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*Of Counsel*

**Admitted in Colorado*

February 18, 2020

***Via Hand Delivery and Email***
Mayor Libby Schaaf
Council President Rebecca Kaplan
Honorable Members of the City Council
City of Oakland
c/o City Clerk
Oakland City Hall
1 Frank H. Ogawa Plaza,
Oakland, California, 94612
Email: cityclerk@oaklandca.gov; atlarge@oaklandca.gov; dkalb@oaklandca.gov; LMcElhaney@oaklandca.gov; district4@oaklandca.gov; nfbas@oaklandca.gov; Ngallo@oaklandca.gov; District6@oaklandca.gov; lreid@oaklandnet.com

***Via Email Only***
Mike Rivera, Project Planner (mrivera@oaklandnet.com)
William Gilchrist (WGilchrist@oaklandnet.com)

**Re: Agenda Item 9.2: Supplemental Response to Appeal Report and Applicant Letters re 1750 Broadway (PLN18369; Appeal No. APL19013)**

Dear Mayor Schaaf, Council President Kaplan, Council Members, Mr. Rivera, Mr. Gilchrist:

This letter is submitted on behalf of Appellants East Bay Residents for Responsible Development ("East Bay Residents" or "EBRRD") to provide a further response to the City of Oakland's ("City") January 17, 2020 Appeal Report regarding EBRRD's Appeal of the 1750 Broadway Project (PLN18369) ("Project") and CEQA Checklist/Exemption Report ("CEQA Analysis"), a preliminary response to the Applicant's letters to the City of Oakland dated January 28, 2020 and

February 14, 2020,[1] and to provide the City Council with new evidence demonstrating that the Project may result in potentially significant impacts from contaminated soil and groundwater during Project construction that require additional environmental review under the California Environmental Quality Act ("CEQA").[2]

This letter attaches the comments of air quality and hazardous resources expert James J.J. Clark, PhD,[3] and noise consultant Derek Watry of Wilson Ihrig.[4] These expert reports demonstrate that neither the Appeal Report, nor the numerous subsequent submissions by the Applicant, resolve the CEQA deficiencies with this Project in three critical areas.

**A. Soil and Groundwater Contamination.**

Dr. Clark presents substantial evidence demonstrating that newly discovered soil and groundwater contamination at the neighboring 1900 Broadway project site may be disturbed during the 1750 Broadway Project's construction excavation and dewatering activities. This is a new, unusual, and potentially significant impact that was not disclosed in the City's CEQA Analysis, and must be fully analyzed and mitigated before the Project can be approved.

The Alameda County Department of Environmental Health ("ACDEH") released a Fact Sheet on February 14, 2020 which discloses that ACDEH is conducting ongoing investigation and corrective action at the 1900 Broadway Project site (mixed-use residential project at 1901 Franklin and 1930 Broadway), located just 260 feet from the 1750 Broadway Project site.[5] ACDEH has concluded that the 1900 Broadway site contains soil and groundwater that have been

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[1] The Appeal Report responds to EBRRD's Appeal of the Planning Commission's March 20, 2019. The January 28 Applicant Letter was submitted in support of the Project. The February 14 Applicant Letter was submitted in response to EBRRD's January 24, 2020 preliminary comments on the Appeal Report.

[2] The Appeal Report was released for public review on January 17, 2020. EBRRD is still in the process of reviewing the Appeal Report with our technical consultants, and reserves the right to provide supplemental comments to the City Council prior to the February 4, 2020 City Council hearing. Please include this letter and all attachments in the record of proceedings for the Project.

[3] Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit A and incorporated by reference.

[4] Mr. Watry's comments and curriculum vitae are attached hereto as Exhibit B and incorporated by reference.

[5] Exhibit A, fn 17. See attached Fact Sheet.

impacted with metals, total petroleum hydrocarbons as diesel and motor oil, and volatile organic compounds (VOCs).[6] ACDEH is in the process of identifying the nature and extent of the contamination at the 1900 Broadway site.[7]

Dr. Clark concludes that the currently unmitigated contamination at 1900 Broadway has the potential to be drawn in and released by Project construction activities at 1750 Broadway, resulting in a potentially hazardous risk. As he explains:

> Groundwater was measured at the Webster Street site at relatively shallow depths of 14 to 23 feet below ground surface. Project construction for 1750 Broadway will excavate approximately 24,500 cubic yards of material beginning in the first phase of Project construction. This excavation may reach groundwater levels. Given the close proximity of the 1900 Broadway site to the 1750 Broadway site, the substantial amount of material being excavated from the 1750 Broadway site, and the Applicant's plan to initiate excavation activities at the beginning of the Project's 2-3 year construction phase, the action of dewatering onsite for the 1750 Broadway Project could create a preferential pathway to draw contaminants from these other sites to the Project Site. If the 1750 Broadway Project were to begin dewatering and excavation activities before the ACDEH corrective action at 1900 Broadway is complete, this could, in turn, result in the release of contaminants during 1750 Broadway construction.[8]

The extent to which this contamination may be disturbed by the 1750 Broadway Project has not been analyzed by either the City or ACDEH. The 1900 Broadway Project was approved on a CEQA exemption,[9] and there was no site-specific soil and groundwater study included in the CEQA Analysis for 1750 Broadway. Therefore, these impacts have not been addressed.

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[6] Exhibit A, p. 9.
[7] See https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000014012.
[8] Exhibit A, p. 10.
[9] See https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwi8qtjWttznAhUYv54KHQm6ALgQFjAAegQIBRAB&url=http%3A%2F%2Fwww2.oaklandnet.com%2Foakca1%2Fgroups%2Fceda%2Fdocuments%2Fagenda%2Foak070743.pdf&usg=AOvVaw0G1f8ZZ6Ff-fHPsrc-cvRu.

An EIR is required prior to Project approval to evaluate the potential impacts from disturbing hazardous contaminants during Project construction, including a site-specific soil and groundwater contamination study for 1750 Broadway, and awaiting the results of ACDEH's investigation of the 1900 Broadway site.

## B. The City Still Fails to Provide Binding Mitigation for Toxic Air Contaminants.

### 1. SCA AIR-3 Does Not Require "Tier 4 Final" Equipment Absent Additional Mitigation.

As we have previously explained, the City's health risk assessment ("HRA") found that the Project's unmitigated TAC emissions over the Project's 28-month construction period will be both individually and cumulatively significant:

- ***23 in one million for CHILDREN; and***
- ***114 in one million for INFANTS.***[10]

The CEQA Analysis admits that this "*cancer risk from uncontrolled Project construction emissions to infant and child receptors at the MEIR would exceed the City's CEQA significance thresholds.*"[11] An impact which exceeds an adopted significance threshold is a "significant impact" within the meaning of CEQA.[12]

We previously commented that SCA AIR-3 does not adequately mitigate this risk because "Tier 4 Final" engines are not required by SCA AIR-3. The February 14 Applicant Letter states that, because the Applicant prepared a health risk assessment pursuant to SCA AIR-3(a)(i), the Applicant will not follow SCA AIR-3(a)(ii), and will instead follow SCA AIR-3(b), resulting in the application of "Tier 4 Final" equipment. This is incorrect. Compliance with AIR-3(b) does not expressly

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[10] CEQA Analysis, p. 55.
[11] CEQA Analysis, p. 55 (emphasis added).
[12] 14 CCR § 15064.7(a) ("A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency."; *CBIA v. BAAQMD,* 2013 Cal. App. LEXIS 644, *18. When an impact exceeds a CEQA significance threshold, the agency must disclose in the EIR that the impact is significant. *CBE v. CRA,* 103 Cal.App.4th at 110-111; *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"); *CBE v. SCAQMD,* 48 Cal.4th at 327 (impact is significant because exceeds "established significance threshold for NOx ... constitute[ing] substantial evidence supporting a fair argument for a significant adverse impact").

require "Tier 4 Final" construction equipment absent additional conditions added by the City, and therefore does not remedy the City's failure to implement a Project-specific mitigation measure to require it.

SCA AIR-3(b) is set forth below:

> **b. Construction Emissions Minimization Plan []**
> Requirement: The project applicant shall prepare a Construction Emissions Minimization Plan (Emissions Plan) for all identified DPM reduction measures (if any). The Emissions Plan shall be submitted to the City (and the Bay Area Air Quality District if specifically requested) for review and approval prior to the issuance of building permits. The Emissions Plan shall include the following:
> i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
> ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract.[13]

SCA AIR-3(b) does not say "Tier 4 Final" equipment. Rather, it refers to the same range of "VDECS" discussed above. Nor does SCA AIR-3(b) state that "the Project must be consistent with the DPM reduction measures that were "assumed" in the HRA," as the Applicant's letter claims. SCA AIR-3(b) requires the Applicant to provide an "equipment inventory" which lists the type of DPM-reduction equipment it proposes to use from the range of VDECS. Similarly, SCA AIR-3(a)(i) requires the Applicant to "identify" DPM-reduction measures to reduce health risk to acceptable levels and present them to the City for review and approval.[14] Even assuming the Applicant proposes the use of Tier 4 Final equipment, as the Applicant claims to have done here, "Tier 4 Final" would not be required unless the City adds a binding condition to the Project which requires it. Neither the CEQA Analysis nor the Appeal Report include any binding condition or mitigation

[13] CEQA Checklist, Appendix A, p. A-7 (emphasis added).
[14] *Id.*, p. A-6.

measure which requires "Tier 4 Final" equipment. Our conclusion therefore remains the same, and the City has not presented substantial evidence demonstrating that Tier 4 Final equipment will be required for the Project.

