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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Darin Ranelletti  
Interim Director, PBD

**SUBJECT:** 226 13<sup>th</sup> Street Appeal

**DATE:** October 24, 2016

City Administrator Approval

Date:

11/3/16

## RECOMMENDATION

**Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt A Resolution Denying the Appeals of the Coalition of Neighborhood Stakeholders and Oakland Residents for Responsible Development And Thus Upholding The Planning Commission's Approval Of A Proposal To Construct 262 Dwelling Units Over Approximately 13,000 Square Feet Of Retail Located At 226 13<sup>th</sup> Street, Oakland CA (Project Case No. PLN15-320), Including Adopting CEQA Exemptions (15183 & 15183.3) and an Addendum (Relying On The Previously Certified 2014 Lake Merritt Station Area Plan EIR).**

## REASON FOR SUPPLEMENTAL

On October 18, 2016, the public hearing on this item was opened and was continued to November 1, 2016. This supplemental report provides additional information and clarifies existing information.

On the day of the October 18, 2016 public hearing, a letter was submitted by the Oakland Residents for Responsible Development appellant, commenting on the City Council Agenda Report and the memo from the City's California Environmental Quality Act (CEQA) consulting firm ICF (see **Attachment A**). Essentially, appellant continues to object to the validity of the Health Risk Assessment conducted and the availability of Tier 4 construction equipment, which are the sole and exclusive bases of its appeal.

This supplemental report also includes, as **Attachment B**, a follow up memo from ICF responding to the appellant's letter of October 18, 2016. The ICF memo essentially acknowledges a typographical error in one part of the analysis/report, but reaffirms the analysis and conclusions that there will be less than significant construction-related air quality impacts because the established CEQA Thresholds will not be exceeded.

In addition, Staff had also received a letter from the Project applicant clarifying the availability of Tier 4 off-road equipment that will be used during construction (**Attachment C**). The availability of Tier 4 off-road construction equipment has been a primary point in the appellant's argument that the Project would create construction period health risk impacts that were not identified in

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Special City Council  
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the Lake Merritt Station Area Plan (LMSAP) Environmental Impact Report (EIR), and have argued that the City's Standard Condition of Approval requiring the use of Tier 4 equipment is not adequate mitigation due to the lack of availability of such equipment. Staff is also including into the record a prior letter from this same appellant on a project at 4<sup>th</sup> & Madison Streets in Oakland where the appellant states that the City's Standard Condition of Approval requiring Tier 4 is sufficient mitigation to address construction period health risks (**Attachment D**), which is contrary to the claims that they are making on this appeal.

#### **ACTION REQUESTED OF THE CITY COUNCIL**

**Staff Recommends That The City Council Adopt A Resolution denying the appeals by the Coalition of Neighborhood Stakeholders and Oakland Residents for Responsible Development and upholding the Planning Commission's approval of a proposal to construct 262 dwelling units over approximately 13,000 square feet of retail located at 226 13<sup>th</sup> Street, Oakland CA (Project Case No. PLN15-320), including adopting CEQA Exemptions (15183 & 15183.3) and Addendum (Relying on the previously certified 2014 Lake Merritt Station Area Plan EIR).**

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

Respectfully submitted,



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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 (4):

- A. October 18, 2016 Letter from Adams Broadwell (appellant representative)
- B. October 21, 2016 ICF Memorandum
- C. October 18, 2016 Letter from Project Applicant
- D. March 16, 2016 Letter from Adams Broadwell on 4<sup>th</sup> & Madison project

ADAMS BROADWELL JOSEPH & CARDOZO

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October 18, 2016

VIA EMAIL AND HAND DELIVERY

City Clerk

City of Oakland

Attn: City Council Members Dan Kalb, Abel J. Guillén, Lynette Gibson McElhaney,  
Annie Campbell Washington, Noel Gallo, Desley Brooks, Larry Reid, Rebecca  
Kaplan, and Mayor Libby Schaaf

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Oakland Community and Economic Development Agency  
Planning and Zoning Division

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City of Oakland

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**Email:** [pvollmann@oaklandnet.com](mailto:pvollmann@oaklandnet.com)

**Re: Agenda Item No. 9.1: 226 13th Street (14th and Alice Project, PLN  
15-320)**

Dear City Council Members and Honorable Mayor Libby Schaaf:

Appellant Oakland Residents for Responsible Development (“Residents”) submits this response to the Agenda Report regarding Agenda Item No. 9.1, 226 13th Street, Oakland CA, also known as 14th and Alice Project (PLN15-320) (“Project”), and the CEQA Analysis prepared by the City of Oakland (“City”) for the Project pursuant to the California Environmental Quality Act (“CEQA Analysis”).<sup>1</sup>

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<sup>1</sup> Pub. Resources Code §§ 21000 et seq.

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Residents and its expert consultants from Soil / Water / Air Protection Enterprise (“SWAPE”)<sup>2</sup> have reviewed the Agenda Report for the October 18, 2016 City Council (“Council”) hearing along with the attachments, including the ICF Memorandum (Attachment D to the Agenda Report)<sup>3</sup>. All previously submitted comments<sup>4</sup> and our July 1, 2016 appeal form and appeal letter, including reports from our consultants SWAPE, are incorporated by reference herein (collectively, “Residents Comments”).

Based on our review of the Agenda Report and the ICF Memorandum, it is clear the City failed to adequately respond to our appeal regarding the impropriety of an addendum for this Project, and the need for further analysis, disclosure, and mitigation of construction-related emissions at the site.

To clarify, Residents does not challenge the validity of the Lake Merritt Station Area Plan (“LMSAP”) or the LMSAP Environmental Impact Report (“EIR”). In cases where no site-specific impacts are present, the City is authorized to rely on the LMSAP EIR in project approvals. In this case, however, CEQA does not allow reliance on the LMSAP EIR in light of the substantial evidence presented by Residents of unmitigated, site-specific significant impacts.

This supplement to our appeal letter and attachments provide responses to the City on issues we previously contested and presented to the Planning Commission as required by Section 17.134.070 of the Oakland Planning Code. We previously filed comments on the Project on May 31, 2016 with the help of experts Matt Hagemann and Jessie Jaeger from SWAPE, which we incorporate herein by reference.<sup>5</sup> We reviewed the June 1, 2016 letter from the City’s consultant, ICF

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<sup>2</sup> See October 17, 2016 letter from SWAPE to L. Sobczynski re Supplemental Comments on the 226 13th Street Project, attached hereto as **Exhibit A** (“SWAPE Comments III”). The SWAPE Comments are incorporated by reference as if fully set forth herein.

<sup>3</sup> On page 12, the Agenda Report indicates this ICF Memorandum is from August 10, 2016. However, the ICF Memorandum provides a date of August 23, 2016. Hereafter, the August 23, 2016 ICF Memorandum (Attachment D) will be referred to as the “August ICF Memorandum.” The ICF Memorandum provides responses to the Adams Broadwell Joseph & Cardozo Appeal as well as the SWAPE technical comments from May 31, 2016.

