at p. 1345.
[60] OPC, Table 17.101C.04.
[61] Addendum, p. C-2.
[62] *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125 ("*Mountain Lion*").
[63] *Wildlife Alive v. Chickering,* 18 Cal.3d at 195-198, 202.
[64] *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 274.

In this case, the Addendum relies on the assumption that the City will grant a density bonus to the Project, consistent with the Density Bonus Law.[65] However, since the density bonus would result in the Project being inconsistent with the BVDSP's D-BV-2 zoning designation and development standards, the CEQA In-Fill Exemption does not apply, and full CEQA review is required. While the legislature created a CEQA exemption for "Qualified In-Fill Development Projects," there is no such CEQA exemption for "Density Bonus Projects." Thus, while in-fill development projects are exempt from CEQA if they comply with all applicable general plan and zoning requirements, an in-fill development project that exceeds general plan and zoning designations as a result of a density bonus waiver granted to accommodate its entitlement to density units and/or incentives and concessions from zoning requirements, is not subject to the Infill Exemption. While the City may be within its rights to grant density bonus and zoning concessions for the Project pursuant to the Density Bonus Law, it is still required to conduct CEQA review for the entire Project – including the additional units and building height added by the density bonus - since the Project as a whole fails to comply with the zoning designations as a result of the density bonus.

The Addendum provides no evidence to support its conclusion that the Project is "consistent" with applicable density so as to rely on the Infill Exemption. Instead, the Addendum merely references the City's reliance on the anticipated density bonus as the bases for its consistency determination. The City must withdraw the Addendum and direct staff to prepare an EIR which discloses, analyzes, and mitigates the proposed Project's impacts, and considers environmentally-superior alternatives.

C. The City Should Deny the Requested Density Bonus and Waiver Because the Project is Likely to Have Unmitigated Adverse Impacts on Public Health and Safety and the Environment.

The Density Bonus Law authorizes the City to deny requested density bonus units incentives, concessions, and waivers where the resulting project would have a "specific adverse impact" on public health and safety or the physical environment.[66] A denial is warranted here because the Addendum fails disclose and mitigate

[65] Gov. Code sec. 65915; OPC Chapter 17.107 (Density Bonus and Incentive Procedure).
[66] See OPC, §§ 17.107.100(B); 17.107.095.A.1.

several potentially significant, unmitigated environmental impacts that are likely to be caused or exacerbated by the Project.

As discussed below, there is substantial evidence demonstrating that the Project is likely to have significant and unmitigated impacts on public health from excess construction TAC emissions and noise, as well as significant environmental impacts on air quality, from GHGs, and on traffic and transportation. Because the City failed to prepare an EIR for the Project, these impacts have not been fully disclosed or mitigated, as required by CEQA.[67]

The Density Bonus Law provides that projects with adverse impacts warrant denial unless the approving agency is able to find that "there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households."[68] The City has not performed the requisite CEQA analysis to evaluate the cost and feasibility of mitigation required to reduce the Project's impacts to the greatest extent feasible. Therefore, the City lacks substantial evidence to support a finding that there is "no feasible method" of mitigating these impacts without rendering the Project's affordability component infeasible. As a result, the City cannot make the requisite findings to approve a density bonus in the face of the Project's significant public health and environmental impacts.

Each of the below-described impacts provides the City with evidence supporting a denial or the requested density bonus unless and until the City prepares an EIR to fully disclose and mitigate these impacts to the greatest extent feasible.[69]

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[67] Pub. Res. Code §§ 21002.1(a), 21100(b)(3).
[68] See OPC, sec. 17.107.100(B).
[69] OPC, § 17.107.100(B) (density bonus cannot be approved where it would release in an adverse impact, as defined by Gov. Code, § 65589.5(d).)

D. There is Significant New Information of Substantial Importance that Air Quality Impacts and Risks to Human Health Will be Significant and Adverse.

The proposed Project is likely to result in potentially significant adverse impacts to air quality and public health during construction and operation of the proposed Project. These impacts were not disclosed, analyzed, or mitigated in the BVDSP EIR. This is significant new information of substantial importance, which must be analyzed in a subsequent or supplemental EIR. As noted above, Oakland Residents reviewed the Addendum with the assistance of experts at SWAPE. The SWAPE Report is attached hereto and summarized below.

i. The Addendum fails to consider all sources of operational air quality emissions and underestimates impacts to air quality and human health.

The proposed Project includes a diesel-powered emergency generator, which emits diesel particulate matter ("DPM"), a toxic air contaminant ("TAC"). The Addendum discloses the health risk impacts from nearby receptors from the generator from routine testing and maintenance in a Health Risk Assessment ("HRA"). The Addendum essentially ends its analysis of the Project's operational air pollutant emissions there.[70]

This analysis raises several concerns, as discussed in detail in the SWAPE Report. First, the analysis only included one operational emissions source – the emergency generator. However, as the Addendum states, during operation, there will be 943 vehicle trips. "These trips will generate additional exhaust emission and continue to expose nearby sensitive receptors to DPM emissions throughout the life of the Project."[71] In order to accurately characterize the full health risk from Project operations, the City's HRA should have included an analysis of all operational sources, not just the generator.[72]

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[70] Addendum, pp. 40-42.
[71] SWAPE Report, p. 4.
[72] SWAPE Report, p. 3.

