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2016 OCT 20 PM 3:51

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti
Interim Director, PBD

SUBJECT: 24th & Harrison Appeal

DATE: October 10, 2016

City Administrator Approval

Date:

10/20/16

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution denying an appeal by Oakland Residents for Responsible Development and thus upholding the Planning Commission's approval of a proposal to construct 437 dwelling units over approximately 65,000 square feet of retail located at 277 27th Street (24th & Harrison), Oakland CA (Project Case No. PLN16-080), including Adopting CEQA Exemptions (15183 & 15183.3) and Addendum (Relying On The Previously Certified 2014 Broadway Valdez District Specific Plan EIR).

EXECUTIVE SUMMARY

On August 17, 2016, the Oakland Planning Commission approved (by a 5-0 vote) case number PLN16-080, a proposal to construct a new mixed use building containing approximately 65,000 square feet of retail and 437 dwelling units ("Project"). The Project would demolish a number of existing commercial building on the Project site, which encompasses a majority of the city block bounded by Valdez, 24th and 27th Streets and is Retail Priority Site 4B in the Broadway Valdez District Specific Plan. The August 17, 2016 Planning Commission staff report is included as **Attachment A**. Following the Planning Commission action, on August 29, 2016, an appeal (PLN16-080-A01) was filed by Adams Broadwell Joseph & Cardozo on behalf of Oakland Residents for Responsible Development challenging whether the Project complied with the California Environmental Quality Act (CEQA) (**Attachment B**). Although the Appeal Form itself had boxes checked purportedly appealing the granting of the Conditional Use Permit ("CUP"), Design Review and Minor Variance, no arguments and/or supporting evidence was presented to the Planning Commission and/or in the Appeal itself challenging the underlying land-use permits, as required by the Oakland Planning Code. As such, these issues are waived and are not properly before the City Council. Staff recommends the City Council deny the appeal, finding the CEQA analysis prepared was legally adequate and uphold the Planning Commission decision to approve the Project.

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BACKGROUND / LEGISLATIVE HISTORY

An application to develop a mixed use project at 277 27th Street that would consist of a new mixed use building containing approximately 65,000 square feet of retail and 437 dwelling units was filed by Holland Partner Group. The proposal would require the demolition of all existing structures on the site. The Project site is located within the Broadway Valdez District Specific Plan (BVDSP) area and is Retail Priority Site 4B under the plan. The BVDSP was adopted by the City Council in July 2014 and provides a vision and planning framework for the future growth and development in the 95-acre area along Oakland's Broadway corridor between Grand Avenue and I-580. The BVDSP was developed by way of thorough analysis of the area's economic and environmental conditions, as well as input from City decision-makers, landowners, developers, real estate experts, and community stakeholders.

On May 25, 2016 the proposal appeared before the Planning Commission's Design Review Committee, during which the Committee recommended the item move forward to the full Planning Commission for consideration.

On August 17, 2016, the Planning Commission reviewed and approved the Project by a (+5, -0) vote.

On August 29, 2016 Adams Broadwell Joseph & Cardozo, on behalf of Oakland Residents for Responsible Development, filed an appeal (PLN16-080-A01) of the Planning Commission approval of the Project.

ANALYSIS AND POLICY ALTERNATIVES

Analysis of Appeal

The appellant raises four issues as identified and discussed below. These issues solely relate to the Project's compliance with CEQA and whether the analysis prepared was legally adequate. As discussed above, because no arguments and/or supporting evidence was presented to the Planning Commission and/or in the Appeal itself challenging the underlying land-use permits, as required by the Oakland Planning Code, these issues are waived and are not properly before the City Council. The appellant's full submitted arguments have been included as **Attachment B** to this report. A detailed technical response to the issues raised by the appellant is contained in a memorandum prepared by the City's CEQA consultant Urban Planning Partners (UPP), which is **Attachment C** to this report.