<sup>4</sup> Residents alleged grounds for noncompliance with CEQA at the May 31, 2016 Planning Commission meeting. (PRC § 21177(a).) SWAPE’s May 31, 2016 technical report were incorporated in the May 31, 2016 Planning Commission Comments.

<sup>5</sup> See Letter and Attachments from Laura Horton to the Oakland Planning Commission and Peterson Vollman re: Comments on the CEQA Analysis for the 226 13<sup>th</sup> Street Project (PLN15320), May 31, 2016. SWAPE’s May 31, 2016 technical report were incorporated by reference in the Letter and Attachments from Laura Horton to the Oakland Planning Commission and Peterson Vollman re:

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International (“ICF”)<sup>6</sup> with the help of SWAPE. Their attached technical comments were submitted as support for our July 1, 2016 appeal letter, and SWAPE’s May 31 letter was incorporated therein by reference.<sup>7</sup> We reviewed ICF’s August 23, 2016 Memorandum, which provided additional responses to our July 1, 2016 appeal as well as responses to the May 31, 2016 technical comments prepared by Matt Hagemann and Jessie Jaeger for the June 22, 2016 Planning Commission meeting.

For the reasons discussed herein, the City’s CEQA Analysis remains inadequate. Residents renews its request that the City prepare a project-level environmental impact report (“EIR”) to fully analyze and mitigate the Project’s potentially significant environmental and public health impacts.<sup>8</sup>

### **A. Project is Not Consistent with CEQA Addendum and Exemption Requirements**

The City claims the Project is consistent with CEQA Guidelines Sections 15162 (Subsequent EIR and Negative Declaration), 15164 (Addendums), and 15168 (Program EIRs).<sup>9</sup> In some instances, an EIR for a Specific Plan, such as the LMSAP EIR, may provide an adequate level of environmental review. However, that is not the case for this Project where there are site-specific impacts. The City’s reliance on these provisions is misplaced.

#### **a. Improper Use of an Addendum**

First, the CEQA Analysis does not simply provide “some changes or additions” to the EIR as is allowed under the Addendum provision; rather, it includes over 2,000 pages of analysis for a large development project which is

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Comments on the CEQA Analysis for the 226 13<sup>th</sup> Street Project (PLN15320), May 31, 2016 (hereinafter “SWAPE Comments”).

<sup>6</sup> See Letter from ICF International to Peterson Z. Vollmann re: 226 13th Street Project - Response to Comment Letter from Adams Broadwell Joseph & Cardozo, June 1, 2016, (hereinafter, “Consultant Letter”)

<sup>7</sup> See Letter from Matt Hagemann and Jessie Jaeger, SWAPE, to Laura Horton re: Comments on the 14th & Alice Project (hereinafter, “SWAPE Comments”), May 31, 2016 ; *see also* Letter from Matt Hagemann and Jessie Jaeger, SWAPE, to Laura Horton re: Response to Comments on the 226 13th Street Project (PLN 15-320), July 1, 2016 (hereinafter, “SWAPE Comments II”).

<sup>8</sup> Residents reserve the right to bring an action or proceeding challenging the City’s noncompliance with CEQA on any grounds for noncompliance that is presented to the City Council and Planning Commission orally or in writing by any person prior to the close of the public hearing on the project. PRC § 21177(a)-(b).

<sup>9</sup> CEQA Analysis, Attachment B, p. B-1.

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different from the project analyzed in the LMSAP EIR.<sup>10</sup> Residents have previously objected to the City's improper use of the Addendum provision in prior project approvals.<sup>11</sup> As in past cases, the use of the Addendum here would clearly violate CEQA.

For this Project, use of an Addendum is not authorized by CEQA. Rather, when an EIR (*i.e.*, LMSAP EIR) has been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.<sup>12</sup>

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

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

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<sup>10</sup> *Id.*, at p. 2; CEQA Guidelines, § 15164.

<sup>11</sup> See 2400 Valdez Street Project, (PLN15-336),

<http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak057878.pdf>.

<sup>12</sup> Pub. Resources Code § 21166.

- (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.<sup>13</sup>

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an Addendum or no further documentation.<sup>14</sup> For Addendums specifically, which is one of several CEQA exemption/streamlining avenues that the City claims is applicable to the Project, CEQA allows Addendums 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.”<sup>15</sup>

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<sup>13</sup> CEQA Guidelines § 15162(a)(1)-(3).

<sup>14</sup> CEQA Guidelines § 15162(b).

<sup>15</sup> CEQA Guidelines § 15164.

**b. Reliance on other CEQA Guidelines is also Improper**

The City's reliance on CEQA Guidelines Sections 15183 (Community Plan)<sup>16</sup> and 15183.3 (Qualified Infill)<sup>17</sup> as other exemptions is misplaced. These exemptions allow approval of projects without an EIR in narrow circumstances, which have not been satisfied here. These exemptions do not excuse it from needing to prepare a supplemental or subsequent EIR to evaluate the Project's new and significant impacts. The City's determination that these exemptions also apply is not supported by substantial evidence.

Moreover, the City has not demonstrated that the standard conditions of approval will be adequate mitigation measures for this Project. The exemptions relied upon by the City apply only when a Project does not have impacts peculiar to the proposed project that are new or more significant than previously analyzed, or impacts that can be substantially mitigated by uniformly applicable development policies or standards.

The Project fails to meet these requirements because the Project's health risks from diesel particulate matter ("DPM") emissions during construction are highly significant. In particular, because the LMSAP did not actually quantify project-level health risks, the absence of any previous project-specific analysis undermines the City's determination that Standard Conditions of Approval ("SCAs") would mitigate the impact. Unfortunately, the LMSAP EIR did not fully address these peculiar and more significant impacts, and mitigation measures are available that were not previously identified that would reduce such impacts below a level of significance.

**B. City's Site-Specific Analysis is Flawed and Mitigation Measures are Inadequate**

The Project will result in new or more severe significant impacts than analyzed in previous EIRs. Additionally, there are new mitigation measures that were not considered in the previous EIRs, but that could reduce those impacts to a less than significant level.<sup>18</sup> In any case, the City's decision must be supported by substantial evidence.<sup>19</sup> Therefore, the City may not rely on the CEQA Analysis for

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<sup>16</sup> CEQA Guidelines Section 15183.

<sup>17</sup> CEQA Guidelines Section 15183.3.

<sup>18</sup> SWAPE Comments, pp. 13-21.

<sup>19</sup> *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).



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Project approval, and must provide detailed analysis of the Project's impacts in an EIR.

