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October 23, 2024

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### **Re: Appeal to Planning Commission of Zoning Administrator Approval of Ardenwood at Paseo Project Discretionary Design Review Permit (PLN2022-00466)**

Dear Mr. Cleveland, Mr. Hungerford, Mr. Pullen, and Honorable Commissioners:

We are writing on behalf of **East Bay Residents for Responsible Development** (“East Bay Residents” or “EBRRD”) to appeal the October 15, 2024 Fremont Zoning Administrator approval of the Discretionary Design Review Permit for the Ardenwood at Paseo Project (PLN2022-00466) (“Project”) proposed by Gavin Christenson, H&R Ardenwood and Evan Sockalosky, Arc Tec, Inc. (collectively the “Applicant”) to the City of Fremont (“City”) and the Zoning Administrator’s approval of the CEQA Environmental Consistency Checklist (“CEQA Checklist”)<sup>1</sup> prepared for the Project (collectively, “Appeal”). This Appeal is filed pursuant to the City of Fremont Municipal Code Chapter 18.300.

East Bay Residents appeals all actions taken by the Zoning Administrator on October 15, 2024 with regard to the Project, including but not limited to the Zoning

<sup>1</sup> City of Fremont, Zoning Administrator Agenda Item 1. Ardenwood at Paseo – Informational Item No. 1 – CEQA Determination (Oct. 15, 2024) (hereinafter “CEQA Checklist”).

Administrator's decision to approve the Project pursuant to CEQA exemptions. East Bay Residents respectfully requests that the Commission uphold this appeal, vacate the Zoning Administrator's October 15, 2024 decision to approve the Project, and require Staff to withdraw the CEQA Checklist and prepare a legally adequate project-level environmental impact report ("EIR") for the Project to address all potentially significant impacts of the Project.

This Appeal is filed within 10 calendar days of the Zoning Administrator's decision, and is accompanied by the following:

- Required appeal form and attachments;
- Appeal fee of \$2,450;
- Issues on Appeal: Comments filed with the Zoning Administrator ahead of the October 15, 2024 hearing on the Project, along with accompanying exhibits and expert comments, are attached hereto as Exhibit A.

## **I. STATEMENT OF INTEREST**

Appellants East Bay Residents is an unincorporated association of individuals and labor organizations directly affected by the Project. The association includes the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and their families who live and/or work in the City of Fremont and Alameda County. EBRRD's members would be directly affected by the Project's unmitigated impacts. Individual members may also work on the Project itself. They would therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of EBRRD also have an interest in enforcing the City's planning and zoning laws and the State's 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. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Residents' members are concerned about projects that are built without providing opportunities to improve local recruitment, apprenticeship training, and retention of skilled workforces, and without providing lifesaving healthcare expenditures for the construction workforce.

## II. PROCEDURAL REQUIREMENTS

Municipal Code Section 18.300.030 states that “[a]ppeals may be filed by any interested party. An appeal shall be submitted in writing, on any form prescribed for that purpose by the city and accompanied by the required fee, and shall state the decision appealed from, the facts and basis for the appeal, and the relief or action sought.”<sup>2</sup> Appeals must be filed within 10 calendar days following the date of the decision being appealed.<sup>3</sup>

This appeal is timely filed within 10 calendar days of the Zoning Administrator’s October 15, 2024 decision to approve the Project. The appeal is accompanied by the required appeal form (Universal Planning Application), the appeal fee of \$2,450,<sup>4</sup> and comments and evidence providing the basis for the appeal, in compliance with the City’s procedural requirements.

The Universal Planning Application also requires Appellants to attach a Reimbursement Agreement. We understand that East Bay Residents’ Appeal filing will be rejected and not filed unless it is accompanied by a signed Reimbursement Agreement. The Reimbursement Agreement is therefore included with this filing under protest. As East Bay Residents has previously explained to the City,<sup>5</sup> the City’s practice of requiring members of the public to sign an open-ended Reimbursement Agreement with the City as a condition of filing an administrative land use appeal as members of the public is a violation of law.