2. The Agreement Between the Applicant and the 1770 Broadway Building Owner to Provide "Air Purifiers" Does Not Adequately Mitigate Cancer Risk.

The Applicant's January 28 Letter includes a Memorandum of Agreement ("MOA") between the Project Applicant and the owners of 1770 Broadway. The recitals indicate that "the developer and neighbor are concerned regarding the potential disruption that construction of the Project may have on Neighboring Building residents." In Section 3.3, entitled Air Condition Units and Air Purifiers, the MOA states:

> During construction, Tenants may wish to keep their windows closed. Because Neighboring Building does not have air conditioning, Developer shall provide Tenants with portable air conditioning units. If windows are open, Project construction may generate increased dust. To address this potential concern, Developer shall provide Tenants with air purifiers. Specifically, Neighbor and Developer agree to the following:
> 3.3.1. Developer shall purchase portable air conditioners and air purifiers for each unit in Neighboring Building. Developer shall notify Neighbor when these items have been purchased and arrange with Neighbor to have them delivered to Neighboring Building.
> 3.3.2. Neighbor shall provide Tenants with notice that portable air conditioners and air purifiers are available and work with each Tenant to install them into their units. If a portable air conditioner or air purifier provided breaks or needs repair, Neighbor shall notify Developer and Developer shall replace or repair the damaged unit.[15]

However, the MOA fails to define what constitutes an "air purifier." As Dr. Clark explains, the type of "air purifier" is a critical consideration in in addressing the impacts from diesel particulate matter ("DPM") and other toxic air contaminants that will be released during the construction phase of the 1750 Broadway Project.

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[15] Applicant Jan 29 Letter, MOA.

As Dr. Clark explains, only high level MERV-13 or higher air filtration devices are capable of filtering the fine toxic particulates contained in the Project's DPM emissions.[16] The MOA fails to require this type of air filtration. Therefore, its purported requirement to provide "air purifiers" to residents of 1770 Broadway will not reduce cancer risk below thresholds.[17]

### C. Construction Noise Impacts Remain Significant and Unmitigated.

The Appeal Report contains a new noise study which is intended to support the noise conclusions in the CEQA Analysis ("Noise Report").[18] However, the Noise Report acknowledges that the Project will have significant construction noise impacts that require mitigation:

> ***We expect that noise levels could temporarily exceed the ordinance criteria without noise reduction measures at the nearest properties when construction is occurring close to the properties.***[19]

The Noise Report presents an improperly deferred analysis of the Project's construction noise impacts disguised as a mitigation plan. This approach violates CEQA.[20]

The Applicant's February 14 letter claims that Noise Report does not admit a significant noise impact because the Noise Report will add additional mitigation to reduce impacts below levels of significance. This claim is also contrary to CEQA, which requires the severity of the impact to be disclosed prior to mitigation.[21]

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[16] Exhibit A, pp. 5-7.
[17] The MOA is also an improper attempt by the Applicant to disguise mitigation measures in an unenforceable private contract, rather than as legally binding mitigation measures or conditions of approval by the City, as required by CEQA.
[18] Appeal Report, Attachment F, Construction Noise Management Plan (10/22/2019).
[19] *Id.*, p. 2.
[20] CEQA requires that an EIR disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved. 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("*CBIA v. BAAQMD*") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition,* 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. ("Berkeley Jets")* (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.
[21] *Lotus v. Dept. of Transportation* (2013) 223 Cal.App.4th 650 (CEQA document may not compress the analysis of impacts and mitigation measures into a single issue, and must incorporate all

Finally, as Mr. Watry explains, the City's reliance on the MOA and the Noise Report to effectively reduce construction noise impacts is unsupported because neither of these documents presents binding or enforceable mitigation measures or conditions of approval, as required by CEQA.

**D. Conclusion**

**EBRRD respectfully requests that the City Council continue this hearing** in order to address the new evidence of toxic soil and groundwater contamination, and to correct the deficiencies in the City's existing CEQA Analysis by requiring an EIR for the Project.[22]

Sincerely,

Christina M. Caro

CMC:acp

Attachment

measures designed to reduce potentially significant project impacts into a legally binding mitigation plan).

[22] We reserve the right to supplement these comments at future proceedings. We incorporate by reference the Appeal and supporting comments of the 1770 Broadway neighbors. Please incorporate these comments into the Project's record of proceedings.

ALAMEDA COUNTY
**HEALTH CARE SERVICES AGENCY**
COLLEEN CHAWLA, Director

DEPARTMENT OF ENVIRONMENTAL
HEALTH LOCAL OVERSIGHT PROGRAM
1131 HARBOR BAY PARKWAY
ALAMEDA, CA 94502
(510) 567-6700
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February 14, 2020

**FACT SHEET ON ENVIRONMENTAL INVESTIGATIONS & CORRECTIVE ACTIONS**
**19 BWAY Tower Development LLC**
1901 Franklin and 1930 Broadway, Oakland, California
Site Cleanup Program Case No. RO0003413
GeoTracker Global ID No. T10000014012

**Summary** – This fact sheet has been prepared by Alameda County Department of Environmental Health (ACDEH) to inform community members and other interested stakeholders of the status of environmental investigations and proposed corrective actions to be implemented in conjunction with redevelopment activities at 1901 Franklin and 1930 Broadway in Oakland, California (the Site). It includes an overview of the historic land use at the Site, environmental investigations, and proposed corrective actions to be implemented in conjunction with Site redevelopment, along with information contacts.

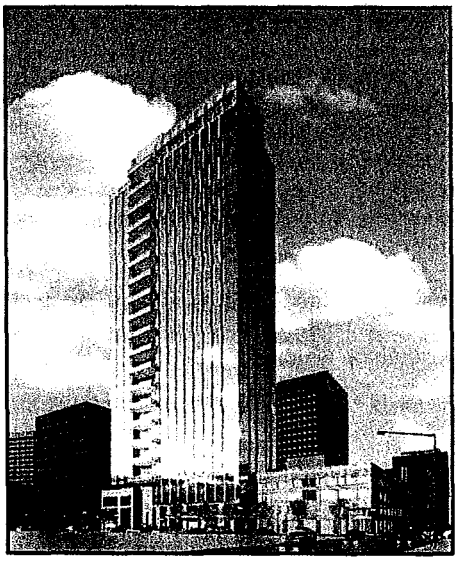

## Community Meeting

Alameda County Department of Environmental Health (ACDEH) invites interested community members to attend a community meeting to learn more about the proposed Site remediation plan, discuss community protection measures, and answer questions.

**When:** Thursday, February 20 from 5:30 to 7:00PM

**Location:** Suffolk Office, 1970 Broadway, Suite 110, Oakland CA 94612

**Site Background** – The Site is located near the northeast corner of Broadway and 19th Street within a commercial area of Oakland. The site was developed as early as 1889 with a Chinese laundry, blacksmith, and wagon shop. Since the 1930s, the site has been developed with a single-story retail building, a 12-story office building, and a single-story movie theater. Office and retail tenants included jewelers, physician offices, photo shop, automobile sales, and a cleaners. The theater and office buildings were demolished in 1992 and 1993 and the basements were backfilled with fill material including concrete, metal, glass, and wood to depths of approximately 12 feet. The 1930 Broadway retail building was demolished in December 2019 and the foundations removed in January 2020. The current property owner, 19th & BWAY Associates, LLC acquired the property in 2014 and 2017 and has been permitted by the City of Oakland to construct a 39-story residential tower and four-story office/retail and residential amenity podium, with one level of subsurface parking that will cover the footprint of the Site.



View of the proposed development from Broadway and 19th Streets.

**Site Investigation & Proposed Corrective Actions** – Environmental investigations were conducted in 2016, 2017, and 2018 without regulatory oversight to assess the type and extent of contamination in soil and groundwater at the Site from historic land uses. Results of these investigations indicate that soil and groundwater have been impacted with metals, total petroleum hydrocarbons as diesel and motor oil, and volatile organic compounds (VOCs). While some of these chemicals are present at levels above regulatory

screening levels, this does not indicate adverse impacts to human health or the environment, rather that further assessment is warranted. In February 2020, the developer entered into a voluntary agreement with ACDEH to provide regulatory oversight of additional environmental investigation activities, and development of corrective actions and community protection measures to reduce human health risk to the adjacent community and future occupants of the building from soil and groundwater contamination.

A Corrective Action Plan will be developed based on the results of the environmental investigations. Currently proposed corrective actions include:

- Excavation of contaminated soil. Construction of the tower requires excavation of the entire site to depths of 26 to 32 feet, which is expected to remove soil with concentrations above residential regulatory screening levels from the site;
- Transportation of contaminated soil to a licensed, off-Site disposal facility.

Additional corrective actions may be required based on the results of the additional field investigation.