The LMSAP EIR did not consider construction related emissions for this particular Project. Indeed, the LMSAP EIR provides a rationale for why it did not address construction related exposures because "[t]he specificity of detail necessary to conduct a health risk assessment is not available at the Plan stage..."<sup>20</sup> The LMSAP EIR thus deferred the assessment of health risks from construction activities to the project level stage where project-specific impacts and mitigation measures could be determined to ensure that DPM exposure would not exceed applicable thresholds.

The CEQA Analysis expressly states that the LMSAP EIR determined that sensitive receptors may be subject to an increased cancer risk due to construction activities.<sup>21</sup> Therefore, CEQA mandates that the City quantify that risk in order to determine *if* the basic construction control measures and best management practices in SCA 19/ SCA-AIR-1 will reduce DPM emissions to less than significant levels. As explained in further detail below, our consultants concluded that the City failed to adequately assess the construction-related risk.

#### **a. Infant Cancer Risk Exceeds BAAQMD Threshold**

We argued in our prior Residents Comment and appeal that the City must do a Health Risk Assessment ("HRA").<sup>22</sup> The City asked its consultants, ICF, to prepare one "in the interest of being conservative."<sup>23</sup> However, our air quality consultants reviewed the City's Health Risk Assessment and determined that the cancer risk calculation was incorrect. When our consultants performed the calculation using the same variables used in the City's analysis, they found that the Project's construction related emissions would clearly exceed the Air District's 10 in one million threshold for a residential cancer risk.<sup>24</sup> The risk would be 13.8 in one million.<sup>25</sup> This is particularly alarming given the proximity of several community spaces, including the American Indian Public Charter School, which is a charter middle school with predominantly low-income, minority students within two blocks

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<sup>20</sup> LMSAP DEIR, p.3.3-39.

<sup>21</sup> CEQA Analysis, p. 39.

<sup>22</sup> See Residents Comments and Appeal Letter.

<sup>23</sup> Agenda Report, p. 7.

<sup>24</sup> SWAPE Comments III, pp. 4-5 [Exhibit A].

<sup>25</sup> *Id.*

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of the Project. Oakland Charter High School is also just a few blocks away from the Project site.

### **b. Speculative Feasibility of SCA-AIR-1**

The City's CEQA Analysis states that although "[t]he LMSAP EIR determined that sensitive receptors in proximity to construction-related DPM emissions (generally within 200 meters) could be subject to increased cancer risk, chronic health problems, and acute health risk," all future development projects pursuant to the LMSAP would be subject to basic construction control measures and best management practices through implementation of SCA 19/ SCA-AIR-1.<sup>26</sup> The Agenda Report similarly states that the "Project sponsor would ensure that construction equipment would meet Tier 4 emissions standards in order to comply with sections (w) and (x) [of SCA-AIR-1]."<sup>27</sup> However, this conclusion is unsupported by evidence of feasibility for this Project, because neither the City nor the Applicant has demonstrated that Tier 4 equipment can be reasonably procured for this Project.

ICF's August Memorandum provides historical sales trends of Tier 4 equipment, but these trends do not demonstrate that the Applicant will be able to procure this equipment.<sup>28</sup> As SWAPE explains, although off-road Tier 4 equipment is available for purchase, it is new technology that may not yet be readily available at all construction equipment vendors, may require special procurement by the Applicant, and is more costly than lower tier equipment.<sup>29</sup> It is therefore unreasonable to presume, prior to procurement, that all construction equipment that will be used for the Project will automatically have Tier 4 engines simply because SCA-AIR-1 calls for it.

Furthermore, SCA-AIR-1 does not require the Applicant to show compliance *prior to construction*. Therefore, SCA-AIR-1 is also unenforceable and would not ensure that impacts would be reduced to less than significant prior to the impact occurring.

The City cannot simply rely on compliance with SCA-AIR-1 alone to reduce the Project's admittedly significant construction emissions below levels of

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<sup>26</sup> CEQA Analysis, p. 39.

<sup>27</sup> Agenda Report, pp. 7-8.

<sup>28</sup> Agenda Report, Attachment D, pp. 5-13 [August ICF Memorandum]

<sup>29</sup> See SWAPE Comments II, p. 2-3.

significance. Rather, the City must either require the Applicant to show that it has procured exclusively Tier 4 equipment for the Project, or require demonstration of procurement prior to construction and include alternative feasible mitigation in the event Tier 4 equipment cannot be procured at that later date. Our consultants suggested other feasible mitigation measures.<sup>30</sup> ICF did not provide evidence that such measures were infeasible, but simply determined SCA-AIR-1 would be sufficient. As set forth above, SCA-AIR-1 remains speculative and unenforceable.

### **c. Substantial Risk Even Assuming SCA-AIR-1 Compliance**

The City's CEQA Analysis for this project incorporates some mitigation measures. However, they are not enough to mitigate the new and severe site-specific impacts. ICF's HRA assumes that mitigation will occur. Our consultants found that even assuming mitigation, the construction will pose a significant health risk.<sup>31</sup> The ICF consultants based their assumption on the purported future compliance with SCA-AIR-1. Even after implementation of SCA-AIR-1, significant and unacceptable health risks to residents will remain and will exceed the Project's residential health risk impact of 13.8 in one million.<sup>32</sup>

### **C. Conclusion**

If the Council upholds the Planning Commission's approval of the Project, that decision will not be supported by evidence in the record. There are several deficiencies in the City's analysis, as well as new information regarding new or more severe impacts than previously analyzed in the LMSAP EIR, which were not adequately considered by the Commission and now the Council. Furthermore, we identified several mitigation measures not previously analyzed that would reduce significant impacts. The City's CEQA Analysis fails to analyze and mitigate the Project's construction health risks to the surrounding community, which are new or more severe than previously analyzed. Therefore, the City lacks substantial evidence to support the conclusions in its CEQA Analysis and an EIR is required.

Although the CEQA Analysis incorporates SCAs from the LMSAP, the City is not absolved of CEQA's requirement that agencies disclose significant environmental impacts to the public and mitigate those impacts.<sup>33</sup> The City failed to demonstrate that the Project can be lawfully approved based on the CEQA

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<sup>30</sup> *Id.*, pp. 5-6; SWAPE Comments, pp. 13-21; SWAPE Comments II, pp. 3-4.

<sup>31</sup> *See* SWAPE Comments III, p. 5 [Exhibit A].

<sup>32</sup> *Id.*

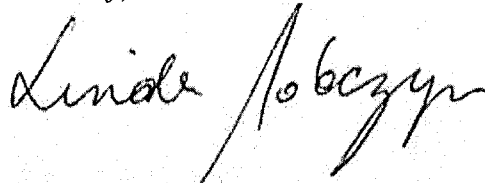
<sup>33</sup> CEQA Guidelines §§ 15126.2, 15126.4.

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Analysis provided. Indeed, as already explained in our appeal letter, the City must disclose, analyze, and mitigate the Project's significant impacts in an EIR. Otherwise, the City's approval of the Project would violate CEQA.