Second, the health risk from the generator was determined to result in an excess cancer risk from TACs of ***exactly* 1:10 million,** which is the applicable threshold of significance set by the Bay Area Air Quality Management District ("BAAQMD"). *Any* additional TAC emissions would therefore cause the threshold to be exceeded, creating a significant cancer risk to residents and the surrounding community.[73]

Third, the HRA failed to sum the cancer risk calculated for each age group, which is inconsistent with Office of Environmental Health Hazard Assessment ("OEHHA") guidance that has been expressly adopted by BAAQMD. This omission is particularly glaring, as SWAPE's review of the data reveals that this information was gathered in the HRA, but not summed to provide a lifetime exposure calculation, as recommended by OEHHA and BAAQMD.[74]

As a result of these omissions, the City's analysis of the Project's operational health risk remains incomplete and underestimated.

ii. The Addendum fails to analyze public health risks during construction of the proposed Project.

The Addendum fails to analyze the health risks from human exposure to TACs, including DPM, during construction of the proposed Project. The SWAPE Report provides expert evidence demonstrating that these risks are potentially significant and must be analyzed in a project-level EIR.

As the SWAPE Report explains, the Addendum concludes that the proposed Project would have a less-than-significant impact on the health of nearby sensitive receptors during Project construction, without performing a construction HRA. The Addendum justifies this lack of analysis by stating that the BVDSP EIR analyzed this risk. However, the EIR prepared for the BVDSP explains that it is a programmatic EIR, and as such, lacked the specific information necessary to reach a conclusion on the severity of the Project's construction (or operational) emissions and the subsequent health risk for specific projects that would constructed under the BVDSP. Therefore, the City cannot rely on this document to avoid project-level

[73] SWAPE Report, pp. 1-2.
[74] SWAPE Report, p. 4.

review of the proposed Project.[75] Rather, a construction HRA must be performed, which includes the Project's specific parameters.[76]

iii. The Addendum underestimates cumulative impacts to air quality and human health.

Mr. Rosenfeld concludes that the Addendum underestimates the proposed Project's cumulative health risks from construction and operation of the proposed Project.[77] The Addendum states, "in addition to existing TAC sources, there are ten proposed development projects that may be constructed within 1,000 feet of the [Maximally Exposed Individual Resident] location in the near future."[78] As the SWAPE Report explains, the Addendum therefore acknowledges that construction and operation of these 10 projects is likely to overlap, and claims to have conducted an analysis of the cumulative health risks.[79]

However, similar to the Project's operational HRA, the SWAPE Report further explains that the Addendum's cumulative HRA only analyzes TAC emissions from a single source for each identified project - emergency diesel generators - and fails to analyze TAC emissions from other sources, including diesel-powered mobile sources.[80] "As a result, the Addendum omits key sources of TAC emissions and underestimates the Project's cumulative health risk impact."[81] These impacts must be analyzed in an EIR to determine if they would exceed BAAQMD's cumulative health risk threshold of 100:1 million.[82]

iv. Conclusion

The SWAPE Report provides substantial evidence of potentially significant adverse impacts to air quality and human health, which were not analyzed in the programmatic EIR prepared for the BVDSP. The City must prepare a project-level

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[75] SWAPE Report, pp. 2-3.
[76] The SWAPE Report also notes that failure to conduct a construction HRA is inconsistent with OEHHA guidance,SWAPE Report, p. 3.
[77] SWAPE Report, pp. 4-5.
[78] SWAPE Report, p. 4, citing Addendum, p. 45.
[79] SWAPE Report, pp. 4-5.
[80] SWAPE Report, p. 4, citing Addendum, pp. 45-48.
[81] SWAPE Report, p. 4.
[82] SWAPE Report, p. 5.

EIR which discloses, analyzes, and mitigates these impacts to air quality and human health.

E. There is Significant New Information of Substantial Importance that Impacts from GHG Emissions Will be Significant and Adverse.

The Addendum concludes that impacts from the Project's operational GHG emissions will be equal-to or less-severe-than those described and analyzed in the EIR prepared for the BVDSP. This conclusion is not supported by substantial evidence. Significant new information of substantial importance demonstrates that GHG impacts are potentially significant and unmitigated.

The SWAPE Report demonstrates that the City underestimates GHG emissions by using inaccurate input parameters. The impact of the proposed Project's GHG emissions is also inaccurately evaluated, as the Addendum relies on outdated and inapplicable GHG reduction targets.

A project-level EIR is required which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives to the proposed Project.

i. The Addendum fails to model all operational land uses.

As described in detail above, the proposed Project consists of two parcels – the existing 80 Grand Avenue office building and the proposed 88 Grand Avenue residential tower. Yet, as the SWAPE Report explains, the existing land use at 80 Grand Avenue, over 12,000 square feet, was omitted from the modelling.[83] This information must be included in an updated GHG analysis.

ii. The Addendum's GHG emissions analysis and data relies on incorrect and unsubstantiated input parameters.

The Addendum relies on emissions calculated using CalEEMod.2016.3.2. CalEEMod provides recommended default values. Default values can be changed, but such changes must be supported by substantial evidence. As the SWAPE Report

[83] SWAPE Report, p. 5.

demonstrates, in its CalEEMod files, the Addendum incorrectly assumes the use of Tier 4 Final engines, incorrectly calculates the Project's land use size, and uses an unsubstantiated water-reduction measure to substantiate its findings. Therefore, the Addendum underestimates GHG impacts from the proposed Project.