**Community Protection Measures** – Prior to the demolition of the 1930 Building in December 2019, a hazardous materials survey was conducted, and site features were abated for lead and asbestos. All future excavation work will be conducted in accordance with the ACDEH approved Soil and Groundwater Management Plan, Dust Monitoring Plan, and Corrective Action Plan. These documents collectively describe best practices to ensure the ongoing safety of on-site construction workers and the surrounding community. Protection measures include:

- Dust control measures, such as spraying water and surfactants, covering soil with plastic tarps, and stopping work on windy days;
- Performing real-time air monitoring during soil disturbing work;
- Perimeter air monitoring during soil disturbing activities;
- Cleaning truck tires and undercarriages to prevent dust track out;
- Adhering to a City of Oakland approved Construction Management Plan (CMP) and truck route(s);
- Stationing flaggers and installing traffic control notifications to manage area traffic and allow trucks to safely enter and exit the Site.

**Next Steps** – ACDEH will host a community meeting:

**When:** Thursday, February 20, 2020
**Time:** 5:30 to 7:00 p.m.
**Location:** Suffolk Office, 1970 Broadway, Suite 110, Oakland, CA 94612

During this meeting, ACDEH staff and the Developer's environmental consultant will provide an overview of the environmental investigations conducted to date, additional future investigations, development and implementation of the Corrective Action Plan and community protection measures, and answer any environmental related questions for the Site.

ACDEH will consider all public comments as part of its approval of the Corrective Action Plan. ACDEH will prepare a Response to Comments document and will provide a copy to all individuals that provided comments.

**For More Information** – Individuals that would like more information or have questions are encouraged to call:

Drew York,
ACDEH Case Manager
1131 Harbor Bay Parkway
Alameda, CA 94502
510-639-1276
andrew.york@acgov.org

Pamela White
LPC West, Inc.
322 Pine Street, Suite 500
San Francisco, CA 94104
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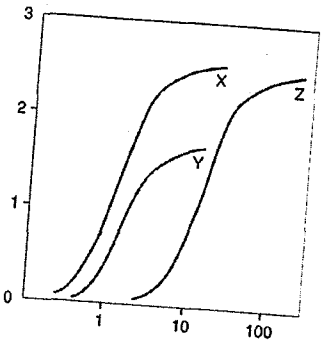
# EXHIBIT A

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February 18, 2020

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Attn: Ms. Christina Caro**

**Subject: Comment Letter on 1750 Broadway Project Application PLN18369**

Dear Ms. Caro:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the response to the Comment Letter prepared and submitted to the City of Oakland last year. In response to the comments provided concerning the potential health impacts from construction activities associated with the project, the City staff has responded to those concerns by relying on the projects consultant's (ESA) assessment that SCA-AIR 3 was sufficient to address concerns over diesel particulate matter (DPM) and "would not result in new, significant, more severe, or peculiar air quality impacts with the implementation of the SCAs was supported by substantial evidence in the CEQA analysis and the HRA."

Prior to dealing with the response from ESA to the concerns pointed out previously, the City must correct a factual error in its CEQA analysis that is posted on its website. In the February 2019 1750 Broadway Project CEQA Checklist/Exemption Report prepared for the City of Oakland by ESA, they state "Table 9.6-4 shows that the use of the Tier 4 controls, health risk at the MEIR would be less than the City's significance threshold for all age groups."[1] Table 9.6-4 shows the significance threshold for cancer to be

[1] ESA. 2019. 1750 Broadway Project CEQA Checklist/Exemption Report. Prepared by ESA for the City of Oakland. Page 55
http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak072045.pdf

10 in a million. In the SCA scenario (With Tier 4 Final Equipment) the line for residential receptor – infant, shows a cancer risk of 14.5 in a million, well above the 10 in a million threshold listed below. In Appendix C of the same document, Table C-6[2] reflects a value of 4.5 in a million for the same exposure scenario. This error is confusing at best and may represent a significant enough of a concern to warrant a recirculation of the DEIR.

**Health Risk from Exposure to Toxic Air Contaminants**

As previously pointed out in our letter of March 23, 2019, SCA AIR-3 a. ii. states "All off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by CARB." This condition *does not bind* the proponent to the use of Tier 4 equipment, rather it offers the proponent the opportunity to use the "most effective VDECS" available. The wording of the SCA allows the Proponent to determine that "available" equipment could include certified equipment that does not meet the Tier 4 requirement. The reduction in particulate matter (PM) and DPM assumed by use of Tier 4 final equipment includes reductions of emissions of up to 93% during the construction phase (0.26 tons to 0.019 tons of DPM emitted). Tier 4 interim equipment achieves emission reductions of 50% to 85% at best[3]. As previously noted, the City has failed to adequately analyze the health impacts from DPM emitted from the project assuming the use of Tier 4 interim equipment.

On February 14, 2020, the Applicant submitted a letter to the City disputing our analysis of SCA AIR-3. The letter states that, because the Applicant prepared a health risk assessment pursuant to SCA AIR-3(a)(i), the Applicant will not follow SCA AIR-3(a)(ii), and will instead follow SCA AIR-3(b). We note that compliance with AIR-3(b) does not change our analysis of the failure of SCA AIR-3 to include a binding requirement to use "Tier 4 Final" construction equipment.

SCA AIR-3(b) is set forth below:

**b. Construction Emissions Minimization Plan (if required by a above)**
Requirement: The project applicant shall prepare a Construction Emissions Minimization Plan

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[2] ESA. 2019. 1750 Broadway Project CEQA Checklist/Exemption Report. Prepared by ESA for the City of Oakland. Page C-7 http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak072045.pdf

[3] BREEZE. 2016. CALEEMOD. Appendix D, Default Data Tables. Table 3-5. OFFROAD Emission Factor Based on Engine Tier. Prepared for the California Air Pollution Control Offices Association. September, 2016.

(Emissions Plan) for all identified DPM reduction measures (if any). The Emissions Plan shall be submitted to the City (and the Bay Area Air Quality District if specifically requested) for review and approval prior to the issuance of building permits. The Emissions Plan shall include the following:
i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract.[4]

The language of SCA AIR-3(b) does not require "Tier 4 Final" equipment. Rather, it refers to the same range of "VDECS" discussed above. Nor does SCA AIR-3(b) state that "the Project must be consistent with the DPM reduction measures that were "assumed" in the HRA," as the Applicant's letter claims. SCA AIR-3(b) requires the Applicant to provide an "equipment inventory" which lists the type of DPM-reduction equipment it proposes to use from the range of VDECS. Similarly, SCA AIR-3(a)(i) requires the Applicant to "identify" DPM-reduction measures to reduce health risk to acceptable levels and present them to the City for review and approval.[5] Even assuming the Applicant proposes the use of Tier 4 Final equipment, as the Applicant claims to have done here, "Tier 4 Final" would not be required unless the City adds a binding condition to the Project which requires it. The CEQA Checklist and Appeal Report do not include any binding condition or mitigation measure which requires "Tier 4 Final" equipment. Our conclusion therefore remains the same, that the City has not presented evidence demonstrating that Tier 4 Final equipment will be required for the Project.

Additionally, the reference cited by the City's consultant (ESA), regarding the availability of Tier 4 final equipment (CARB, 2018. "In-use, off-Road Equipment, 2017 Inventory Model," April 2018) could not be validated. A detailed review of the CARB website and the databases/reports attached therein failed to show either the report or data claimed in the comment letter. Therefore, without the referenced material(s,) we cannot validate the assumption that Tier 4 final equipment will be readily available for the project.

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[4] CEQA Checklist, Appendix A, p. A-7 (emphasis added).

[5] *Id.*, p. A-6.

The Applicant's February 14, 2020 letter states that a contractor has stated that Tier 4 Final equipment is likely to be available for the Project. However, without a binding requirement in place for "Tier 4 Final," or a comprehensive analysis of the potential emissions from equipment with less emissions reductions than Tier 4 final equivalent utilized on site (in an Environmental Impact Report), the suggested mitigation measures remains uncertain, and the City has not demonstrated that DPM mitigation will effectively reduce impacts on the affected residents near the project site to below thresholds of significance.

Air Filtration

On January 28, 2020, Rubicon Point Partners, LLC (Project Applicant), sent a letter to the City of Oakland City Council in support of the project. The letter includes a Memorandum of Agreement (MOA) between the Project Applicant and the owners of 1770 Broadway. The recitals indicate that "the developer and neighbor are concerned regarding the potential disruption that construction of the Project may have on Neighboring Building residents." In Section 3.3, entitled Air Condition Units and Air Purifiers, the MOA states:

"During construction, Tenants may wish to keep their windows closed. Because Neighboring Building does not have air conditioning, Developer shall provide Tenants with portable air conditioning units. If windows are open, Project construction may generate increased dust. To address this potential concern, Developer shall provide Tenants with air purifiers. Specifically, Neighbor and Developer agree to the following:
3.3.1. Developer shall purchase portable air conditioners and air purifiers for each unit in Neighboring Building. Developer shall notify Neighbor when these items have been purchased and arrange with Neighbor to have them delivered to Neighboring Building.
3.3.2. Neighbor shall provide Tenants with notice that portable air conditioners and air purifiers are available and work with each Tenant to install them into their units. If a portable air conditioner or air purifier provided breaks or needs repair, Neighbor shall notify Developer and Developer shall replace or repair the damaged unit."