Aside from the detailed, point-by-point response to the appeal, we note that the appellant provided a comment letter related to similar issues on a prior project and indicated their satisfaction with the City's approach to these issues. Specifically, issues raised by Adams Broadwell on the Jack London Square 4th & Madison Project (4th & Madison Project) that are very similar to issues they have raised in their appeal of this Project are: 1) dewatering during construction; and 2) use of Tier 4 engines to reduce construction emissions. The City's response below and approach in the CEQA Analysis prepared for this Project are substantially the same as the City's response and approach to this topic for the 4th & Madison Project.

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For example, dewatering activities during construction and the City's plan to handle potential contaminants related to prior site uses are consistent between both projects. Additionally, Tier 4 engines would be used by the Project sponsor, per the City's conditions of approval as indicated in SCA-AIR-1 for this Project. Similarly, the Tier 4 engines were specified as a condition of approval for the 4th & Madison Project through the same SCA-AIR-1. Adams Broadwell states in their letter on the 4th & Madison Project, "we have no further comments and withdraw our objections to the EIR and the Project." (See Attachment C)

A. The City May Not Rely Upon Exemptions and an Addendum to the BVDSP EIR

Appellant argument: The appellant argues the Planning Commission inappropriately relied upon three provisions in CEQA to approve the Project without a new or subsequent EIR, including the Community Plan Exemption, Qualified Infill Exemption and an Addendum to the BVDSP Environmental Impact Report (BVDSP EIR). The appellant argues that the City's reliance on these provisions was inappropriate because the Project would have more severe significant impacts than previously identified in the BVDSP EIR.

Staff response:

The comments provided by Adams Broadwell under this section are identical to those provided in their comment letter dated August 3, 2016 and do not address, nor attempt to refute, the City's August 11th Response. Thus, all substantive comments raised by Adams Broadwell regarding this topic have been previously addressed in the City's August 11th Response. (See Attachment C)

The BVDSP EIR analyzed the environmental impacts of the adoption and implementation of the BVDSP at full build out and provided project-level review for reasonably foreseeable development, such as the Project. The City Council certified the BVDSP EIR in accordance with CEQA on June 7, 2014 and the analysis now is presumptively valid under California law. Since that certification, the City has created and relied upon a framework for analyzing projects within the BVDSP area called "CEQA Analysis," which separately and independently provides a basis for CEQA compliance. This framework relies on the applicable streamlining and tiering sections of CEQA: Community Plan Exemption, Qualified Infill Exemption and/or Addendum, as detailed in the CEQA section of this report below.

The City has relied upon the BVDSP CEQA Analysis framework since 2014 for numerous projects. As summarized herein and outlined in exhaustive detail, the assumptions and conclusions in the Project's CEQA Analysis are supported by substantial evidence in accordance with CEQA. The appellant has provided no credible, persuasive, or substantial evidence that the Project would result in a new, peculiar, significant environmental impact or a substantial increase in the severity of a significant environmental impact than determined in the BVDSP EIR. Neither construction-related toxic air contaminants nor contaminants related to automotive uses on development sites are peculiar, as evidenced by this appellant raising the same issues on multiple development projects in the City. Significant impacts are also not "peculiar" to a project or property where uniform policies or standards apply that would mitigate

the impact, such is the case with the City's Standard Conditions of Approval. Therefore, the conclusions in the CEQA Analysis are valid and preparation of an EIR is not warranted.

B. The City Failed to Adequately Analyze and Mitigate On-site Hazards

Appellant argument: The appellant argues three issues pertaining to hazards: 1) Project site contamination has not been adequately disclosed and mitigated; 2) the City may not rely solely on compliance with regulations or laws as reducing impacts without a full analysis of impacts or enforceable mitigation such as a deferred Site Management Plan; and 3) dewatering impacts have not been adequately addressed.