First, as the SWAPE Report explains, in calculating the Project's impacts, the Addendum applies mitigation measure SCA-AIR-3 to lessen or avoid impacts from construction-related DPM. SCA-AIR-3 permits the Applicants to use Tier 4 engines to reduce impacts. However, the measure does not specify whether Tier 4 Interim or Tier 4 Final engines should be used. Tier 4 Final engines are the cleanest burning engines, and thus the most protective of the environment and human health, and more effective at reducing TAC exposure than Tier 4 Interim engines.[84]

The CalEEMod files assumed the use of Tier 4 Final engines as a component of the Applicants' implementation of SCA-AIR-3. However, SCA-AIR-3 does not clearly require the use of Tier 4 Final engines. Thus, the City lacked substantial evidence to rely on the use of Tier 4 Final engines in its emissions modeling. To rely on the use of Tier 4 Final engines to lessen or avoid impacts, the City must impose their use as an enforceable mitigation measure or condition of approval on the Applicants. Assuming the use Tier 4 Final engines, without ensuring that they will be used, obscures and underestimates the proposed Project's impacts.[85]

Moreover, the Addendum fails to evaluate the feasibility of obtaining Tier 4 engines, both Interim and Final.[86] Tier 4 Final engines are still being phased into use in California. As of 2014, they accounted for just 4% of the fleet of engines available. By contrast, Tier 4 Interim engines account for 18% of the available fleet.[87] The City must analyze the impacts from the Project's feasible engine mix.[88]

Second, SWAPE's review of the Project's CalEEMod output files demonstrates that the parking garage was modelled using an underestimated floor surface area. The floor size given in the Addendum is 1,600 square feet, yet the only 460 square feet were modeled.[89] This discrepancy is not explained. As a result, the

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[84] SWAPE Report, pp. 6-8.
[85] SWAPE Report, pp. 6-8.
[86] SWAPE Report, pp. 8-9.
[87] SWAPE Report, p. 9, Fig. 4: 2014 Statewide All Fleet Sizes (Pieces of Equipment).
[88] SWAPE Report, p. 9.
[89] SWAPE Report, p. 9.

Addendum underestimates the proposed Project's construction and operational emissions.[90] The City's reliance on this information to conclude that impacts will be equal-to or less-severe-than impacts modelled in the EIR prepared for the BVDSP is not supported by substantial evidence.

Third, SWAPE's review of the Project's CalEEMod output files demonstrates that the City used an inaccurate Sunday trip rate to calculate mobile emissions. The Addendum assumes 973 daily trips from the proposed Project, but the Sunday trip rate was calculated at 839 daily trips. If the Sunday trip rate is lower than 973, then the City must support its decision to use that figure for all weekly calculations with substantial evidence. The Addendum contains no such information.[91]

Fourth, SWAPE's review of the Project's CalEEMod output files reveals that the model included an operational "Water Conservation Strategy," which the model purports would reduce water consumption by exactly 20%. The Addendum does not otherwise define or describe this strategy.[92] The Addendum also states that it will comply with the CalGreen Code, which requires that indoor water use be reduced by 20%. As the SWAPE Report explains, reliance on building codes cannot guarantee that purported reductions will actually be achieved, particularly where, as here, the specifics required to achieve compliance have not been analyzed for accuracy or feasibility.[93]

As described above, the City's reliance on its CalEEMod modelling to demonstrate that impacts to global climate change would be equal-to or less-severe-than impacts analyzed in the EIR prepared for the BVDSP is not supported by substantial evidence. The City must withdraw the Addendum and prepare an updated GHG emissions analysis, using correct and substantiated input parameters.[94]

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[90] SWAPE Report, pp. 9-10.
[91] SWAPE Report, pp. 10-11.
[92] SWAPE Report, p. 11.
[93] SWAPE Report, p. 11; see e.g., *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-728 (an agency cannot rely on mitigation measures of uncertain efficacy or feasibility).
[94] SWAPE Report, p. 13.

iii. GHG impacts are incorrectly evaluated because the Addendum relies on inapplicable GHG reduction targets.

The Addendum found that GHG emissions would not exceed the BAAQMD threshold of significance of 1,100 MT CO_2e/year.[95] The Addendum then concludes that the proposed Project's GHG impact would equal-to or less-severe-than that analyzed in the EIR prepared for the BVDSP. In making these determinations, the City relies on the Project's purported consistency with the Statewide GHG reduction targets set in The Global Warming Solutions Act of 2006 ("AB 32") and the City of Oakland's 2020 Equitable Climate Action Plan ("ECAP") and other plans. AB 32 and ECAP reduction targets are not applicable to the Project.[96] The only applicable plan is the California Air Resources Board 2017 Climate Scoping Plan ("2017 CARB Scoping Plan"). Yet, the Addendum does not include an analysis of the proposed Project's consistency with that plan. Thus, the City's conclusions are not based on substantial evidence. The City must withdraw the Addendum and prepare a project-level EIR which analyzes the proposed Project's impacts against the applicable GHG reduction targets.

First, AB 32 mandated that Statewide GHG emissions be reduced to 1990 levels by target year 2020. As the SWAPE Report explains, AB 32 is only applicable to projects that will be operational by target year 2020. As the Addendum states, construction will begin in 2020, and the Project would not become operational until 2022 – two years after the target date set in AB 32. Thus, the City is relying on outdated GHG reduction targets.[97]

For the same reason, the City cannot rely on the proposed Project's consistency with the ECAP to conclude that impacts will be less-than-significant.[98] As the Addendum states, the ECAP was adopted in 2013. Its goal was to reduce GHG emissions to 2005 levels by 2020.[99] Since the proposed Project would not become operational until 2022, meeting the ECAP's reduction targets is not a reliable indicator of the proposed Project's impact.[100]

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[95] SWAPE Report, p. 11, citing Addendum, p. 63.
[96] SWAPE Report, pp. 11-13.
[97] SWAPE Report, pp. 11-12.
[98] SWAPE Report, pp. 12-13.
[99] SWAPE Report, p. 13, citing Addendum, p. 64.
[100] SWAPE Report, pp. 12-13.