The MOA fails to define what constitutes an "air purifier." The type of "air purifier" is an important consideration in addressing the impacts from diesel particulate matter (DPM) and toxic air contaminants that will be released during the construction phase of the 1750 Broadway project in Oakland, CA. Construction emissions from the project will include diesel particulate matter (DPM), tailpipe emissions and evaporative losses from internal combustion engine using gasoline also contain

a number of volatile chemicals that are known to the State of California to have serious health impacts, including reproductive effects, chronic and acute health impacts, and may lead to the development of cancer. DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.[6,7,8] Fine diesel particles are deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.[9] Exposure to diesel exhaust increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.[10] Toxic air contaminants (TACs) identified by BAAQMD[11] in tailpipe emissions and evaporative losses from internal combustion engines include acetaldehyde, acrolein, benzene, 1,3-butadiene, ethylbenzene, formaldehyde, hexane, methanol, methyl ethyl ketone, naphthalene, propylene, styrene, toluene, and xylenes. Exposure to each of these chemicals has been linked to a host of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.

Prior to agreeing to any remedial/mitigation measure for the residents of 1770 Broadway "air purification" must be clearly defined. In May, 2016, the California Air Resources Board (CARB) published the results of a multiyear study to evaluate the effectiveness of air purification systems in homes.[12] The study evaluated eight combinations of ventilation and air cleaning systems for pollutant

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[6] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

[7] U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

[8] Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed February 7, 2020. 2008.

[9] California Air Resources Board. 1998. Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

[10] Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

[11] BAAQMD. 2011. Recommended Methods for Screening and Modeling Local Risks and Hazards. Bay Area Air Quality Management District. May, 2011

[12] CARB. 2016. Reducing In-Home Exposure to Air Pollution Contract No. 11-311: Final Report

removal and energy use. Systems were installed in an unoccupied 2006 house located 250 m downwind of I-80 in Sacramento. Systems were evaluated for reduction of outdoor particles (6 nm to 2.5 μm and black carbon) in summer and fall/winter, ozone and VOCs in summer, and indoor particles generated by a scripted cooking procedure. The study demonstrated the benefits of high efficiency mechanical filtration at reducing particulate matter exposures from outdoor sources, with varying energy costs.

Mechanical filters are rated using the Minimum Efficiency Reporting Value (MERV) rating system that was developed by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)[13]. The MERV rating system ranges from a low of 1 to a high of 20, with each rating indicating the percentage of particles removed within a specific particle size range (measured in microns, where a micron is one millionth of a meter). According to CARB[14], as the MERV rating increases, so does the filter's removal efficiency for smaller-sized particles. The table from CARB summarizes each MERV rating's particle removal efficiency, based on specific size ranges.

[13] CARB. 2014. Air Cleaning Devices For The Home: Frequently Asked Questions.

[14] Ibid.

**Table 1. MERV Ratings***

| MERV Rating | Average Particle Size Efficiency (PSE), microns – % Removal | | | Typical Controlled Contaminant or Material Sources (ASHRAE 52.2) | Typical Building Applications |
|---|---|---|---|---|---|
| | 0.3-1.0 | 1.0-3.0 | 3.0-10.0 | | |
| 1-4 | | | <20% | **> 10 Microns** Textile Fibers Dust Mites, Dust, Pollen | Window AC units Common Residential Minimal Filtration |
| 5 | | | 20-35 | **3.0 to 10.0 Microns** Cement Dust, Mold Spores, Dusting Aids | Industrial Workplace Better Residential Commercial |
| 8 | | | >70 | | |
| 9 | | <50 | >85 | **1.0 to 3.0 Microns** Legionella, Some Auto Emissions, Humidifier Dust | Hospital Laboratories Better Commercial Superior Residential |
| 12 | | >80 | >90 | | |
| 13 | <75 | >90 | >90 | **0.3 to 1.0 Microns** Bacteria, Droplet Nuclei (sneeze), Most Tobacco Smoke, Insecticide Dust | Superior Commercial Smoking Lounge Hospital Care General Surgery |
| 16 | >95 | >95 | >90 | | |
| 17** | ≥99.97 | | | **<0.3 Microns (HEPA/ULPA filters)** Viruses, Carbon Dust, Fine Combustion Smoke | Clean Rooms Carcinogenic & Radioactive Matls., Orthopedic Surgery |
| 18** | ≥99.99 | | | | |
| 19, 20** | ≥99.999 | | | | |

* Adapted from EPA 2009; originally from ANSI/ASHRAE Standard 52.2-2007. Not all levels are shown.

** Not part of the official ASHRAE Standard 52.2 test, but added by ASHRAE for comparison purposes.

CARB's 2016 study[15] demonstrated that higher performance MERV16 filtration on supply ventilation reduced outdoor particles by 97-98% with low energy consumption, but provided no benefits for indoor-generated particles. Similarly rated (MERV13 to MERV16) filtration on the central forced air system reduced outdoor PM2.5 by 90-97% when operated at least 20 min each hour or continuously at low-speed. Air cleaning on recirculating systems also reduced indoor emitted pollutants.

For gas and chemical vapor removal, CARB[16] notes that residential air cleaning devices that effectively remove gases and odors typically involve the use of air drawn through materials such as

[15] CARB. 2016. Reducing In-Home Exposure to Air Pollution Contract No. 11-311: Final Report

[16] ibid

activated charcoal (carbon) or alumina coated with potassium permanganate. A draw back to this type of filtration system is that the system can quickly become overloaded and may need to be replaced often. These filters (usually charcoal) are offered as an option with some residential particle air cleaners. Electronic air cleaners are not recommended as a method for reducing contaminants in the 1770 Broadway residences. There are three general types of electronic air cleaning technologies available for portable and central air cleaners: intentional ozone generators, electrostatic precipitators (ESPs), and ionizers. Ozone generators produce substantial amounts of ozone by design, which can result in unhealthful indoor air quality and a pungent odor; these are not recommended for use in homes, schools, or other occupied locations.

In order to effectively filter the fine DPM particles that will be released during Project constriction, it is clear that a multi-technology filtration system will be necessary for the residents of 1770 Broadway.

1. At a minimum, installation of mechanical filters in each of the units at 1770 Broadway will be necessary. All such air filtration devices must be rated MERV13 or higher. To ensure adequate health protection to sensitive receptors, a ventilation system is proposed to meet the following minimal design standards:

- A MERV13 or higher rating;
- At least one air exchange(s) per hour of fresh outside filtered air;
- At least four air exchange(s) per hour recirculation.

2. Given the proximity of the project to the 1770 Broadway residences, the mechanical filtration system should also contain a gas and vapor containment filter. The filtration system should not reduce the efficiency of the air flow into the residence nor impact the efficiency of the MERV mechanical filter.

3. As part of implementing this measure, an ongoing maintenance plan for the building's HVAC air filtration system should be developed. A qualified air quality expert should be retained to maintain the systems and to test the residences to ensure that indoor air quality is not impacted from construction emissions.

4. Ensure that an agreement is in place that between the proponent and tenants that (1) requires cleaning, maintenance, and monitoring of the affected units for air flow leaks; (2) include assurance that new owners and tenants are provided information on the ventilation system; and (3) include

provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

5. Require that, prior to building occupancy, an authorized air pollutant consultant or HVAC engineer verify the installation of all necessary measures to reduce DPM and TAC exposure.

The "air purifiers" described in the Applicant's MOA do not include any of these requirements, and are therefore ineffective at reducing the cancer risk posed by the Project's construction TAC emissions.

**Soil and Groundwater Contamination at 1900 Broadway and Neighboring Sites**

The CEQA Checklist failed to disclose soil and groundwater remediation activities are occurring at neighboring project sites which may be impacted by Project construction. These impacts must be addressed in site-specific soil and groundwater study.

In particular, the City of Oakland must consider the potential impacts of current remedial investigations of hazardous wastes in the immediate vicinity on the Project Site. Approximately 160 meters southeast of the Project Site, an Alameda County Department of Environmental Health (ACEH) site, Douglas Parking Company, located at 1721 Webster Street, is undergoing active remediation and groundwater monitoring for volatile organic compounds. A second site, located at 1901 Franklin and 1930 Broadway (the 1900 Broadway 19BWAY Tower Development located approximately 160 meters north east of the Project Site),[17] which has yet to be listed on the Cortese Sites, was entered into a voluntary agreement with ACDEH[18] for additional environmental investigation activities and corrective actions from soil and groundwater contamination. Each site is within a close enough proximity that contamination measured in groundwater or soil vapor has the potential to impact the Project Site, especially if the Project Site will be dewatered to excavate soils

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[17] Studies prepared by the City for the 1900 Broadway Project also identify the distance between 1750 Broadway and 1900 Broadway as "approximately 260 feet." See May 17, 2018, Update to the CEQA Checklist for the 1900 Broadway Project, Oakland, California, at p. 21, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjY5ojygdznAhXFIDQIHX8KBCkQFjAAegQIAxAB&url=http%3A%2F%2Fwww2.oaklandnet.com%2Foakca1%2Fgroups%2Fceda%2Fdocuments%2Fagenda%2Foak070743.pdf&usg=AOvVaw0G1f8ZZ6Ff-fHPsrc-cvRu.