Staff response:

The comments provided by Adams Broadwell under this section are identical to those provided in their comment letter dated August 3, 2016 and do not address, nor attempt to refute, the City's August 11th Response. Thus, all substantive comments raised by Adams Broadwell regarding this topic have been previously addressed in the City's August 11th Response. **(See Attachment C)**. Specifically, the CEQA Analysis prepared for the project correctly summarizes the findings of the Phase I and II Environmental Site Assessments (ESAs). Based on the substantial evidence presented in those reports, the CEQA Analysis correctly stated that the site was adequately sampled, no significant contamination was detected, and that the Project site will be managed in accordance with the recommendations of the Phase II ESA, which includes the preparation of a Site Management Plan to address the handling of soil and groundwater in accordance with applicable environmental and worker health and safety laws and regulations, and the applicable Standard Conditions of Approval (SCAs) including SCA-HAZ-1 and SCA-HAZ-2, as referred to in the CEQA Analysis.

As outlined in the CEQA Analysis and prior responses by UPP, SCA-HAZ-2 would require implementation of specific sampling and handling and transport procedures for reuse or disposal in accordance with applicable local, state, and federal requirements. The exact method employed or plan to be implemented will be identified in a Site Management Plan, which is being prepared by the Project sponsor, consistent with the Phase II ESA recommendations. The Site Management Plan will comply with identified federal, state, or local regulations or requirements and specific performance criteria. A Health and Safety Plan will also be required under SCA-HAZ-2 and would adequately protect workers consistent with applicable worker health and safety standards.

The comments provided by Adams Broadwell under this section are identical to those provided in their comment letter dated August 3, 2016 and do not address, nor attempt to refute, the City's August 11th Response. Thus, all substantive comments raised by Adams Broadwell regarding this topic have been previously addressed in the City's August 11th Response. **(See Attachment C)**. Specifically, CEQA and established case law makes clear that the CEQA Analysis can wait to specify how the measures/conditions identified will be achieved provided a determination of impact has been made prior to approval and where known measures/conditions exist that are feasible for the impact identified. Here, the City has met that standard. The City determined the impact of the Project will be less than significant based on the detailed analysis regarding Hazards and Hazardous Materials prepared as part of the

BVDSP EIR and supplemented by the CEQA Analysis and technical studies prepared for the Project. The BVDSP EIR analysis included an overview of the regulatory scheme, evaluated potentially significant impacts associated with development in the BVDSP, analyzed applicable state, federal and local regulatory schemes that would apply, summarized a listing of known contaminated sites in the area and determined that compliance with the SCAs and/or Mitigation Measures would reduce any hazardous impact, and any cumulative hazardous impact, to a less than significant level.

The BVDSP EIR notes that "construction in the Plan Area could potentially intercept and disturb impacted soil and/or groundwater," the exact dewatering impact identified by the appellant in their appeal. The BVDSP EIR, however, states that "construction and operation of the project would be subject to the stringent state and local policies regarding the handling of contaminated soils and groundwater" (Impact HAZ-3), listing the SFRWQCB as one of the local agencies with oversight over contaminated groundwater.

Because of the established regulatory framework and specific performance standards established under it, the BVDSP EIR determined that the impact pertaining to exposure of hazardous materials in soil and groundwater would be less-than-significant. The appellant even correctly states that contaminated groundwater would need to be handled and disposed in accordance with SFRWQCB requirements, as described in the BVDSP EIR, and also stated in the CEQA Analysis. Thus, substantial evidence exists in the record and in established case law to support reliance on the regulatory scheme and to determine that the Project will not have a new or more significant impact on hazards.

C. The City Lacks Evidence to Conclude that the Construction Emissions Would Be Reduced to a Less Than Significant Level

Appellant argument: The appellant contends that the City lacks substantial evidence on which to conclude that the construction emissions identified in the applicant's health risk assessment will be reduced to below levels of significance. The appeal asserts that the project's construction emissions could result in a significant health risk impact because the feasibility of the project employing exclusively Tier 4 construction equipment has not been demonstrated. The appeal also contends that the project must also identify alternative mitigation measures that are technologically feasible in the event that the applicant is unable to procure all Tier 4 equipment necessary to construct the Project.