Second, AB 32 has been superseded by Senate Bill 32 ("SB 32"), passed by the Legislature in 2016. SB 32 codified Statewide GHG reduction targets to 40% below 1990 levels by 2030. In December 2017, the California Air Resources Board issued the 2017 CARB Scoping Plan. The 2017 CARB Scoping Plan outlined the Statewide strategy needed to achieve SB 32's goals. The 2017 CARB Scoping Plan is the now the binding state regulatory scheme enacted for the purpose of reducing GHG emissions. Yet, the City does not include an analysis of consistency with the 2017 CARB Scoping Plan.[101]

iv. Conclusion

The SWAPE Report provides substantial evidence demonstrating that the Addendum relies on incorrect and unsubstantiated input parameters for the proposed Project to generate its supporting data, thus underestimating the Project's actual emissions. Moreover, the Addendum fails to analyze the proposed Project's threshold of significance against the applicable Statewide regulatory scheme, the 2017 CARB Scoping Plan. The City must withdraw the Addendum and direct Staff to prepare a project-level EIR which analyzes, discloses, and mitigates the proposed Project's GHG emissions, and which considers a reasonable range of environmentally-superior alternatives.

F. The Addendum Does Not Consider Changes in Circumstances and Significant New Information Related to Traffic Conditions Since the BVDSP EIR was Certified.

As discussed above, an EIR is required when "[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report."[102] The Smith Report provides substantial evidence of changes in circumstances related to traffic conditions that have occurred since the BVDSP EIR was certified. This triggers the City's duty to prepare an EIR.

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[101] SWAPE Report, p. 12.
[102] Pub. Resources Code, § 21166(b).

i. The Addendum does not consider changes in circumstances related to traffic conditions since the BVDSP EIR was certified.

As the Smith Report explains, the traffic data in the BVDSP EIR was primarily collected from 2008 to 2010. This was during the period of the economic recession. The economic recession caused a decrease in traffic, as less people were commuting to work and fewer projects were being built.[103]

In 2012, the EIR for the BVDSP then updated weekday peak counts at three (3) of the 57 intersections analyzed from 2008 to 2010. This accounts for just 5% of the potentially impacted intersections.[104] Since 2012, the economy has experienced considerable growth and recovery.

As the Smith Report explains, the BVDSP EIR relied on California Department of Transportation ("CalTrans") annual daily traffic volume counts for surrounding roadway networks from 2012 in its analysis. However, since 2012 "CalTrans has documented substantial increases" in annual daily traffic volumes.[105] These increases include an 6.67% increase from 2014 to 2015, an additional 2.62% increase in 2016, and further increases in 2017.[106] The City failed to consider this substantial change in circumstances in the Addendum.[107] Thus, as the Smith Report explains, most of the data relied upon in the BVDSP EIR was already out-of-date, the BVDSP failed to update 95% of this information, and since 2012, traffic has further increased.[108]

The City cannot rely on a lack of study and analysis to support its decision not to prepare an EIR. As the California Supreme Court concluded in *Sierra Club v. County of Fresno*, when an EIR's description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is "not a substantial evidence question."[109] Here, the Addendum is completely devoid of any

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[103] Smith Report, p. 2.
[104] Smith Report, pp. 2-3.
[105] Smith Report, p. 3.
[106] Smith Report, p. 3.
[107] Smith Report, p. 3.
[108] Smith Report, pp. 2-3.
[109] (2018) 6 Cal.5th 502, 519.

recent data or analysis. The City has an obligation to fill this informational void by preparing a legally adequate EIR.

The economic recovery and further changes in traffic levels are significant changes in circumstances which may create a potentially significant impact to traffic congestion on local streets and highways. Traffic generated by the Project will exacerbate these conditions.[110] This is also significant new information concerning a more severe traffic impact than previously analyzed which must be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

ii. The Addendum fails to disclose, analyze, and mitigate cumulatively considerable impacts to public transit.

The proposed Project is located within 0.5 mile of the 19th Street BART station. The BART system is already overcrowded in this area, and the proposed Project is likely to cause cumulatively considerable impacts to public transit, particularly since the economic recovery. This is significant new information of substantial importance that must be disclosed, analyzed and mitigated in a subsequent or supplemental EIR.

First, as the Smith Report explains, the City's *Transportation Impact Review Guidelines* (April 2017) discusses the requirements for a transit review analysis for new projects. Although the BVDSP EIR contained a transit review analysis, it did not reflect the most current guidance in the *Transportation Impact Review Guidelines*. The *Transportation Impact Review Guidelines* provides that the analysis must include the total number of passengers that would be added per transit line, and the effect that additional passengers would have on available space.[111]

Second, the proposed Project is 64% taller than the zoned height limit analyzed in the BVDSP EIR. As the Smith Report explains, as a result, the BVDSP EIR is inadequate to access public transit impacts from this much-larger proposed Project.[112]

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[110] See 14 Cal. Code Regs. Sec. 15064.
[111] Smith Report, pp. 3-4.
[112] Smith Report, p. 4.

Third, since the BVDSP EIR was certified, there have been significant changes in circumstances related to public transit.[113] Specifically, there has been a "substantial increase in BART ridership" and "deteriorated BART conditions" which "have arisen since the BVDSP EIR was certified."[114] As the Smith Report explains, the *Transit Capacity and Quality of Service Manuel* published by the Transit Cooperative Research Program establishes that 5.4 square-feet per passenger is the minimally allowable amount of comfortable space.[115] The Federal Transit Authority ("FTA") has also adopted this threshold.[116] During peak times, BART riders in the Transbay Corridor currently average only 5.2 feet of space.[117] And, the most crowded sections in the Transbay Corridor, between Embarcadero and the West Oakland BART station, only maintain 4.2 square-feet of passenger space.[118] As the Smith Report explains, the 19th Street BART Station is obviously situated within this already overcrowded corridor.[119] Yet, the Addendum "fails to disclose the number of BART riders that the Project will generate, fails to disclose the impact these riders will have on the public transit system, and fails to require any mitigation measures to address potentially significant impacts."[120] Nor is this information contained in the BVDSP EIR.