[18] ACDEH. 2020. Fact Sheet on Environmental Investigations and Corrective Actions, 19BWAY Tower Development LLC. February 14, 2020.

for footings for the building.

Groundwater was measured at the Webster Street site at relatively shallow depths of 14 to 23 feet below ground surface. Project construction for 1750 Broadway will excavate approximately 24,500 cubic yards of material[19] beginning in the first phase of Project construction.[20] This excavation may reach groundwater levels. Given the close proximity of the 1900 Broadway site to the 1750 Broadway site, the substantial amount of material being excavated from the 1750 Broadway site, and the Applicant's plan to initiate excavation activities at the beginning of the Project's 2-3 year construction phase, the action of dewatering onsite for the 1750 Broadway Project could create a preferential pathway to draw contaminants from these other sites to the Project Site. If the 1750 Broadway Project were to begin dewatering and excavation activities before the ACDEH corrective action at 1900 Broadway is complete, this could, in turn, result in the release of contaminants during 1750 Broadway construction.

There is evidence that ACDEH has identified impacted soil and groundwater conditions at 1900 Broadway that contain toxic chemicals in excess of regulatory screening levels. As explained in ACDEH's Fact Sheet, ACDEH is in the process of identifying the exact nature and extent of the contamination at the 1900 Broadway Project site.[21] The extent to which this contamination may be disturbed by the 1750 Broadway Project has not been analyzed by either the City or ACDEH. There was also no site-specific soil and groundwater study included in the CEQA Checklist for 1750 Broadway. Therefore, these impacts have not been addressed. Further investigation/inquiry are necessary prior to Project approval to evaluate the potential impacts from disturbing hazardous contaminants during Project construction, including a site-specific soil and groundwater contamination study for 1750 Broadway, and awaiting the results of ACDEH's investigation of the 1900 Broadway site.

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[19] CEQA Checklist, p. 51.

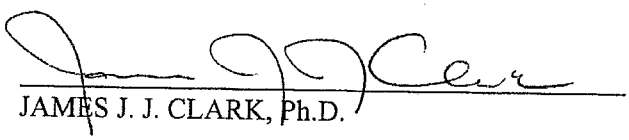
[20] Applicant's Construction Noise Analysis – Construction Schedule by Phase, pp. 74-75.

[21] See https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000014012.

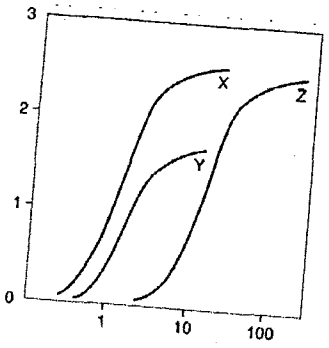
## Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the CEQA Checklist has factual errors that must be corrected and recirculated; the Project could result in significant unmitigated impacts if the conditions of approval are not binding and that the new MOA between the Applicants and the owners of 1770 Broadway fails to address significant issues which will impact the effectiveness of any mitigation measure implemented in the residences at 1770 Broadway; and, that previously undisclosed sites with hazardous materials may present potential impacts for the Project Site.

Sincerely,



JAMES J. J. CLARK, Ph.D.

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# *James J. J. Clark, Ph.D.*

*Principal Toxicologist*

**Toxicology/Exposure Assessment Modeling**

**Risk Assessment/Analysis/Dispersion Modeling**

**Education:**

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

**Professional Experience:**

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

**LITIGATION SUPPORT**

**Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009**

**Client: Environmental Litgation Group, Birmingham, Alabama**

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Summary judgment for defendants.**

**Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W**

**Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.**

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.**

**Client: Rose, Klein, Marias, LLP, Long Beach, California**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Settlement in favor of plaintiff.**

**Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344**

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

**Case Result: Settlement in favor of defendant.**

**Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247**

**Client: Richard G. Berger Attorney At Law, Buffalo, New York**

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

**Case Result: Judgement in favor of defendant.**

## SELECTED AIR MODELING RESEARCH/PROJECTS

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

**Client – Confidential**

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

**Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California**

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client – City of Santa Monica, Santa Monica, California**

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

**Client: Omnitrans, San Bernardino, California**

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

**Client: Confidential, San Francisco, California**

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

**Client: Confidential, Minneapolis, Minnesota**

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

**Client – United Kingdom Environmental Agency**

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

## EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

**Client: Ameren Services, St. Louis, Missouri**

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

**Client: City of Santa Clarita, Santa Clarita, California**

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Immanent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment.*

**Client – Confidential, Los Angeles, California**

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

**PUBLIC HEALTH/TOXICOLOGY**

**Client: Brayton Purcell, Novato, California**

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

**Client: Confidential, San Francisco, California**

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

**Client: Confidential, San Francisco, California**

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

**Client: Confidential, San Francisco, California**

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

**Client: Covanta Energy, Westwood, California**

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

**Client – United Kingdom Environmental Agency**

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (M*t*BE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of M*t*BE. The results of the evaluation have been used as a briefing tool for public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of M*t*BE, and is suspected to be the primary cause of M*t*BE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

**Client – Confidential, Los Angeles, California**

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been were used as a briefing tool for non-public health professionals.

**Client – Ministry of Environment, Lands & Parks, British Columbia**

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

**Client: Confidential, Los Angeles, California**

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

**Client: Kaiser Venture Incorporated, Fontana, California**

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

**RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS**

**Client: Confidential, Atlanta, Georgia**

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

**Client: Confidential, Escondido, California**

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

**Client: Confidential, San Francisco, California**

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

**Client: Confidential, Bogotá, Columbia**

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia The risk assessment was used as the basis for the remedial goals and closure of the site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

**Client: Confidential, Los Angeles, California**

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

**Kaiser Ventures Incorporated, Fontana, California**

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

**Unocal Corporation - Los Angeles, California**

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

**Client: Confidential, Los Angeles, California**

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

**Client: Confidential, San Francisco, California**

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

**Client: Confidential, San Francisco, California**

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

**IT Corporation, North Carolina**

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

**Professional Associations**

American Public Health Association (APHA)
Association for Environmental Health and Sciences (AEHS)
American Chemical Society (ACS)
California Redevelopment Association (CRA)
International Society of Environmental Forensics (ISEF)
Society of Environmental Toxicology and Chemistry (SETAC)

**Publications and Presentations:**

**Books and Book Chapters**

Sullivan, P., **J.J. J. Clark,** F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities.* Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark.** 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet.* Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark.** 2005. *The Environmental Science of Drinking Water.* Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions.* Trafford Publishing, Victoria B.C.

**Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment.* Art Diaz, Ed.. Oxford University Press: New York.

**Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment.* Edward Urbansky, Ed. Kluwer/Plenum: New York.

**Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

**Journal and Proceeding Articles**

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equialency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. Organohalogen Compounds, Volume 70 (2008) page 002254.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. Organohalogen Compounds, Volume 70 (2008) page 000527

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research.* 105:194-199.

Rosenfeld, P.E., **Clark, J. J.,** Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" Water Science & Technology. 55(5): 345-357.

Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.

Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.

**Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophnoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.

**Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.

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**Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.

**Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.

**Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. Toxicologist. 30(1):14.

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Tierney, D.F. and **J.J.J. Clark.** (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

# EXHIBIT B

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

18 February 2020

Christina Caro, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd, Suite 1000
South San Francisco, California 94080

Subject: *1750 Broadway Project*
Review and Comment on CEQA Noise Mitigation

Dear Ms. Caro,

Per your request, I have reviewed the City of Oakland *Agenda Report for the 1750 Broadway Appeal by East Bay Residents for Responsible Development* ("Agenda Report", 13 January 2020) and Attachment F thereto, and a letter from Rubicon Point Partners, LLC ("RPP") to the Oakland City Council ("Rubicon Letter"; no date in letter, filename dated 28 January 2020) and *1750 Broadway Project Summary Materials* ("Summary Materials"; no date, filename dated 28 January 2020). Previously, I have provided comments on the *1750 Broadway Residences Construction Noise Management Plan* ("CNMP", Charles M. Salter Associates, 22 October 2019), and *1750 Broadway Project – CEQA Checklist / Exemption Report* ("CC/ER", February 2019).

Following are my comments to the specific questions you asked me to address.

## 1. Do the applicant documents support a finding of 'no significant impacts' under CEQA?

The *1750 Broadway Project – CEQA Checklist / Exemption Report* states as the threshold of significance for construction noise:

1. *Generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding construction noise, except if an acoustical analysis is performed that identifies recommended measures to reduce potential impacts. During the hours of 7 PM to 7 AM on weekdays and 8 PM to 9 AM on weekends and federal holidays, noise levels received by any land use from construction or demolition shall not exceed the applicable nighttime operational [sic] noise level standard.* [CC/ER at p 39]

Interestingly, this threshold specifically calls out that the nighttime noise level standard must be met during the prescribed hours, but it does not correspondingly call out that the daytime noise level standard must be met during all other hours not prescribed, despite the fact that such corresponding statements are made in the Oakland Planning Code. [§ 17.120.050, subsections G.1 and G.2] Rather,

the CC/ER threshold misstates the requirements of the Oakland Planning Code by stating "except if an acoustical analysis is performed that identifies recommend measures to reduce potential impacts". This exception is not contained in the Oakland Planning Code.