Staff response:

The BVDSP EIR conservatively determined that construction health risks from diesel particulate matter (DPM) were significant and unavoidable (Impact Air-4). Staff believes the construction health risk has been adequately studied as part of the BVDSP EIR and addressed by planning-level review and Project's conditions of approval. Based on the analysis conducted as part of the BVDSP EIR, there is nothing that indicates a stand-alone health risk assessment (HRA) for construction-related impacts on a project-by-project basis is required for developments under the BVDSP. Preparing construction-related HRAs would result in unnecessary and duplicative studies that would ultimately reach the same conclusions and impose the same control measures as are already established in the BVDSP EIR. Nevertheless, the Project sponsor

voluntarily retained a consultant to prepare a project-level construction HRA for the Project. This project level HRA demonstrated that with the application of the City's Standard Conditions of Approval, the health risk from construction emissions would be less-than-significant. This is consistent with previously submitted comments by the appellant on the 4th & Madison project where the appellant stated that the application of the City's Standard Condition of Approval to require the use of Tier 4 equipment to address construction emissions was sufficient mitigation to reduce impacts to less-than-significant. The Project under Standard Condition of Approval [SCA-AIR-1], will be required to use all Tier 4 equipment during construction. While the appellant claims that Tier 4 equipment is not readily available, as demonstrated in the UPP memo attached to this report, Tier 4 equipment is readily available on the market. The Project sponsor has also submitted letters from contractors and subcontractors acknowledging the Standard Condition of Approval ([SCA-AIR-1] that requires the use of all Tier 4 equipment during construction and providing a list of off-road construction equipment in their fleet that meets Tier 4 equipment standards or where they currently do not have a piece of equipment that meets Tier 4 equipment standards the names of companies where such equipment is available for rent (**Attachment D**). Substantial evidence exists in the record that Tier 4 equipment is readily available and any construction emissions risk from the Project is less-than-significant.

Policy Alternatives

The following options are available to the City Council and staff could be directed to return to City Council at a future date:

1. Deny the appeal and uphold the Planning Commission's decision, and allow the Project to proceed as approved by the Planning Commission with amendments, if proposed, to the Conditions of Approval related to the issues raised on appeal;
2. Grant the appeal and reverse the Planning Commission's decision, and deny the Project. Under this option, the matter would return to the City Council at a future meeting for adoption of appropriate findings. The applicant would have the option of not pursuing the Project or of submitting a new application to the Bureau of Planning;
3. Continue the item to a future meeting for further information or clarification related to the issues raised on appeal; or
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council related to the issues raised on appeal. Under this option, the appeal would be forwarded back to the City Council for final decision.

FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the project would provide a positive fiscal impact through increased property taxes, sales taxes, utility user taxes, and

business license taxes, while at the same time increasing the level of municipal services that must be provided.

PUBLIC OUTREACH / INTEREST

This item has appeared before a community meeting and public hearings on a couple occasions. The Project appeared before the City Planning Commission Design Review Committee on May 25, 2016, and the full Planning Commission for decision on the development application on August 17, 2016.

COORDINATION

The Agenda report on the appeal has been reviewed by the City Attorney's Office and the Controller's Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Allowing the development to proceed creates commercial square footage within a priority development site of the Broadway Valdez District Specific Plan area that was established by the City Council in order to create an area for comparison goods shopping for the residents of the City and region. The development of the Project would increase the sales tax base, raise the property tax for the site due to the proposed improvements, and provide temporary construction jobs, as well as future permanent jobs within the new retail stores.

Environmental: Developing in already urbanized environments reduces pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Social Equity: The project benefits the community by adding increased commercial and housing opportunities in the City of Oakland, as well as temporary jobs during the construction of the Project and permanent jobs upon completion in the approximately 65,000 square feet of new retail created.

CEQA

The BVDSP EIR analyzed the environmental impacts of adoption and implementation of the BVDSP and, where the level of detail available was sufficient to adequately analyze the potential environmental effects, provided a project-level CEQA review for reasonably foreseeable development. This project-level analysis allows the use of CEQA streamlining and/or tiering provisions for projects developed under the BVDSP.

A detailed CEQA Analysis document was prepared, entitled "24th & Harrison Project CEQA Analysis" dated July 5, 2016, which evaluates the potential project-specific environmental

effects of the proposed Project and whether such impacts were adequately covered by the BVDSP EIR to allow the below-listed streamlining and/or tiering provisions of CEQA to apply.