Here, and as already explained in our prior comments and appeal letter, the Project will have new or more severe significant impacts than previously analyzed in the LMSAP EIR that are not adequately mitigated, therefore disqualifying the project from any CEQA exemptions and requiring a subsequent or supplemental EIR.

Sincerely,

A handwritten signature in black ink that reads "Linda Sobczynski". The signature is written in a cursive style with a large, sweeping initial "L".

Linda Sobczynski  
Associate

Attachments

LTS:ljl

# EXHIBIT A



Technical Consultation, Data Analysis and  
Litigation Support for the Environment

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October 18, 2016

Linda Sobczynski  
Adams Broadwell Joseph & Cardozo  
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**Subject: Response to Comments on the 226 13th Street Project (PLN 15-320)**

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Dear Ms. Sobczynski:

We have reviewed the August 2016 Agenda Report ("Agenda Report"), which addressed comments that we made on the 226 13th Street Project ("Project") in a July 1, 2016 letter and May 31, 2016 letter. The May 31 comment letter we prepared addressed deficiencies in the May 2016 CEQA Analysis ("CEQA Analysis") and associated attachments. The July 1 comment letter we prepared addressed responses to our original comments and deficiencies in the June 2016 Memorandum ("June Memorandum"). After review of the Agenda Report, and the August 23, 2016 Memorandum ("August Memorandum") included within the Agenda Report, we maintain that the CEQA Analysis falls well short in describing and mitigating the Project's Air Quality impacts. The Project should not be approved until an environmental impact report (EIR) is prepared that adequately evaluates and mitigates the Project's health and environmental risks.

### **Air Quality**

In our May 31 letter, we concluded that the Project's CEQA Analysis failed to adequately evaluate the Project's Air Quality impacts because the Project's emissions were modeled using incorrect input parameters, and the CEQA Analysis failed to prepare a construction health risk assessment. The July Memorandum provided responses to many of our comments on the CEQA Analysis, however, it failed to address our concern regarding the construction health risk posed by the proposed Project. Therefore, in our July 1 letter, we reiterated the need for a construction-related health risk assessment to be conducted. While the current Agenda Report and August Memorandum addresses our concerns and prepares a construction health risk assessment (HRA) in response to our July 1 letter, we find that the health risk is derived incorrectly. As a result, we maintain that the CEQA Analysis falls well short in properly evaluating and mitigating the Project's health risk impact, and require that an EIR is prepared to adequately analyze and mitigate this issue.

### Failure to Accurately Estimate the Project's Construction-Related Health Risk

In our July 1 comment letter, we reiterated the need for the CEQA Analysis to evaluate the health risk impact posed to nearby sensitive receptors from exposure to diesel particulate matter (DPM) emissions released during Project construction. In response, the August Memorandum states, "...in the interest of being conservative, ICF prepared a detailed HRA as part of the June 22, 2016 response to the comment letter from Adams Broadwell Joseph & Cardozo dated May 31, 2016..." (Agenda Report, pp. 385). According to Table 1, the August Memorandum estimates that construction of the Project would result in a maximum residential cancer risk of 3.18 in one million after mitigation (see excerpt below) (Agenda Report, pp. 392).

**TABLE 1  
PROJECT-LEVEL CANCER AND CHRONIC (HI) RISKS AND PM2.5 CONCENTRATIONS DURING CONSTRUCTION<sup>a</sup>**

Receptor Type	Chronic Non-Cancer HI	Project-Level Incremental Cancer Risk (per million)	Project-Level PM2.5 Concentration (µg/m <sup>3</sup> )
Residential	<0.01	3.18	0.04
Daycare/Pre-School <sup>b</sup>	<0.01	0.25	0.02
School <sup>c</sup>	<0.01	0.07	0.01
Park/Recreational Facility	<0.01	0.01	<0.01
BAAQMD Thresholds	1.0	10	0.3

<sup>a</sup> Assumes implementation of SCA AIR-1 (see Attachment A to this memorandum). Consistent with BAAQMD and OEHHA guidance, the results represent the worst case predicted health risk for the modeled receptors.

<sup>b</sup> Includes churches. Per BAAQMD guidance, uses 8-hour moderate intensity breathing rates.

<sup>c</sup> Includes elementary schools, high schools, and charter schools. Per BAAQMD guidance, uses 8-hour moderate intensity breathing rates.

According to the August Memorandum, this value was derived using recommendations set forth by the Office of Environmental Health Hazard Assessment (OEHHA) and the Bay Area Air Quality Management District (BAAQMD), as outlined in the table below (Agenda Report, pp. 385, pp. 412).

Table A-3. Cancer Exposure Parameters from ICF's HRA

Parameter	Assumption
Annual DPM Emissions from Construction	3.066313 pounds per year
Health Impacts Considered	Cancer, Chronic, Acute
Receptor Types Considered	Individual Resident, Student, Preschool student, Recreational
Annual Average Ambient Concentration at Worst Case Residential Receptor	4.04E-02 ug/m <sup>3</sup>
Pathways	Inhalation, soil, dermal, mother's milk
Intake Rate for Cancer Risk	High-end point estimate (95th percentile) for the two driving exposure pathways and mean (65th percentile) point estimate for other pathways (OEHHA derived).
Exposure Duration	2 years
Initial Age of Exposure	-0.25 (3rd Trimester) year
Pollutant Deposition Rate for non-inhalation pathways	0.02 m/s
Fraction of Time at Home, Residential Receptors	
3rd Trimester	1
0-2 years	1
2-9 years	1
2-16 years	1
16-30 years	0.73
16-70 years	0.73
Source	BAAQMD/OEHHA recommendations for cases with schools within a 1/million cancer risk
Mean Breathing Rate (L/kg-day), Residential Receptors	
3rd Trimester	225
0-2 years	658



Parameter	Assumption
2-9 years	535
2-16 years	452
16-30 years	210
16-70 years	185
Source	BAAQMD/OEHHA recommendation
High-End Breathing Rate (L/kg-day), Residential Receptors	
3rd Trimester	361
0-2 years	1090
2-9 years	861
2-16 years	745
16-30 years	335
16-70 years	290
Source	BAAQMD/OEHHA recommendation (95th Percentile)
Risk Factors	
Age Sensitivity Factors	OEHHA default per HARP 2
Inhalation Cancer Potency Factor	1.1 (mg/kg-day) <sup>1</sup>
Inhalation Chronic REL	5
Soil Intake Rate	OEHHA default per HARP 2
Dermal Loading Factor	OEHHA default per HARP 2
Mother's Milk Intake Rate	OEHHA default per HARP 2

However, if the recommended input parameters are used to calculate the Project's construction-related risks, as discussed below, we find that the residential risk is actually much higher than what is stated in the August Memorandum and does, in fact, exceed the BAAQMD thresholds of significance, contrary to what is stated in the August Memorandum. As a result, we find the responses provided in the August Memorandum to be inadequate, and maintain that Project construction would pose a potentially significant health risk impact that was not previously identified or addressed by the CEQA Analysis.