Rather, per §17.120.050 of the Oakland Planning Code, the maximum allowable, daytime, receiving noise level standard at residential buildings for long-term (greater than 10 day) construction activities is the greater of 65 dBA or the measured, existing ambient noise level. It is unclear why the CC/ER misstated this straightforward requirement from §17.120.050, but there is clearly no such exception in the Code.

The *1750 Broadway Residences Construction Noise Management Plan* ("CNMP") prepared for the Project applicant by acoustical consultants at Charles M. Salter Associates clearly establishes that the construction noise levels will, in fact, violate the daytime noise levels standards in O.P.C. § 17.120.050. In the CNMP, 1770 Broadway is identified as "Location 3". The following text and table are copied directly from the CNMP:

> **Location 3**
>
> This location is on the roof of the adjacent residential property at 1770 Broadway. It is at the north property line of the project site. Based on the construction phasing and equipment information provided, we estimate that construction noise levels without reduction measures at this location could be up to those shown in Table 7.

**Table 7: Construction Noise Analysis for Location 3 (Hourly $L_{eq}$)**

| Phase | Estimated Maximum Construction Noise Levels | Noise Limit/Typical Ambient Noise Level During Construction Hours |
|---|---|---|
| 1 | 86 dBA | Ambient of 63 to 72 dBA |
| 2 | 84 dBA | |
| 3 | 84 dBA | |

[CNMP at p 10]

As can be seen in the table above, the estimated maximum construction noise levels greatly exceed both the nominal noise standard of 65 dBA and the provisionary standard of the existing ambient (as measured by the applicant's acoustical consultant). These noise levels substantiate that there will, in fact, be a significant noise impact caused by the construction of the 1750 Broadway Project, a fact acknowledged in the CNMP:

> We expect that noise levels could temporarily exceed the ordinance criteria without noise reduction measures at the nearest properties when construction is occurring close to the properties. [CNMP at p 2]

The primary reason that the estimated maximum noise levels are so high is that the residences at 1770 Broadway quite literally abuts the Project site, and so construction will come as close as 1'-6". This is a peculiar aspect of this site compared to the CEQA noise impact assessment prepared for the City of Oakland Housing Element in 2014. In that EIR document, which the Project's CC/ER cites, the

construction noise was found to be less-than-significant, but that analysis only considered noise receptors that were at least 25' away. [COHE DEIR at p 3.4-21] Using the attenuation with distance factor utilized in the Housing Element EIR, noise at 1'-6" will be approximately 24 dB higher than at 25'. Similarly, the EIR for the cited Proposed Amendments to the Central District Urban Renewal Plan (March 17, 2011) only considered receptors that were at least 50' away. [PACDURP DEIR at p 4.10-16] Conversely, the DEIR for the Oakland General Plan Land Use and Transportation Element (October 31, 1997) stated, "some noise-sensitive receptors are in such close proximity to project sites in the Downtown Showcase District that compliance with the City Noise Ordinance may not reduce this impact to a level of less-than-significant." [LUTE DEIR at p III.L-21] Accordingly, the LUTE EIR concluded that construction noise would be a significant and unavoidable impact even with mitigation. [LUTE DEIR at p III.L-22]. So, the very close proximity of 1770 Broadway to the Project site is peculiar in comparison to the distances used for Housing Element and Renewal Plan EIR noise analyses, and, while it is not peculiar with respect to the LUTE EIR noise analysis, that analysis concluded that construction noise would constitute a significant and unavoidable impact, which is not the case with the present Project.

Another peculiarity of the Project site is that it is the Project is proposed to be the tallest building in Oakland, and will therefore require one of the longest construction periods for a vertical building of this limited acreage in the City. The Project site is also on the opposite side of 1770 Broadway from another pending high-rise redevelopment project that will be concurrently constructed, 1900 Broadway. 1770 Broadway is sandwiched between these two major projects, a peculiarity that will cause the residents of 1770 Broadway to be subjected to construction noise for many years to come.

## 2. Are the proposed noise control measures adequate?

As of the drafting of the Agenda Report, RPP had retained an acoustical consulting firm to draft the CNMP which included as potential options for noise reduction at 1770 Broadway the measures that Wilson Ihrig proposed in our 1 April 2019 letter. Specifically, the CNMP stated that construction noise at 1770 Broadway could be reduced by hanging noise control blankets on scaffolding and/or replacing the existing windows with higher performing, double-pane, sound-rated windows. While we appreciate the City's acknowledgement that this should be done, we note that neither of these actions is actually required in any conditions of approval for the Project. It appears that permission for a very limited amount of noise remediation has been partially obtained through a Memorandum of Agreement between RPP and the owner of 1770 Broadway, 19TH & Broadway Associates, LP [Summary Materials, p 15, Appendix B – Agreement with the Owner of 1770 Broadway]. However, the Memorandum of Agreement does not provide mitigation measures for all of the significant construction noise impacts identified by CNMP and Wilson Ihrig.[1]

[1] The Memorandum of Agreement between RPP and 19th & Broadway Associates, LP, provides for temporary accommodations for the residents of 1770 Broadway when construction must start earlier than 7:00 a.m. or when there will be extremely noisy activity during the day, e.g., demolition. Removing a person from the immediate area would eliminate any significant noise impact to that person, which is obviously an effective, albeit temporary, mitigation measure. However, the Temporary Accommodation Policy is too vague to enable us to determine how effective this Policy will be overall during the multi-

The Memorandum of Agreement provides for RPP to fund the replacement of the nine windows on the south side of 1770 Broadway with new, sound-rated windows. However, as we noted in our 1 April 2019 comment letter on the CC/ER, the windows in the south-facing 1770 Broadway lightwell – a reverberant space that will amplify incoming construction noise – will also need to be shielded or improved. Previously, we suggested that the lightwell could be temporarily enclosed with construction noise control blankets hung from scaffolding or supported by the building itself. This concept was included in the CNMP [at p 14], but is not provided for in the Memorandum of Agreement. Alternatively, the windows in the lightwell could also be replaced with sound-rated windows. There appear to be 64 windows in the lightwell. To date, no feasible noise mitigation has been incorporated into either the City's CEQA document, conditions of approval, or the Project applicant's documents for the rooms that have windows in the lightwell.

Similarly, we noted that the windows on the east side of 1770 Broadway should be shielded and/or improved. While this side of the building does not face the Project tower directly, it does face the garage entrance and the 19th Street residential entrance, both of which will have to be constructed. Given the Project site layout, it also seems reasonable to assume that this area will also be used extensively to bring materials to the site and to remove rubble and debris from the site. However, no noise attenuation for the 28 window assemblies for residences on this side of the building is provided for in the Memorandum of Agreement between RPP and 19th & Broadway Associates. As such, the feasibility of an effective mitigation measure has not been established.

In summary, although the Memorandum of Agreement between RPP and 19th & Broadway Associates does provide for noise mitigation at the nine south-facing windows, it does not provide mitigation at the windows in the south-facing, reverberant lightwell or at the east-facing windows which will be exposed directly to construction activities. Therefore, at this time, the proposed construction noise control measures are not entirely adequate.

## 3. Do the proposed mitigation measures meet CEQA requirements?

My comments on this issue address feasibility and sufficiency of the City's proposed noise mitigation. The City has not demonstrated that all mitigation measures which the CNMP analysis acknowledges are required to reduce construction noise impacts will be implemented for the Project.

The fact that the CNMP analysis indicates that the construction noise levels will be much greater than both the nominal construction noise standard and the existing ambient [CNMP at p 10] and the fact

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year construction period. For example, what is the limit on the number of nights a person may choose to have temporary sleeping accommodations? Other than demolition of 1750 Broadway, what other activities will be considered "extreme noise activities"? What is the limit on the number of days a person may choose to have temporary office accommodations? Because of this vagueness and because we presume that the number of days and nights of temporary accommodation will be small compared to the entire duration of project construction, we believe additional mitigation measures are necessary. This position seems to be corroborated by another provision of the Memorandum of Agreement, the replacement of windows on the south side of the 1770 Broadway building.

that the CNMP endorsed the idea of installing sound-rated windows at 1770 Broadway [CNMP at p 14] both indicate that, in fact, construction noise creates a significant noise impact on the neighboring building that requires mitigation. The two practical mitigation measures suggested in the CNMP are construction noise control blankets and sound-rated windows. While the Applicant attempts to demonstrate the sufficiency of the latter in the Memorandum of Agreement by providing for the replacement of some windows, the Memorandum only provides for the replacement of a small subset of the windows that require protection and fails to provide for any noise reduction at the other facades of the building where noise impacts will occur. Furthermore, the City has not included any binding or enforceable conditions that require sound-rated windows or other noise mitigation in the Project's proposed approval documents. For example, the feasibility of construction noise control blankets has not been established because there is no requirement in either the Memorandum or the Project's conditions of approval to install them, and permission from the owner of 1770 Broadway to access the property for this purpose has not been obtained.