The Reimbursement Agreement purports to authorize the City the charge appellants an undefined and unlimited amount of additional money for “staff review, coordination, and processing costs based on real time expended” on the appeal.<sup>6</sup> The costs associated with the Reimbursement Agreements are open-ended and are above and beyond the actual appeal fee paid by the Appellant at the time their appeal is filed with the City. The City’s Reimbursement Agreement is an

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<sup>2</sup> Fremont Municipal Code § 18.300.030(a).

<sup>3</sup> Fremont Municipal Code § 18.300.030(b).

<sup>4</sup> City of Fremont Fee Schedule (With Developer Deposit Schedule) (July 8, 2024), *available at*: <https://www.fremont.gov/home/showpublisheddocument/13864/638573532122970000>.

<sup>5</sup> East Bay Residents previously objected to the City’s use of the Reimbursement Agreement in its 2023 and 2024 administrative appeals of the Fremont Hub Mixed-Use Project (PLN2022-00487) and Gateway Plaza Apartments Project (PLN2023-00198), in which East Bay Residents’ representatives were required to sign the Reimbursement Agreements as a condition of the appeal filings being accepted by the City.

<sup>6</sup> See City of Fremont, Universal Planning Application, Part II, *Reimbursement Agreement*.

illegal contract that is void as against public policy.<sup>7</sup> The Reimbursement Agreements are also an unduly burdensome requirement which violates EBRRD's procedural due process rights because it imposes an undue burden on Appellants' pursuit of an administrative appeal to exhaust administrative remedies required by law.<sup>8</sup>

### III. BASIS FOR APPEAL

The basis for this appeal is set forth in East Bay Residents' October 15, 2024 comments to the Zoning Administrator,<sup>9</sup> as well as supplemental comments and evidence that will be presented to the Planning Commission on appeal.

East Bay Residents' comments explain that the City's decision to rely on a streamlining exemption pursuant to CEQA Guidelines Section 15183 (Community Plan Exemption)<sup>10</sup> and a CEQA addendum pursuant to CEQA Guidelines Sections 15162 violated CEQA and were not supported by substantial evidence because the Project has new or more severe significant impacts than previously analyzed in the 2011 General Plan Update EIR which are peculiar to the Project site and were not known and could not have been known at the time of the EIR's certification. These impacts are not fully mitigated by the General Plan EIR mitigation measures or the City's Standard Development Requirements ("SDRs") and therefore require disclosure and additional mitigation in a project-level EIR. The specific issues presented to the Zoning Administrator are summarized in Exhibit A.

Pursuant to the Municipal Code, the Planning Commission's review of all appeals "shall be de novo" and appeal review bodies are "not bound by the decision that has been appealed or limited to the issues raised on appeal."<sup>11</sup> Accordingly, we reserve the right to supplement this appeal with additional written comments and supporting evidence,<sup>12</sup> including but not limited to the City's appeal fee and deposit structure, prior to consideration by the Planning Commission.

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<sup>7</sup> See Civil Code §§ 1608, 1667; *Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1251; see *Trumbo v. Bank of Berkeley* (1947) 77 Cal.App.2d 704, 710 ("The law does not imply a promise to pay for services illegally rendered under a contract expressly prohibited by statute.").

<sup>8</sup> *California Teachers Ass'n v. State of Cal.* (1999) 20 Cal. 4th 327, 331.

<sup>9</sup> See Exhibit A.

<sup>10</sup> 14 CCR § 15183(a)-(c).

<sup>11</sup> *Id.* at § 18.300.050.

<sup>12</sup> 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.

October 23, 2024  
Page 5

#### IV. CONCLUSION

For the reasons stated herein, and as will be presented to the Planning Commission on appeal, East Bay Residents urges the Planning Commission to reverse the Zoning Administrator's approval of the Project, and require staff to prepare a project-level EIR. Thank you for your consideration.

Sincerely,



Kelilah D. Federman

Attachments  
KDF:acp