In an effort to verify the health risk values provided in Table 1 of the August Memorandum, we prepared a health risk assessment using the same input parameters (see Table A-3 of Staff Report, pp. 411). To stay consistent with the August Memorandum, we modeled the health risk using the Hotspots Analysis and Reporting Program Version 2 (HARP2) software using the OEHHA derived method (Agenda Report, pp. 385). Taking the ambient air concentration of 0.0404 µg/m<sup>3</sup> provided by the Agenda Report and assuming an exposure duration of 2 years (pp. 411), we estimated a residential cancer risk of 13.8 in one million, not 3.81 in one million, which still exceeds the 10 in one million threshold of significance set forth by the BAAQMD.<sup>1</sup> Consistent with OEHHA guidance, exposure was assumed to begin in the infantile stage of life to provide the most conservative estimates of air quality hazards.

<sup>1</sup> Please see HARP2 output files attached.

According to the August Memorandum, the health risk assessment performed by ICF reflected “the project-specific inventory, as provided by the project engineers, and included emissions benefits achieved through implementation of SCA AIR-1” (pp. 386). Therefore, it can be reasonably assumed that the ambient air concentration relied upon by the August Memorandum (and by us) to estimate the Project’s construction-related risk accounts for the emission reductions that would be achieved once SCA AIR-1 is implemented. Therefore, our analysis demonstrates that when the Project’s mitigated construction-related health risk is modeled using the assumptions provided in the August Memorandum, the Project’s residential health risk impact of 13.8 in one million would exceed the BAAQMD threshold of 10 in one million, thus presenting a significant air quality impact, even after implementation of SCA AIR-1.

If the August Memorandum utilized the input parameters provided in Table A-3, it is unclear how a cancer risk of 3.81 in one million was estimated. Nowhere in the Agenda Report are the output files from the ICF’s HRA provided, so we are unable to verify that the parameters provided in Table A-3 of the Agenda Report were utilized in the ICF’s HRA. However, as demonstrated by the output files of our model, which are attached to this comment letter for reference, we utilized the same input parameters as the ICF’s HRA and we estimated a much higher cancer risk than the ICF did. Therefore, until the ICF provides its HARP2 output files to verify that the cancer risk value estimated in the August Memorandum is correct and actually relies upon OEHHA and BAAQMD guidance, we assert that the construction-related cancer risk estimated in the August Memorandum and the Agenda Report is calculated incorrectly and therefore, is unreliable. Our analysis demonstrates that when the Project’s mitigated construction-related health risk is modeled using the assumptions provided in the August Memorandum, the Project’s residential health risk impact of 13.8 in one million would exceed the BAAQMD threshold of 10 in one million, thus presenting a significant air quality impact, even after implementation of SCA AIR-1. Therefore, additional mitigation measures should be included in order to reduce the Project’s construction-related cancer risk to a less than significant level.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Jessie Jaeger

GLCs loaded successfully  
Pollutants loaded successfully  
\*\*\*\*\*

RISK SCENARIO SETTINGS

Receptor Type: Resident  
Scenario: Cancer  
Calculation Method: Derived

\*\*\*\*\*  
EXPOSURE DURATION PARAMETERS FOR CANCER

Start Age: -0.25  
Total Exposure Duration: 2

Exposure Duration Bin Distribution  
3rd Trimester Bin: 0.25  
0<2 Years Bin: 2  
2<9 Years Bin: 0  
2<16 Years Bin: 0  
16<30 Years Bin: 0  
16 to 70 Years Bin: 0

\*\*\*\*\*  
PATHWAYS ENABLED

NOTE: Inhalation is always enabled and used for all assessments. The remaining pathways are only used for cancer and noncancer chronic assessments.

Inhalation: True  
Soil: True  
Dermal: True  
Mother's milk: True  
Water: False  
Fish: False  
Homegrown crops: False  
Beef: False  
Dairy: False  
Pig: False  
Chicken: False  
Egg: False

\*\*\*\*\*  
INHALATION

Daily breathing rate: LongTerm24HR

14thandAliceOUTPUT

**\*\*Worker Adjustment Factors\*\***

Worker adjustment factors enabled: NO

**\*\*Fraction at time at home\*\***

3rd Trimester to 16 years: ON

16 years to 70 years: ON

\*\*\*\*\*

**SOIL & DERMAL PATHWAY SETTINGS**

Deposition rate (m/s): 0.02

Soil mixing depth (m): 0.01

Dermal climate: Mixed

\*\*\*\*\*

**TIER 2 SETTINGS**

Tier2 adjustments were used in this assessment. Please see the input file for details.

Calculating cancer risk

Cancer risk saved to: C:\Users\Rob1\Desktop\HARP2\14thandAliceCancerRisk.csv

HRA ran successfully



# Memorandum

<b>Date:</b>	October 21, 2016
<b>To:</b>	Peterson Z. Vollmann, City of Oakland
<b>From:</b>	ICF
<b>Subject:</b>	<b>226 13<sup>th</sup> Street Project – Response to Agenda Report Response from Adams Broadwell Joseph &amp; Cardozo</b>

This memorandum responds to the comments on the Agenda Report regarding Agenda Item No. 9.1, 226 13<sup>th</sup> Street, Oakland CA submitted by Adams Broadwell Joseph & Cardozo (hereafter, "Adams Broadwell Letter") dated October 18, 2016, as well as the technical comments prepared by Matt Hagemann and Jessie Jaeger (hereafter, "SWAPE letter") dated October 18, 2016, which were attached to that letter, regarding the Oakland Planning Commission's June 22, 2016 decision to approve and adopt the CEQA findings for the 226 13<sup>th</sup> Street Project (PLN15-320). The responses are organized into the following topics, which correspond with the topics in the Adams Broadwell letter and the SWAPE letter:

- A) Consistency with the CEQA Addendum and Exemption Requirements
- B) Flaws in City's Site-Specific Analysis and Inadequate Mitigation Measures

#### **A) Consistency with the CEQA Addendum and Exemption Requirements**

*Section A of the Adams Broadwell letter asserts that the City may not rely on previous environmental analysis for project approval. Specifically, the Adams Broadwell letter asserts that the project is not consistent with CEQA Addendum and Exemption requirements. Therefore, the project allegedly would result in new or more severe significant impacts than were analyzed in the Lake Merritt Station Area Plan Environmental Impact Report (LMSAP EIR).<sup>1</sup> The Adams Broadwell letter also claims that the Addendum determination is improper because it is too long, in excess of 2,000 pages.*

**RESPONSE:** Refer to the detailed response to this assertion prepared by ICF and included in June 22, 2016 response to the comment letter from Adams Broadwell Joseph & Cardozo dated May 31, 2016.