As I've noted previously, my understanding of and experience with the CEQA process is that, once a significant noise impact is identified, mitigation measures must be utilized to reduce that impact to the greatest extent feasible. If the noise levels are adequately mitigated, the impact may be reduced to being less-than-significant, otherwise the impact must be found to be significant and unavoidable. This is normally done by adopting a mitigation, monitoring, and reporting plan (MMRP) during the certification of an Environmental Impact Report. The City has not provided any such mitigation measures for this Project. It is therefore unclear whether the measures proposed in the CNMP will actually be implemented.

I note that the Agenda Report implies that noise reduction measures will be imposed during the building permit review process:

> The [CNMP] also considered and included in its report the recommendations made by the noise consultant, Wilson Ihrig, who was hired by the residents of the adjacent 1770 Broadway property. This noise analysis and project-specific reduction measures would have been required prior to building permit issuance regardless of this appeal through the City's SCA Planning Commission does not generally review and approve the CNMP, as that is approved prior to the building permit. Based on independent review that is supported by the ESA memorandum, staff believes that the specific noise measures that apply to the Project through the CNMP would provide the mitigations the appellants thought the Project lacked. These measures would be enforceable through the City's building permit review process. [Agenda Report at p 4]

However, as this would be done outside of the CEQA process, I do not believe it may be considered a mitigation measure for an identified significant noise impact. I am not suggesting that the measures would not otherwise be required during the permitting process, but as the matter at hand is the CEQA analysis for the proposed Project, I believe the construction noise impacts and mitigation for 1770 Broadway should be fully addressed in the Project's CEQA document.

Please contact me if you have any question about this review and comments on construction noise from the 1750 Broadway Project.

Very truly yours,

WILSON IHRIG

Derek L. Watry
Principal

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WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

# DEREK L. WATRY

*Principal*

Since joining Wilson Ihrig in 1992, Derek has gained experienced in many areas of practice including environmental, construction, forensic, architectural, and industrial. For all of these, he has conducted extensive field measurements, established acceptability criteria, and calculated future noise and vibration levels. In the many of these areas, he has prepared CEQA and NEPA noise technical studies and EIR/EIS sections. Derek has a thorough understanding of the technical, public relations, and political aspects of environmental noise and vibration compliance work. He has helped resolve complex community noise issues, and he has also served as an expert witness in numerous legal matters.

## Education

- M.S. Mechanical Engineering, University of California, Berkeley
- B.S. Mechanical Engineering, University of California, San Diego
- M.B.A. Saint Mary's College of California

## Project Experience

***12th Street Reconstruction, Oakland, CA***
Responsible for construction noise control plan from pile driving after City received complaints from nearby neighbors. Attendance required at community meetings.

***525 Golden Gate Avenue Demolition, San Francisco, CA***
Noise and vibration monitoring and consultation during demolition of a multi-story office building next to Federal, State, and Municipal Court buildings for the SFDPW.

***911 Emergency Communications Center, San Francisco, CA***
Technical assistance on issues relating to the demolition and construction work including vibration monitoring, developing specification and reviewing/recommending appropriate methods and equipment for demolition of Old Emergency Center for the SFDPW.

***Central Contra Costa Sanitary District, Grayson Creek Sewer, Pleasant Hill, CA***
Evaluation of vibration levels due to construction of new sewer line in hard soil.

***City of Atascadero, Review of Walmart EIR Noise Analysis, Atascadero, CA***
Review and Critique of EIR Noise Analysis for the Del Rio Road Commercial Area Specific Plan.

***City of Fremont, Ongoing Environmental Services On-Call Contract, Fremont, CA***
Work tasks primarily focus on noise insulation and vibration control design compliance for new residential projects and peer review other consultant's projects.

***City of Fremont, Patterson Ranch EIR, Fremont, CA***
Conducted noise and vibration portion of the EIR.

***City of King City, Silva Ranch Annexation EIR, King City, CA***
Conducted the noise portion of the EIR and assessed the suitability of the project areas for the intended development. Work included a reconnaissance of existing noise sources and receptors in and around the project areas, and long-term noise measurements at key locations.

***Conoco Phillips Community Study and Expert Witness, Rodeo, CA***
Investigated low frequency noise from exhaust stacks and provided expert witness services representing Conoco Phillips. Evaluated effectiveness of noise controls implemented by the refinery.

***Golden Gate Park Concourse Underground Garage, San Francisco, CA***
Noise and vibration testing during underground garage construction to monitor for residences and an old sandstone statue during pile driving for the City of San Francisco.

***Laguna Honda Hospital, Clarendon Hall Demolition, San Francisco, CA***
Project manager for performed vibration monitoring during demolition of an older wing of the Laguna Honda Hospital.

***Loch Lomond Marina EIR, San Rafael, CA***
Examined traffic noise impacts on existing residences for the City of San Rafael. Provided the project with acoustical analyses and reports to satisfy the requirements of Title 24.

***Mare Island Dredge and Material Disposal, Vallejo, CA***
EIR/EIS analysis of noise from planned dredged material off-loading operations for the City of Vallejo.

***Napa Creek Vibration Monitoring Review, CA***
Initially brought in to peer review construction vibration services provided by another firm, but eventually was tapped for its expertise to develop a vibration monitoring plan for construction activities near historic buildings and long-term construction vibration monitoring.

***San Francisco DPW, Environmental Services On-Call, CA***
Noise and vibration monitoring for such tasks as: Northshore Main Improvement project, and design noise mitigation for SOMA West Skate Park.

***San Francisco PUC, Islais Creek Clean Water Program, San Francisco, CA***
Community noise and vibration monitoring during construction, including several stages of pile driving. Coordination of noise and ground vibration measurements during pile driving and other construction activity to determine compliance with noise ordinance. Coordination with Department of Public Works to provide a vibration seminar for inspectors and interaction with Construction Management team and nearby businesses to resolve noise and vibration issues.

***San Francisco PUC, Richmond Transport Tunnel Clean Water Program, San Francisco, CA***
Environmental compliance monitoring of vibration during soft tunnel mining and boring, cut-and-cover trenching for sewer lines, hard rock tunnel blasting and site remediation. Work involved long-term monitoring of general construction activity, special investigations of groundborne vibration from pumps and bus generated ground vibration, and interaction with the public (homeowners).

***Santa Clara VTA, Capitol Expressway Light Rail (CELR) Bus Rapid Transit (BRT) Update EIS, CA***
Reviewed previous BRT analysis and provide memo to support EIS.

***Shell Oil Refinery, Martinez, CA***
Identified source of community noise complaints from tonal noise due to refinery equipment and operations. Developed noise control recommendations. Conducted round-the-clock noise measurements at nearby residence and near to the property line of the refinery and correlated results. Conducted an exhaustive noise survey of the noisier pieces of equipment throughout the refinery to identify and characterize the dominant noise sources that were located anywhere from a quarter to three-quarters of a mile away. Provided a list of actions to mitigate noise from the noisiest pieces of refinery equipment. Assisted the refinery in the selection of long-term noise monitoring equipment to be situated on the refinery grounds so that a record of the current noise environment will be documented, and future noise complaints can be addressed more efficiently.

***Tyco Electronics Corporation, Annual Noise Compliance Study, Menlo Park, CA***
Conducted annual noise compliance monitoring. Provided letter critiquing the regulatory requirements and recommending improvements.

***University of California, San Francisco Mission Bay Campus Vibration Study, CA***
Conducted measurements and analysis of ground vibration across site due to heavy traffic on Third Street. Analysis included assessment of pavement surface condition and propensity of local soil structure.

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**VIA HAND DELIVERY, U.S. MAIL & E-MAIL**

February 18, 2020

*HAND DELIVERED TO FEBRUARY 18, 2020 CITY COUNCIL MEETING*
City Council Chamber, 3rd Floor
Oakland City Hall
1 Frank H. Ogawa Plaza,
Oakland, California 94612

*VIA U.S. MAIL*
Mayor Libby Schaaf, Council President Rebecca Kaplan and Honorable Members of the City Council
City of Oakland
c/o City Clerk
Oakland City Hall
1 Frank H. Ogawa Plaza,
Oakland, California 94612

*VIA E-MAIL*
Email: cityclerk@oaklandca.gov; atlarge@oaklandca.gov; dkalb@oaklandca.gov; LMcElhaney@oaklandca.gov; district4@oaklandca.gov; nfbas@oaklandca.gov; Ngallo@oaklandca.gov; District6@oaklandca.gov; lreid@oaklandnet.com; mrivera@oaklandnet.com; WGilchrist@oaklandnet.com

RE: Agenda Item No. 9.3 -Preliminary Response to January 17, 2020 Appeal Report re 1750 Broadway (PLN18369; Appeal No. APL19013)

Dear Mayor Schaaf, Council President Kaplan, Council Members, Mr. Rivera, Mr. Gilchrist:

On behalf of Appellants Residents of 1770 Broadway, Chad Abbey, Roberto Abiog, Adria Anderson, Charles Barrett, Christy Booth, Kishira Caldwell, Brendan Friedrich, Scott Goff, Manar Harb, Joseph Hornof, Dominique Jones, Daniel Kennedy, Clay Kilby, Brendan Kuklok, Pauline Luppert, Chao-Yi Joy Meng, Misheel Munkherdene, Brett Nichols, Stan O'Neill, Joy Ou, Andre Owens, Vikki Panchal, Matt Perry, Angela Roberts, Rory Ross, Velta Savelis, Tsolmonbaatar Sergelen, Vernie Yong Tim, Jwlhyfer

de Winter, and John Does living in apartments 101-112, 201-212, 301-312, and 401-412 (Collectively "**Residents**" or "**Appellants**"), my Office is submitting these preliminary responses to the City of Oakland's ("**City**" or "**Lead Agency**") January 17, 2020 Appeal Report ("**Report**") for the Planning Commission's March 20, 2019 approval of the 1750 Broadway Project (PLN18369) ("**Project**") and CEQA Checklist/Exemption Report ("CEQA Analysis") prepared by the City pursuant to CEQA.