Finally, the proposed Project's proximity to public transit is mentioned throughout the Addendum as a positive feature. Yet, as the Smith Report explains, if public transit is unable to handle the increased ridership, then the proximity to public transit is no longer an asset, but a significant adverse impact.[121]

A project-level EIR is required which discloses, analyzes, and mitigates the proposed Project's potentially significant impacts to public transit, and which considers changes in circumstances since 2012 which impact transit riders.

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[113] Smith Report, pp. 4-5.
[114] Smith Report, p. 4.
[115] Smith Report, p. 5.
[116] Smith Report, p. 5.
[117] Smith Report, p. 5.
[118] Smith Report, p. 5.
[119] Smith Report, p. 5.
[120] Smith Report, p. 5.
[121] Smith Report, pp. 4-5.

G. There is Significant New Information of Substantial Importance Demonstrating that Impacts to Sensitive Receptors from Construction-Related Noise is Potentially Significant and Unmitigated.

As the attached Watry Report demonstrates, there is significant new information of substantial importance that impacts to nearby sensitive receptors from construction-related noise is potentially significant and unmitigated, due to size of the proposed Project and its proximity to nearby sensitive receptors. In addition, the mitigation measure proposed in the BVDSP EIR to lessen or avoid impacts during the noisiest phases of construction is vague, unenforceable, and of uncertain efficacy. The City should withdraw the Addendum and prepare a subsequent or supplemental EIR which discloses, analyzes, and mitigates this impact.

i. Noise impacts to sensitive receptors at the 100 Grand apartment building are potentially significant and unmitigated.

As the Watry Report explains, the nearest sensitive receptor is The Grand apartment building, located at 100 Grand Avenue. OPC, Section 17.120.050.G states the City's construction noise standards. For longer-term construction noise (more than 10 business days), the OPC provides that noise at the receiving line for residential receptors should not exceed 65 decibels during the weekday and 55 decibels on weekends.[122]

The BVDSP EIR provided reference noise levels for construction equipment and typical average noise levels during various phases of construction. Table 2A in the Watry Report presents these noise levels in average decibels[123] at 50, 66, and 185 feet from The Grand. [124] Table 2B assumes that noise levels can be reduced by 10 decibels by using engine mufflers, consistent with Environmental Protection Agency guidance.[125] The Watry Report notes that these are average figures, and actual noise may be three to six decibels higher.[126] Moreover, these figures are

[122] Watry Report, pp. 2-3.
[123] Note that decibels are expressed as either "dBA" or "dB."
[124] Watry Report, p. 3; see also Langan, Geotechnical Report (2019).
[125] Watry Report, p. 4.
[126] Watry Report, p. 4.

provided with regard to a hypothetical project, as the BVDSP EIR is a programmatic EIR.

As the Watry Report concludes, and Table 2B demonstrates, "even with the use of modern mufflers, the noise levels at The Grand are expected to exceed Oakland's weekday, daytime noise limit of 65 dBA by 1 to 12 dB during the various phases of construction."[127] And, an "additional 12 dB of noise reduction will likely not be achieved by additional improvement of the mufflers."[128] As such, construction noise should be identified as a significant noise impact, which is more severe than that analyzed in the BVDSP EIR.[129] Thus, subsequent or supplemental environmental review is required.

Moreover, as the Watry Report explains, the proposed Project will be 64% larger than allowed under the current, applicable zoning and will take 29 months to construct. The impact of constructing a 411-foot structure were not analyzed in the BVDSP EIR. The noise impacts from a building this size is significant new information that was not analyzed in the BVDSP EIR.[130]

ii. SCA-NOI-2 is insufficient to mitigate the proposed Project's potentially significant impacts from construction-related noise.

As the Watry Report explains, the Addendum relies on SCA-NOI-2 (BVDSP SCA# 29) (Construction Noise) to mitigate the noise from the Project's most severe, noise-inducing construction activities. As the Watry Report concludes, the "City cannot rely on this measure to reduce noise impacts to nearby sensitive receptors because the *Addendum* does not provide sufficient information to determine if it will be enforceable or effective."[131]

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[127] Watry Report, p. 4.
[128] Watry Report, p. 5.
[129] Watry Report, pp. 4-5.
[130] Watry Report, p. 1.
[131] Watry Report, p. 5.

Courts have imposed several parameters for the adequacy of mitigation measures. Importantly, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility.[132] In addition, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments."[133] Additionally, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.[134] Finally, compliance with noise regulations does not guarantee that noise impacts will be less than significant.[135]

Here, SCA-NOI-2 provides: "The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented."[136]

This measure is vague, unenforceable, and of uncertain efficacy as the Watry Report explains.[137] First, the Addendum does not provide the construction schedule for the Project and does not disclose the length of time that must occur between noisy periods. Second, this measure does not place any limitations on the nature or length of the proposed extensions that the City may authorize. Third, the mitigation measure does not define the criteria that City will apply to determine if an extension is necessary. Thus, the measure is vague, unenforceable and of uncertain efficacy.[138]

For example, under this measure, the Applicants could engage in a 10-day period of extreme noise, followed by one day of no noise (for example, on a Sunday), followed by 10 more days of extreme noise. This pattern could continue for months or years. Moreover, if the City deems it "necessary," and determines that the Applicants are already compiling with the other measures (including the use of

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[132] *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).
[133] CEQA Guidelines, § 15126.4(a)(2).
[134] *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.
[135] *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.
[136] Watry Report, p. 5, citing SCA-NOI-2.
[137] Watry Report, p. 5.
[138] Watry Report, p. 5.

mufflers, which will not reduce impacts to less-than-significant levels), then the Applicants would be permitted to generate extreme noise, entirely uninterrupted. Because necessary is undefined, it could include a finding by the City, that due to traffic considerations, it is necessary that the Applicants complete extremely loud excavation work on an expedited schedule. The City is not required to consider noise impacts to sensitive receptors in making such a finding under the terms of the mitigation measure.