#### **B) Adequacy of the Project-Specific Health Risk from Diesel Particulate Matter (DPM) Analysis and Mitigation**

##### *1. Infant Cancer Risk Exceeds BAAQMD Threshold*

*Section B.a of the Adams Broadwell letter asserts that the cancer risk calculation performed by ICF is incorrect and would exceed BAAQMD's 10 in one million threshold for a residential cancer risk.*

---

<sup>1</sup> The City of Oakland (City) certified an EIR for the LMSAP in November 2014, pursuant to CEQA. The LMSAP EIR can be obtained from the City of Oakland Bureau of Planning at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, California 94612, and/or located at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.

**RESPONSE:** ICF prepared a detailed health risk assessment (HRA) as part of the June 22, 2016 response to the comment letter from Adams Broadwell Joseph & Cardozo dated May 31, 2016. The HRA was completed using the project-specific emissions inventory and AERMOD/Hotspots Analysis and Reporting Program Version 2 (HARP2) modeling platforms. The modeling inputs shown in Table A-3 of the detailed HRA are consistent with the assumptions made for the June 22, 2016 Response to Comment memorandum, with the exception of the “annual average ambient concentration at worst case residential receptor.” This value was inadvertently recorded as “4.04E-02 ug/m<sup>3</sup>”, which was a typographical error. The correct value based on the current and fully mitigated construction inventory is 3.18E-06 ug/m<sup>3</sup>. Running HARP2 with the inputs shown in Table A-3 and the updated ambient diesel particulate matter (DPM) concentration yields a cancer risk value of 3.18 per million, as reported in the June 22, 2016 Response to Comment memorandum. Thus, the results of the HRA reported in the June 22, 2016 Response to Comment memorandum are correct and remain valid under CEQA.

## *2. Speculative Feasibility of SCA-AIR-1*

Section B.b of the Adams Broadwell letter states that it has not been demonstrated that Tier 4 equipment can be reasonably procured for the project and SCA-AIR-1 is unenforceable. Thus, the Adams Broadwell letter states that the City cannot rely on compliance with SCA-AIR-1 alone to reduce the project's construction emissions below levels of significance.

**RESPONSE:** Subsection (w) of SCA AIR-1 requires that equipment and diesel trucks be equipped with Best Available Control Technology. Tier 4 engines are considered the best available technology. SCA AIR-1 was adopted under the LMSAP EIR and has undergone public and legal review. It has been used to feasibly mitigate emissions from numerous projects throughout the City. Thus, the City can rely on SCA AIR-1 to ensure that construction health risks associated with the project would be less than significant. Moreover, ICF understands that the applicant has secured commitments from its subcontracts as to the feasibility of procuring Tier 4 equipment. Therefore, SCA AIR-1's obligation will be satisfied.

## *3. Substantial Risk Even Assuming SCA-AIR-1 Compliance*

Section B.c of the Adams Broadwell letter states that even assuming mitigation, construction of the project would pose a significant health risk.

**RESPONSE:** As discussed above, estimated health risks with implementation of SCA AIR-1 would not result in cancer, non-cancer, or PM<sub>2.5</sub> exhaust concentrations in excess of BAAQMD thresholds. Since construction of the project would not result in significant health risk impacts with implementation of SCA AIR-1, no additional mitigation is required.



October 18, 2016

Peterson Z. Vollmann  
Planner IV  
Bureau of Planning  
City of Oakland  
250 Frank H. Ogawa, Suite 2114  
Oakland, CA 94612

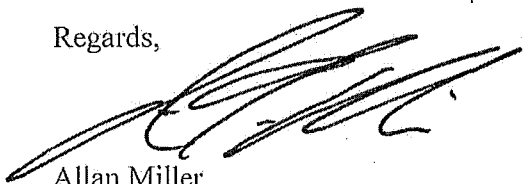
RE: 14<sup>th</sup> St. and Alice St. (Project Number PLN15-320), Oakland, CA

Dear Pete,

In response to the questions raised about the ability for our project known as 14<sup>th</sup> & Alice to comply with Tier-4 off-road equipment during construction I have reached out to a couple Subcontractors to confirm that we will in fact be able to provide Tier-4 off-road equipment during construction. Our construction activities involving off-road equipment are very limited as our project does not have any deep excavations and will only require a few pieces of off-road equipment during the grading and excavation activities. Attached are letters from a couple of the Subcontractors on our grading/excavation bid list confirming they will be able to provide Tier-4 equipment if required.

Please feel free to contact me should you have any questions.

Regards,



Allan Miller  
Wood Partners

Cc: Brian Pianca

Enclosures

Wood Partners is a Group of Limited Liability Companies  
20 Sunnyside Avenue, Suite B, Mill Valley, California 94941  
(415) 888-8075

ATTACHMENT C



# A & B Construction

Contractor's License No. 636514

1350 4<sup>th</sup> Street, Berkeley, CA 94710

Phone: (510) 999-6000

Fax: (510) 982-3636

Mr. Allan Miller  
Regional Construction Manager  
Wood Partners  
20 Sunnyside Ave.  
Mill Valley, CA 94619

October 13, 2016

Re: Use of Tier 4 Rated Emissions Certifications for Equipment at 14<sup>th</sup> Street and Alice Street Project

Dear Mr. Miller:

I write in response to your request for information on the equipment scheduled for use at Wood Partners 14<sup>th</sup> Street and Alice Street project in Oakland, California. As requested, below is a list of emission generating equipment that will be used during the site improvement construction:

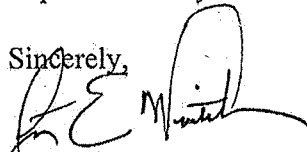
List of Equipment Requiring Tier 4 Certification Subcontractor will be using onsite:

1. Kobelco SK230SR Excavator s.n. LA07-03081
2. Kobelco SK350LC-9 Excavator s.n. YC12U2597
3. Caterpillar 420F Backhoe s.n. SKR02748
4. Wacker DW60 Dumper
5. Caterpillar TL1055D Fork Lift
6. Takeuchi TL10 Tracked Loader s.n. 201000635
- 7) Caterpillar 305E Mini Excavator s.n. XFA02627

It is our understanding that all of the equipment listed above must meet Tier 4 emission standards as required under Standard Condition of Approval (SCA) AIR-1. All equipment listed above will come from our existing fleet, which meets the Tier 4 emissions standards.

We understand the requirement to use Tier 4 construction equipment and will comply with this requirement. If you have any questions, please let me know.