Applicable CEQA streamlining and/or tiering code sections are described below, each of which, separately and independently, provide a basis for CEQA compliance.

- 1. Community Plan Exemption.** Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 allow streamlined environmental review for projects that are "consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." Section 15183(c) specifies that "if an impact is not peculiar to the parcel or to the proposed project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards..., then an EIR need not be prepared for the project solely on the basis of that impact."

As set out in detail in the CEQA Analysis' Attachment B, the City finds that, pursuant to CEQA Guidelines section 15183 and Public Resources Code section 21083.3, the Project is consistent with the development density established by the BVDSP and analyzed in the BVDSP EIR and that there are no environmental effects of the Project peculiar to the Project or the Project Site which were not analyzed as significant effects in the BVDSP EIR; nor are there potentially significant off-site impacts and cumulative impacts not discussed in the BVDSP EIR; nor are any of the previously identified significant effects which, as a result of substantial information not known at the time of certification of the BVDSP EIR, are now determined to present a more severe adverse impact than discussed in the BVDSP EIR. As such, no further analysis of the environmental effects of the Project is required.

- 2. Qualified Infill Exemption.** Public Resources Code Section 21094.5 and CEQA Guidelines Section 15183.3 allow streamlining for certain qualified infill projects by limiting the topics subject to review at the project level, if the effects of infill development have been addressed in a planning level decision, or by uniformly applying development policies or standards. Infill projects are eligible if they are located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least 75 percent of the site's perimeter; satisfy the performance standards provided in CEQA Guidelines Appendix M; and are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy. No additional environmental review is required if the infill project would not cause any new specific effects or more significant effects, or if uniformly applicable development policies or standards would substantially mitigate such effects.

The City finds that, pursuant to CEQA Guidelines section 15183.3, the CEQA Analysis contains in Attachment C a written analysis consistent with Appendix M to the CEQA Guidelines examining whether the Project will cause any effects that require additional review under CEQA. The contents of Attachment C document that

the Project is located in an urban area satisfying the requirements of CEQA Guidelines section 15183.3 and satisfies the applicable performance standards set forth in Appendix M to the CEQA Guidelines. It also explains how the effects of the Project were analyzed in the BVDSP EIR; and indicates that the Project incorporates all applicable mitigation measures and SCAs from the BVDSP EIR. Attachment C also determines that the Project will cause no new specific effects not analyzed in the BVDSP EIR; determines that there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the BVDSP EIR, determines that the Project will not cause new specific effects or more significant effects, and documents how uniformly applicable development policies or standards (including, without limitation, the SCAs) will mitigate environmental effects of the Project. Based upon the CEQA Analysis and other substantial evidence in the record, the City finds and determines that no further environmental analysis of the effects of the Project is required.

- 3. Addendum.** Public Resources Code Section 21166 and CEQA Guidelines Section 15164 state that an addendum to a certified EIR is allowed when minor changes or additions are necessary and none of the conditions for preparation of a subsequent EIR or Negative Declaration pursuant to Section 15162 are satisfied.

The City finds and determines that the CEQA Analysis constitutes an Addendum to the BVDSP EIR and that no additional environmental analysis of the Project beyond that contained in the BVDSP EIR is necessary. The City further finds that no substantial changes are proposed in the Project that would require major revisions to the BVDSP EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; no substantial changes occur with respect to the circumstances under which the Project will be undertaken which will require major revisions of the BVDSP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and there is no new information of substantial importance not known and which could not have been known with the exercise of reasonable diligence as of the time of certification of the BVDSP EIR showing that the Project will have one or more significant effects not discussed in the BVDSP EIR; significant effects previously examined will be substantially more severe than shown in the BVDSP EIR, 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; or mitigation measures or alternatives which are considerably different from those analyzed in the BVDSP EIR would substantially reduce one or more significant effects on the environment.