And, as discussed above, the BVDSP EIR did not consider the size of the proposed Project - 64% larger than that allowed by the applicable zoning - in its discussion and mitigation of extreme noise events.[139] This is significant new information of substantial importance that may result in more severe noise impacts than analyzed in the BVDSP EIR which must be analyzed in a supplemental or subsequent EIR.

The Watry Report explains that the Addendum's proposed mitigation is inadequate to reduce the Project's potentially significant noise impact to less than significant levels. Because the use of mufflers and SCA-NOI-2 will not be effective in reducing impacts to less-than-significant levels, MrWatry concludes that additional noise mitigation is required. The Watry Report recommends that, in addition to SCA-NOI-2, the City should require that the Applicants deploy a noise monitoring system on the lower balcony-levels of the 100 Grand building. This system would alert site management when levels are exceeded. Work should cease when this occurs.[140]

This mitigation measure is considerably different from any measure proposed or adopted in the BVDSP EIR. Thus, supplemental or subsequent review is required.[141]

iii. The proposed Project will contribute to a semi-permanent state of construction noise in the neighborhood.

The Watry Report explains that local residents will be subjected to semi-permanent levels of construction noise as a result of the proposed Project, in

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[139] Watry Report, p. 5.
[140] Watry Report, p. 4.
[141] CEQA Guidelines, § 15162(a)(3)(D).

conjunction with other projects under the BVDSP, as they are constructed.[142] This potentially significant impact should be disclosed, analyzed, and mitigated in a subsequent or supplemental EIR.

The City noise ordinance defines short-term noise impacts as those lasting up to 10 working days (approximately two weeks); after that, impacts are considered long-term. Here, construction is proposed to last at least 29 months. This is 63 times longer than the period that the City considers to be short-term. And, the 88 Grand Avenue Project is only one of many proposed and under-construction projects within the BVDSP plan area.[143]

As the Watry Report explains, living with the noise of continuous construction has already impacted the lives of local Oakland residents, including those in close proximity to the proposed Project.[144]

And here, "as of July 30, 2018 residents of The Grand are either experiencing or have recently finished experiencing construction noise from a multi-use development at 2315 Valdez and will soon experience construction noise from permitted projects at 2270 Broadway and 2305 Webster. These Oakland residents can therefore expect to be exposed to construction noise for many years to come, as the Broadway Valdez District is transformed to fulfill the vision expressed by the Specific Plan."[145]

This is a significant impact which was not considered in the BVDSP EIR. The City should address the noise impact to sensitive receptors from creating a semi-permanent state of construction in the local community in order to build the proposed Project and other projects in the BVDSP.[146]

iv. Conclusion

There is significant new information of substantial importance demonstrating that noise impacts will be more severe than disclosed, analyzed, and mitigated in the BVDSP EIR. In addition, the key mitigation measure proposed

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[142] Watry Report, pp. 6-7.
[143] Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan.*
[144] Watry Report, pp. 6-7.
[145] Watry Report, p. 6.
[146] Watry Report, pp. 6-7.

under the BVDSP to reduce impacts from the noisiest phases of construction is insufficient. Thus, the City's conclusion that construction noise impacts will be the same-as or less-severe-than those analyzed in the BVDSP EIR is not supported by substantial evidence. A supplemental or subsequent EIR required to analyze, disclose, and mitigate the proposed Project's potentially significant impacts to sensitive noise receptors.

III. A MAJOR CONDITIIONAL USE PERMIT IS REQUIRED FOR THE PROJECT.

The City seeks to approve the proposed Project with a Minor CUP, per OPC, Sections 17.134.020(B), 17.134.020(A). Because the City must prepare an EIR in order to approve the proposed Project, a ***Major*** CUP is required.

OPC, Section 17.134.020 defines and differentiates between a Major and Minor CUP. A Major CUP is required when projects cross a defined threshold of size or density in identified zones,[147] when specified uses are proposed,[148] and, as relevant here, when there are "special situations."[149] The first special situation cited is when an EIR is required.[150] Only if ***none*** of the above-listed situations apply to a proposed project is a Minor CUP permitted.[151]

A Minor CUP is approved by the Director of City Planning and no hearing is required.[152] Decisions are appealable to the Planning Commission.[153] In contrast, a Major CUP is reviewed at noticed public hearing before Planning Commission. Planning Commissions are appealable to the City Council.[154]

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[147] OPC, § 17.134.020(A)(1).
[148] OPC, § 17.134.020(A)(2).
[149] OPC, § 17.134.020(A)(3).
[150] OPC, § 17.134.020(A)(3)(a).
[151] OPC, § 17.134.020(B).
[152] The City's failure to conduct a public hearing in conjunction with its proposed approval of the Project also violates the public hearing requirements of the Infill Exemption. See 14 Cal. Code Regs. § 15183(e)(2) (a public hearing is required for lead agency to determine whether significant environmental effects will be mitigated to the greatest extent feasible).
[153] OPC, § 17.134.040(B).
[154] OPC, § 17.134.040(A).