Sincerely,



Steve Wintch  
Operations Manager



"Clearing the way for the future"™

Mr. Allan Miller  
Regional Construction Manager  
Wood Partners  
20 Sunnyside Ave.  
Mill Valley, CA 94619

October 14, 2016

Re: Use of Tier 4 Rated Emissions Certifications for Equipment at 14<sup>th</sup> & Alice Street Project

Dear Mr. Miller:

I write in response to your request for information on the equipment scheduled for use at Wood Partners 14<sup>th</sup> Street and Alice Street project in Oakland, California. As requested, below is a list of emission generating equipment that will be used for construction:

List of Equipment Requiring Tier 4 Certification Subcontractor will be using onsite: Examples (Concrete/Industrial Saws, Rubber Tired Dozers, Tractors/Loaders/Backhoes, Excavators, Drill Rig, Graders, Mobile Cranes, Forklifts, Generator Sets, Welders, Cement and Mortar Mixers, Concrete Pumps, Pavers, Paving Equipment, Rollers, Air Compressors.....)

1. CAT 336 Excavator
2. Volvo 350 Excavator
3. CAT 246D loader
4. GIPO portable crusher

It is our understanding that all of the equipment listed above must meet Tier 4 emission standards as required under Standard Condition of Approval (SCA) AIR-1. All equipment listed above will come from our existing fleet, which meets the Tier 4 emissions standards.

We understand the requirement to use Tier 4 construction equipment and will comply with this requirement. If you have any questions, please let me know.

Sincerely,

Name: Tim Ruff

Date: 10-14-16

Title: Chief Estimator

Company: Ferma Corporation

1265 Montecito Avenue, Suite 200 • Mountain View, CA 94043-4506  
Phone (650) 961-2742 • Fax (650) 968-3945

California Environmental Protection Agency  
**Air Resources Board**

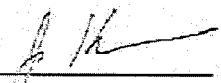
March 1, 2016

**CERTIFICATE OF REPORTED COMPLIANCE  
OFF-ROAD DIESEL VEHICLE REGULATION**

is issued to

**FERMA CORPORATION**

This certificate indicates that the fleet listed above has reported off-road diesel vehicles to the California Air Resources Board and has certified they are in compliance with title 13 CCR, section 2449. All applicable vehicles owned by the individual, company, or agency must be reported and labeled, as specified in Section 2449, with all possible completeness, else this certificate is null and void. **Certificate expires 2/28/2017**

  
\_\_\_\_\_  
Jack Kitowski  
Chief, Mobile Source Control Division  
California Air Resources Board

Off-road Diesel Fleet Identification

1181

To verify the authenticity of this certificate, enter this number at  
[http://www.arb.ca.gov/doors/compliance\\_cert1.html](http://www.arb.ca.gov/doors/compliance_cert1.html)

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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lhorton@adamsbroadwell.com

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DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
LAURA E. HORTON  
MARC D. JOSEPH  
RACHAEL E. KOSS  
JAMIE L. MAULDIN  
ADAM J. REGELE  
ELLEN L. WEHR

March 16, 2016

VIA EMAIL AND U.S. MAIL

Planning Commission  
Oakland City Hall  
One Frank H. Ogawa Plaza, Hearing Room No. 1  
Oakland, CA 94612

Emails: [jmoore.ocpc@gmail.com](mailto:jmoore.ocpc@gmail.com)  
[nagrajplanning@gmail.com](mailto:nagrajplanning@gmail.com)  
[jahazielbonillaoaklandpc@gmail.com](mailto:jahazielbonillaoaklandpc@gmail.com)  
[amandamonchamp@gmail.com](mailto:amandamonchamp@gmail.com)  
[jmyres.oakplanningcommission@gmail.com](mailto:jmyres.oakplanningcommission@gmail.com)  
[pattillo@pgadesign.com](mailto:pattillo@pgadesign.com)  
[EW.Oakland@gmail.com](mailto:EW.Oakland@gmail.com)

Peterson Vollman  
Planner II  
City of Oakland  
250 Frank H. Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
Email: [pvollmann@oaklandnet.com](mailto:pvollmann@oaklandnet.com)

**Re: Responses to Comments on the Jack London Square 4th & Madison Project (ER 15-005)**

Dear Honorable Members of the Oakland Planning Commission and Mr. Vollman:

We are writing on behalf of Oakland Residents for Responsible Development regarding the Jack London Square 4th & Madison Project ("Project"), proposed by the Carmel Partners ("Applicant"). Based on our review of the Final Environmental Impact Report ("FEIR") prepared by the City of Oakland ("City"), as well as the Project's Staff Report for the March 16, 2016 hearing, we believe the City has adequately addressed the issues raised in our September 25, 2015 comments on the

3387-006rc

March 16, 2016

Page 2

Draft Environmental Impact Report ("DEIR"). We describe below the most important issues raised in our comments and the City's responses.

First, we previously commented that the DEIR failed to sufficiently describe the Project by failing to adequately describe aspects of the Project's design features and failing to describe dewatering requirements for the Project, which could lead to potentially significant impacts. In response, the City made several changes to the FEIR, which now provides: more specific details on the construction schedule; further explanation that the retail space analysis is not dependent on the retail space location; further details on transportation design features including driveway locations, as well as further detail on the City process for reviewing the final design to ensure adequate site distance is provided and all safety issues are addressed; and further analysis on the potential for dewatering and exposure to contaminated soil and water, including the process and schedule for dewatering as well as the requirements of the Construction General Permit and the City's Standard Conditions of Approval as applied to discharges of contaminated water from the Project site.

Second, we commented that the DEIR underestimated construction emissions by failing to use the correct modeling inputs for architectural coating, demolition of existing buildings, percent reductions for daily trip rates, construction duration, and assumption of Tier 4 engine use. In response, the City prepared revised air modeling using corrected inputs. Specifically, the City changed the concentration of VOCs in architectural coatings, which we noted was inconsistent between the DEIR and modeling files. In addition, the City provided further explanation of construction activities associated with site preparation and building demolition, as reflected in the modeling files. The City also removed the 16.2 percent reduction we noted was incorrectly applied in the modeling files because it had already applied a reduction elsewhere in the modeling. Finally, the revised air modeling used the appropriate default construction durations. The Project will also implement all basic and enhanced best management practices for construction and the City has ensured the use of Tier 4 engines by including it as enforceable mitigation, which would further reduce construction emissions. The revised model concluded that the Project's emissions will not result in a significant air quality impact.

Third, we previously commented that the DEIR underestimated Greenhouse Gas Emissions ("GHGs") because it incorrectly calculated the service population and used incorrect parameters and an inflated percent reduction in daily trips in its

March 16, 2016

Page 3

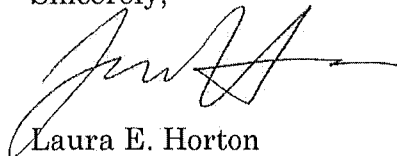
modeling files, as explained above. The FEIR clarified the City's approach to determining the Project's service population. Specifically, the City explained that the 2013 United States Census for the City of Oakland, which it used in its estimation, relies on population per room, and not only bedrooms. The City then revised its estimate, taking into account our modeling file input comments as explained above. In addition, the Project will implement several mitigation measures, such as compliance with CALGreen mandatory measures and the applicable requirements of the Green Building Ordinance, which would further reduce the Project's GHG emissions. The City's revised model falls below the significance threshold.