The City Council was previously provided a copy of the 2014 BVDSP EIR and the July 5, 2016 CEQA Analysis Document was provided under separate cover for review and consideration by the City Council, and is available to the public at the Bureau of Planning office at 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612 and on the City's website at:

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>

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ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends that The City Council Adopt A Resolution denying an appeal by Oakland Residents for Responsible Development and upholding the Planning Commission's approval of a proposal to construct 437 dwelling units over approximately 65,000 square feet of retail located at 277 27th Street (24th & Harrison), Oakland CA (Project Case No. PLN16-080), including adopting CEQA exemptions and an Addendum (relying on the previously certified 2014 Broadway Valdez District Specific Plan EIR).

For questions regarding this report, please contact Pete Vollmann, Planner IV, at (510) 238-6167.

Respectfully submitted,



Darin Ranelletti
Interim Director, Department of Planning &
Building

Reviewed by:
Robert Merkamp, Development Planning
Manager

Prepared by:
Pete Vollmann, Planner IV
Bureau of Planning

Attachments:

- A. August 17, 2016 Planning Commission Staff report
- B. August 29, 2016 Appeal by Oakland Residents for Responsible Development
- C. October 6, 2016, UPP memorandum (including attachments)
- D. October 7, 2016, Letter from project sponsor (including attachments from Contractor's)

FILED
OFFICE OF THE CITY CLERK
OAKLAND CITY COUNCIL

Approved as to Form and Legality

Mark J. Wall
City Attorney

2016 OCT 20 PM 3:58

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION DENYING AN APPEAL BY OAKLAND RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND THUS UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A PROPOSAL TO CONSTRUCT 437 DWELLING UNITS OVER APPROXIMATELY 65,000 SQUARE FEET OF RETAIL LOCATED AT 277 27TH STREET (24TH & HARRISON), OAKLAND CA (PROJECT CASE NO. PLN16-080), INCLUDING ADOPTING CEQA EXEMPTIONS AND AN ADDENDUM (RELYING ON THE PREVIOUSLY CERTIFIED 2014 BROADWAY VALDEZ DISTRICT SPECIFIC PLAN EIR).

WHEREAS, the project applicant, Holland Partner Group, filed an application on March 24, 2016, to construct a mixed use building containing 437 residential units over approximately 65,000 square feet of retail at 277 27th Street (24th & Harrison), Oakland Ca. (Project); and

WHEREAS, the Design Review Committee of the Planning Commission considered the design review aspects of the Project at a duly noticed public meeting on May 25, 2016; and

WHEREAS, the City Planning Commission took testimony and considered the Project at its duly noticed public meeting of August 17, 2016 and at the conclusion of the public hearing deliberated the matter and voted (5-0-0) to approve the Project; and

WHEREAS on August 29, 2016, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was filed by Laura Horton on behalf of Oakland Residents for Responsible Development; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council at a duly noticed public hearing on November 1, 2016; and

WHEREAS, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 1, 2016; now, therefore be it

RESOLVED: That, the City Council hereby independently finds and determines that the requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, the adoption of this resolution is exempt from CEQA pursuant to CEQA Guidelines Section 15183 and/or Section 15183.3; and furthermore none of the factors requiring further CEQA review are met and the City can rely on an Addendum to the previously Certified 2014 Broadway Valdez District Specific Plan EIR, pursuant to CEQA Guidelines section 15162-15164 and that each of the foregoing provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, based on evidence in the record before the City Planning Commission that the Commission's decision on August 17, 2016 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record before it; and be it.

FURTHER RESOLVED: That the Appeal is denied, the Planning Commission's CEQA Determination is upheld based upon the August 17, 2016 Staff Report to the City Planning Commission and the November 1, 2016, City Council Agenda Report, each of which is hereby incorporated by referenced, including attachments, as if fully set forth herein, and is separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts the August 17, 2016 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions, conditions of approval and attachments, each of which is hereby separately and independently adopted by this Council in full), as well as the November 1, 2016, City Council Agenda Report, (including without limitation the discussion, findings, conclusions, conditions of approval and attachments, each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption and Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all

related/supporting final materials, and all final notices relating to the application and attendant hearings;

5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;

6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Department of Planning & Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, 2114, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California