As discussed in detail above and in the attached expert reports, the proposed Project would create potentially significant impacts to air quality and public health, GHG, traffic, and noise. An EIR is required which discloses, analyzes, and mitigates these impacts. Therefore, a Major CUP is required in order to approve the proposed Project. The application for a Minor CUP should be withdrawn, and the Applicant should be directed to apply for a Major CUP. The Major CUP can only be considered after an EIR has been prepared, circulated for public comment, and certified by the City.

IV. THE CITY'S FINDINGS CONCERNING REGULAR DESIGN REVIEW, THE MINOR CONDITIONAL USE PERMIT, AND THE TENTATIVE PARCEL MAP ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

Even if the City could approve the proposed Project using a Minor CUP, which it cannot, the City's findings under the OPC's general use permit and design review criteria are not supported by substantial evidence.[155]

i. Legal background

As stated above, the OPC, Section 17.134.040(B) permits the Director of Planning to grant a Minor CUP if the proposed development conforms to the general use criteria set forth in OPC, Section 17.134.050. OPC, Section 17.134.050 states the general use permit criteria:

> A. That the location, **size, design**, and operating characteristics of the proposed development will be **compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density;** to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; **to the generation of traffic** and the capacity of surrounding streets; and to any other relevant impact of the development;

[155] OPC, §§ 17.134.050, 17.136.050(A).

> B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;
>
> ....
>
> D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at **Section 17.136.050**;
>
> E. **That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map** which has been adopted by the Planning Commission or City Council.[156]

The Regular Design Review criteria, OPC, Section 17.136.050(A), referenced above, further provides that "approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria" for residential family developments:

> 1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, **scale, bulk, height, materials, and textures**:
>
> 2. That the proposed design will **protect, preserve, or enhance desirable neighborhood characteristics;**
>
> ....
>
> 5. **That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map** which have been adopted by the Planning Commission or City Council.[157]

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[156] OMC, §17.134.050(A)-(B) and (D)-(E), emphasis added.
[157] OMC, § 17.136.050(A)(1)-(2), (5), emphasis added.

Finally, per OPC, Section 17.010C.010(B)(2), the intent of the D-BV-2 zone is to "create, maintain and enhance" the area with ground level retail and upper floor residential development.

The proposed Project does not meet these criteria because, as discussed above, the Project is inconsistent with BVDSP zoning and density requirements, and is likely to result in significant, unmitigated impacts on public health and the environment. As a result, the applications for a Minor CUP, Regular Design Review, and the Tentative Parcel Map should be denied.

ii. The proposed Project is inconsistent with the OPC's general review criteria.

The January 2019 Staff Report and Oakland Planning Commission's June 26, 2019 Staff Report ("June 2019 Staff Report") purported to analyze the proposed Project's consistency with the site's zoning and OPC's design review criteria.

In both Staff Reports, Staff recognized that the D-BV-2 zone does not permit development at the requested density and height.[158] Yet, Staff concluded that the "proposed design consists of a very slender tower due to the limited available footprint of the development site, which results in a rather attractive massing for the building. This is especially true considering the proposal in the context of other existing and proposed towers surrounding the project site, that are all in the range of 240 to 250 feet in height. This tall slender tower at more than 350 feet in height would create a visual accent in an area that will likely be filled with towers of similar heights in the future."[159]

This finding that a "slender" tower eliminates the Project's height exceedances is not supported by substantial evidence and is inconsistent with other statements in the Addendum and Staff Reports.

First, the Addendum, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan* lists all constructed, approved, and under construction projects in the BVDSP. It shows that 88 Grand Avenue, if approved, would be the

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[158] January 2019 Staff Report, pp. 3-4; June 2019 Staff Report, p. 1.
[159] January 2019 Staff Report, p. 5.

third largest building in the entire plan area.[160] Thus, slender or not, the Project remains extremely tall, and is *not* likely to be filled in with similar-sized buildings in the future. Rather, the Project would continue to be significantly taller than surrounding proposed buildings.

Second, the Staff's conclusion that the building's height would provide an attractive visual accent is contradicted by other statements in the Staff Reports, particularly with regard to the design of the building's northern façade. This discussion also runs contrary to Staff's conclusion that future buildings will be the same height or taller.

The January 2019 Staff Report discusses the building's northern façade in some depth. It states, "[t]he northern façade does raise some concerns. The proposal as submitted is almost entirely lacking any openings or glazing on the northern elevation .... *While design features like this are common practice on shorter buildings where those blank elevations will eventually be covered by a future building, this site is different because it will be the tallest building in the direct vicinity.* As tall as the proposed building is, the largely blank northern façade will be very prominent in the City skyline...."[161] The June 2019 Staff Report then admitted that while the Applicants had made some changes to the northern elevation in response to these concerns, "staff still has concerns about the design given that it will be a very prominent building in the skyline and the *lack of visual cohesiveness with the other building elevations.*"[162] In this way, the City admits that the building will be taller than its surroundings, it will be not be surrounded by other similarly-sized development, and ,coupled with the lack of design features on the northern elevation, will be visually jarring.

Nor will the proposed Project be "compatible with and not adversely affect the livability or development of abutting properties and the surrounding neighborhood"[163] and related provisions cited above in the OPC.