Fourth, we commented that because of the Project site's long history of industrial uses, potential soil and groundwater contamination had not been adequately evaluated. Specifically, we found that the DEIR had not adequately evaluated the dewatering potential and associated impacts, and had not completed a Phase II Environmental Site Assessment ("ESA"). In response, as stated above, the City provided further details on potential dewatering impacts and clarified the City's plan to handle stormwater contaminants related to industrial uses. In addition, the City conducted a Phase II ESA for the Project site, which found that no further studies or remedial action are recommended for the projects site at this time.

We thank the City for taking seriously the legal and technical issues identified in our submittal, and for its thorough and good faith responses and additional analysis and mitigation added in the FEIR. In light of the City's response to our comments, we have no further comments and withdraw our objections to the EIR and the Project.

Thank you for your attention to this matter.

Sincerely,



Laura E. Horton

LEH:ric

3387-006rc

# OAKLAND CITY COUNCIL

REVISED  
Approved as to Form and Legality

*Mark P. Wahl* for  
*Heather Lee* City Attorney

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

---

**A RESOLUTION DENYING THE APPEALS OF THE COALITION OF NEIGHBORHOOD STAKEHOLDERS AND OAKLAND RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND THUS UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF A PROPOSAL TO CONSTRUCT 262 DWELLING UNITS OVER APPROXIMATELY 13,000 SQUARE FEET OF RETAIL LOCATED AT 226 13<sup>TH</sup> STREET, OAKLAND CA (PROJECT CASE NO. PLN15-320), INCLUDING ADOPTING CEQA EXEMPTIONS (15183 & 15183.3) AND AN ADDENDUM (RELYING ON THE PREVIOUSLY CERTIFIED 2014 LAKE MERRITT STATION AREA PLAN EIR)**

**WHEREAS**, the project applicant, WP West Acquisitions, filed an application on October 7, 2015, to construct a 262 unit residential building over approximately 13,000 square feet of ground floor commercial at 226 13<sup>th</sup> Street, 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 January 13, 2016; and

**WHEREAS**, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of June 1, 2016. At the conclusion of the public hearing, the Commission deliberated the matter and voted to continue the item to a date certain on June 22, 2016; and

**WHEREAS**, the City Planning Commission took testimony and considered the project at its public meeting of June 22, 2016. At the conclusion of the public hearing, the Commission deliberated the matter and voted (4-0-0) to approve the Project; and

**WHEREAS** on July 1, 2016, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was filed by Eric Arnold on behalf of Coalition of Neighborhood Stakeholders; and

**WHEREAS** on July 5, 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 October 18, 2016. After opening the public hearing, the Council voted to continue the matter to the November 1, 2016 City Council Agenda; 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, continued 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 Lake Merritt Station Area Plan EIR, pursuant to CEQA Guidelines section 15162-15164, 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 Appeals, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Planning Commission that the Commission's decision on June 22, 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. Accordingly, the Appeal is denied and the Planning Commission's CEQA Determination is upheld, based upon the June 1, 2016 Staff Report to the City Planning Commission, the October 18, 2016, City Council Agenda Report (the October 18<sup>th</sup> report was originally scheduled to be released for the October 4, 2016 agenda and is so dated) and November 1, 2016 City Council Supplemental Agenda Report, each of which is hereby 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 June 1, 2016 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), as well as the October 18, 2016, City Council Agenda Report (the October 18<sup>th</sup> report was originally scheduled to be released for the October 4, 2016 agenda and is so dated) and the November 1, 2016 City Council Supplemental Agenda Report, (including without limitation the discussion, findings, conclusions and conditions of approval, 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, 1<sup>st</sup> 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

# OAKLAND CITY COUNCIL

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 NOV -8 PM 12: 24

RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**A RESOLUTION DENYING THE APPEALS OF THE COALITION OF NEIGHBORHOOD STAKEHOLDERS AND OAKLAND RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND THUS UPHOLDING THE PLANNING COMMISSION’S APPROVAL OF A PROPOSAL TO CONSTRUCT 262 DWELLING UNITS OVER APPROXIMATELY 13,000 SQUARE FEET OF RETAIL LOCATED AT 226 13<sup>TH</sup> STREET, OAKLAND CA (PROJECT CASE NO. PLN15-320), INCLUDING ADOPTING CEQA EXEMPTIONS (15183 & 15183.3) AND AN ADDENDUM (RELYING ON THE PREVIOUSLY CERTIFIED 2014 LAKE MERRITT STATION AREA PLAN EIR)**

**WHEREAS**, the project applicant, WP West Acquisitions, filed an application on October 7, 2015, to construct a 262 unit residential building over approximately 13,000 square feet of ground floor commercial at 226 13<sup>th</sup> Street, 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 January 13, 2016; and

**WHEREAS**, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of June 1, 2016. At the conclusion of the public hearing, the Commission deliberated the matter and voted to continue the item to a date certain on June 22, 2016; and

**WHEREAS**, the City Planning Commission took testimony and considered the project at its public meeting of June 22, 2016. At the conclusion of the public hearing, the Commission deliberated the matter and voted (4-0-0) to approve the Project; and

**WHEREAS** on July 1, 2016, an appeal of the Planning Commission’s approval and a statement setting forth the basis of the appeal was filed by Eric Arnold on behalf of Coalition of Neighborhood Stakeholders; and

**WHEREAS** on July 5, 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 October 4~~18~~, 2016. After opening the public hearing, the Council voted to continue the matter to the November 1, 2016 City Council Agenda; 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, continued 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 ~~October 4~~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 Lake Merritt Station Area Plan EIR, pursuant to CEQA Guidelines section 15162-15164, 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 Appeals, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Planning Commission that the Commission's decision on June 22, 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, ~~based on the June 1, 2016 Staff Report to the City Planning Commission and the September 20, 2016, City Council Agenda Report hereby incorporated by reference as if fully set forth herein.~~ Accordingly, the Appeal is denied ~~and~~; the Planning Commission's CEQA Determination is upheld, based upon ~~the June 1, 2016 Staff Report to the City Planning Commission, and the October 18-4, 2016, City Council Agenda Report (the October 18<sup>th</sup> report was originally scheduled to be released for the October 4, 2016 agenda and is so dated) and November 1, 2016 City Council Supplemental Agenda Report,~~ each of which is hereby 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 June 1, 2016 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), as well as the October 18<sup>4</sup>, 2016, City Council Agenda Report (the October 18<sup>th</sup> report was originally scheduled to be released for the October 4, 2016 agenda and is so dated) and the November 1, 2016 City Council Supplemental Agenda Report, (including without limitation the discussion, findings, conclusions and conditions of approval, 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, 1<sup>st</sup> 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  
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of the City of Oakland, California