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[160] Addendum, pp. 95-96, Table V.M-3, *Developments in the Broadway Valdez District Specific Plan.*
[161] January 2019 Staff Report, p. 5, emphasis added.
[162] June 2019 Staff Report, p. 3, emphasis added.
[163] OPC, § 17.134.050(A)

As discussed in detail above and in the attached SWAPE Report, the proposed Project may result in potentially significant impacts to air quality during construction and operation, as well as cumulatively considerable air quality impacts. As the SWAPE Report explains, the Addendum failed to address cumulative impacts from emissions from all sources, did not include an HRA which analyzed public health risks as a result of construction activities, and failed to consider all sources of operational emissions, among other deficiencies. These impacts will be largely borne by neighborhood residents and visitors, and were not disclosed, analyzed or mitigated in the BVDSP EIR.[164] Impacted visitors to the area include patients at the Columbia Allergy and Asthma Clinic, located at 80 Grand Avenue.[165] Impacts to these individuals, who are already suffering from decreased pulmonary functioning, are not addressed in the Staff Reports or Addendum.

The SWAPE Report also provides expert evidence that impacts to global climate change from the proposed Project's GHG emissions were not analyzed, disclosed, or mitigated in the BVDSP EIR. Nor is this impact considered in the Staff Reports.[166] As discussed in the SWAPE Report, SB 32 and the 2017 CARB Scoping Plan require that proposed developments limit their GHG emissions in order to reach Statewide GHG reduction goals. Projects, such as this one, which ignore the State's GHG reduction benchmarks can jeopardize future jobs and development in the area by causing development moratoriums or restrictions. The plan for development described in the BVDSP may become unobtainable if currently proposed projects, such as this one, proceed without considering their GHG impacts.

As described in detail above and in the attached Smith Report, the proposed Project may potentially generate traffic, in excess of the capacity of existing streets. As Mr. Smith explains, this level of traffic was not analyzed in the EIR prepared for the BVDSP because the traffic data relied upon in that document did not consider the recent economic recovery, among other deficiencies.[167] The Smith Report also details how the proposed Project may create a cumulatively considerable impact to public transit, specifically, to the functioning of the nearby 19th Street BART station.[168] The Staff Reports and Addendum do not address this impact on

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[164] See generally, SWAPE Report, pp. 1-4.
[165] Columbia Allergy and Asthma Clinic, https://www.columbiaallergy.com/, last viewed Jan. 2, 2020.
[166] See generally, SWAPE Report, pp. 4-12.
[167] See generally, Smith Report, pp. 1-3.
[168] See generally, Smith Report, pp. 4-5.

neighborhood livability, should the BART system be unable to handle increased ridership as a result of the proposed Project.

As described in detail above and in the attached Watry Report, the proposed Project may create significant impacts to neighborhood residents from noise during Project construction. The mitigation provided in the BVDSP is vague, unenforceable, and of uncertain efficacy. As Mr. Watry explains, SCA-NOI-2 contains a significant loophole which makes it ineffective in reducing impacts during the proposed Project's noisiest phases.[169] This loophole would allow the Applicants to engage in the nosiest phases of construction, unceasingly, if the City deems it "necessary." Necessary is not defined.[170]

This impact is especially acute because the proposed Project would be 411 feet tall, more than 60% taller than buildings analyzed in the BVDSP EIR.[171] Moreover, buildout of the Project, in conjunction with plans for buildout of the rest of the BVDSP area, will expose neighborhoods residents to "semi-permanent" construction noise – noise that will continue for several years.[172] Nearby sensitive receptors include the residents at The Grand and the patients of the 88 Grand Avenue medical offices.[173] Neither the Addendum nor the Staff Reports address how exposure to continuous construction noise would impact neighborhood livability or be compatible with existing uses. Thus, the City's conclusions are unsupported.

iii. Conclusion

If permitted, the Minor CUP, Tentative Parcel Map and Regular Design Review approvals would allow the Applicant to construct a massive, 35-story tower on a single half-acre parcel, immediately adjacent to a small street. Development of this height, scale, density and massing at this location is wholly out of character with surrounding development, and will have deleterious impacts to neighborhood livability, including impacts to air quality, traffic, public transit and noise. The City

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[169] See generally, Watry Report, pp. 1-5.
[170] See generally, Watry Report, pp. 1-5.
[171] See generally, Watry Report, pp. 1-5.
[172] See generally, Watry Report, pp. 6-7.
[173] Oakland Bone and Joint Specialists, http://oaklandboneandjointspecialists.com/, last viewed, Jan. 2, 2020; Columbia Allergy and Asthma Clinic, https://www.columbiaallergy.com/, last viewed, Jan. 2, 2020.

should reject the Applicants' request for a Minor CUP, Regular Design Review, and Tentative Parcel Map.

V. CONCLUSION

As this letter and attached expert reports demonstrate, the proposed Project is likely to create potentially significant impacts to air quality and public health, GHG, noise, and traffic. These impacts were not disclosed, analyzed, or mitigated in the EIR prepared for the BVDSP.

Moreover, because an EIR is required, the City cannot approve the proposed Project using a Minor CUP. A Major CUP is required, subject to review by the Oakland Planning Commission. And, even if the City could issue a Minor CUP in these circumstances, which it cannot, the City's findings under the general permit review criteria are not supported by substantial evidence.

To comply with the law, the City must withdraw the Addendum and direct Staff to prepare a subsequent or supplemental EIR for public review and comment, which discloses, analyzes, and mitigates these impacts, and considers a reasonable range of environmentally-superior alternatives to the proposed Project.

At the very least, the City should extend the comment period on the Addendum by 17 additional days, until **January 16, 2020**, in order to allow Oakland Residents additional time to review the materials received on December 30, 2019 in response to their California Public Records Act Request.

Thank you for considering our comments. Please place this comment letter and attachments in the record of proceedings for this matter.

Sincerely,

Sara Dudley

SFD:ljl

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