The Residents also will include in its preliminary responses additional Conditions of Approval ("**Conditions**") for the Project, to be incorporated by the City to protect their health and safety, ensure access to affordable housing in Oakland, and reasonable access to nearby transit. Should the City deny the Residents proposed Conditions at this time, the City should withhold its approval and permits for the Project until a resolution. In the alternative, the City should postpone approval and permitting to allow additional time for Residents, other interested parties, the City, and the Applicant to reach a resolution. Conditions of Approval are an appropriate measure in the CEQA process to mitigate identified environmental impacts and may take the form of an agency requiring actions from a project developer, or demand the developer refrain from taking certain actions with regard to a project as a condition of permitting and approving the project. (Pub. Resources Code §§21000–21189.3; *See, e.g., Williams Communications, LLC v. City of Riverside* (2003) 114 Cal. App. 4th 642, 657 (street trenching fees); *Bright Dev. V. City of Tracy* (1993) 20 Cal. App. 4th 783 (requirement to install off-site utilities underground); *California Bldg. Indus. Ass'n v Governing Bd. of the Newhall Sch. Dist.* (1988) 206 Cal. App. 3d 212, 235 (fees for public school facilities).)

It is clear that the Report fails to resolve critical health, noise, affordable housing, and transit issues that will have a significant and direct impact on the Residents, including: (1) more severe environmental impacts on air quality, noise, and transit than previously analyzed in the 1998-2011 CEQA documents on which the CEQA Analysis relied; (2) the circumstances surrounding the Project have changed substantially since the City prepared the 1998-2011 CEQA documents; (3) an environmental impact report is required for this Project in order to sufficiently analyze and mitigate the impacts; and (4) new and unusual circumstances have surfaced that make the use of CEQA exemptions improper.

The Appeal Report presents new post-hoc studies and mitigation measures in an attempt to fix substantial errors and omissions in the City's CEQA Analysis, while still

inappropriately relying on the same CEQA "exemptions." The City needs to file an EIR for this Project because CEQA expressly prohibits reliance when: (1) the Project could result in any significant effects relating to traffic, noise, air quality, or water quality; (2) has the potential for significant cumulative impacts; (3) has new or more severe impacts than previously analyzed; (4) has impacts that are peculiar to the project site; (5) there are substantial changes in circumstances following certification of a prior EIR resulting in a new specific effect, or (6) the impacts are not fully mitigated. Each of these points is an issue here. (14 Cal. Code Regs ("**CCR**" or "**CEQA Guidelines**") § 15332(d); 14 CCR § 15183(b); 14 CCR § 15183(b)-(d); 14 CCR § 15183.3; 14 CCR § 15162; 14 CCR § 15183.3; 14 CCR § 15162.)

CEQA has two basic purposes. First, CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project. 14 CCR § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 (*"Berkeley Jets"*); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.)

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets,* 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.) The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." (CEQA Guidelines § 15002(a)(2).) If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081. (CEQA Guidelines § 15092(b)(2)(A–B).)

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position.' A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights,* 47 Cal.3d at 391, 409 fn. 12).) Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131.) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

The preparation and circulation of an EIR are more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. (*Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450).)

Preparing an EIR will enable the City, and the public, to meaningfully consider the full extent of the Project's environmental impacts, require all feasible mitigation measures to reduce impacts to the fullest extent feasible, and consider alternatives, as required by CEQA.

# I. THE APPEAL REPORT FAILS TO ADDRESS THE ISSUES RAISED BY THE RESIDENTS IN THEIR APPEAL

## A. The Health Risk from Exposure to Toxic Air Contaminants Remains Significant and Unmitigated

The CEQA Analysis admits that the Project poses a new and significant health risk to nearby sensitive receptors from exposure to the toxic air contaminant ("TACs") diesel particulate matter ("DPM") during construction, including the Residents of 1770 Broadway. This impact is not adequately mitigated by either the SCAs (existing Conditions of Approval) or the additional information in the Appeal Report because neither requires the use of "***Tier 4 Final***" construction equipment, as assumed in the City's CEQA Analysis. This air quality impact requires the preparation of an EIR.

### 1. *The CEQA Analysis Admits a Significant Cancer Risk.*

The Bay Area Air Quality Management District's CEQA significance threshold for cancer risk from exposure to TAC emissions is **10 in one million.** (CEQA Analysis at 48.) The significance threshold for cumulative cancer risk from exposure to TAC emissions is **100 in one million.** (*Id.* at 57.) The City has adopted both thresholds. (*Id.* at 48, 57.)

The City's health risk assessment ("HRA") found that the Project's unmitigated TAC emissions over the Project's 28-month construction period will be both individually and cumulatively significant:

- ***23 in one million for CHILDREN; and***
- ***114 in one million for INFANTS.***

(*Id.* at 55.)

The CEQA Analysis admits that this "*cancer risk from uncontrolled Project construction emissions to infant and child receptors at the MEIR would exceed the City's CEQA significance thresholds.*" An impact that exceeds an adopted significance threshold is a "significant impact" within the meaning of CEQA. (14 CCR § 15064.7(a).) When an impact exceeds a CEQA significance threshold, the agency must disclose in the EIR that the impact is significant. (*CBE v. CRA* (2002) 103 Cal. App. 4th 98, 110-11; *Schenck v. County of Sonoma* (2011) 198 Cal. App. 4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"); *CBE v. SCAQMD* (2010) 48 Cal. 4th 310, 327 (impact is significant

because exceeds "established significance threshold for NOx … constitute[ing] substantial evidence supporting a fair argument for a significant adverse impact").)

This significant air quality impact renders the Class 32 Infill Exemption facially inapplicable because Class 32 can ***only*** be used where the project "would not result in any significant effects relating to traffic, noise, air quality, or water quality." (14 CCR § 15332(d) (emphasis added).) And, as discussed below, this impact also renders the Infill Streamlining Exemptions inapplicable because this impact will not be "substantially mitigated by the imposition of uniformly applied development policies or standards" (the SCAs). After all, the City's SCA's do not require "Tier 4 Final" construction equipment.

2. *The SCAs Do Not "Substantially Mitigate" Health Risk Because They Do Not Require "Tier 4 Final" Construction Equipment.*

The Appeal Report and CEQA Analysis next assert that SCA AIR-3 would reduce DPM exhaust emissions (a TAC) to less than significant levels, because "SCA AIR-3 ***assumes*** the use of engines that meet the ***Tier 4 Final standards*** as the most effective VDECS for all construction equipment as required by the SCA." (CEQA Analysis at 55.)

However, the City's assumption is incorrect because "Tier 4 Final" engines are not required by SCA AIR-3, and the "most effective VDECS" described in the CEQA Analysis allows the use of less health-protective "Tier 4 Interim" engines. Therefore, SCA AIR-3 does not achieve the cancer risk reductions assumed in the CEQA Analysis. The Appeal Report cites the same language and does not include any new mitigation measures requiring the use of "Tier 4 Final" engines. Therefore, the Appeal Report does nothing to correct this error.

SCA AIR-3 requires preparation of an HRA "to determine the health risk to sensitive receptors exposed to DPM from project construction emissions." (*Id.*) If the HRA finds a significant health risk, SCA AIR-3 then requires that "[a]ll off-road diesel equipment shall be equipped with the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type." (*Id.*) SCA AIR-3 explains that "Tier 4 engines automatically meet this requirement," but does not require "Tier 4 Final" engines. (*Id.*)

There are two types of "Tier 4 engines" – Tier 4 "*Interim*" and Tier 4 "*Final.*" Tier 4 emissions standards were phased in by the Cal. Air Resources Board ("CARB") from

2011-2015. See EPA's final rule[1]; see 40 Code Fed. Regs. § 1039.102 (describing passed-in Tier 4 PM reductions). The 2011 standards are referred to as "Tier 4 Interim," while the 2015 limits represent "Tier 4 Final" standards. (*Id.*) ***Tier 4 Interim equipment is less efficient and has higher emissions than Tier 4 Final equipment.*** In particular, while *Tier 4 Final* equipment achieves 90% PM/DPM reductions (the air pollutants responsible for the Project's cancer risk), *Tier 4 Interim* has higher PM/DPM emissions (reducing PM/DPM by just 50-85%). The CEQA analysis relies on the exclusive use of *Tier 4 Final* equipment to reduce cancer risk to less than significant levels and says that it "assumes" that SCA AIR-3 will accomplish this. (CEQA Analysis at 55.)

The City's reliance on "*Tier 4 Final* equipment" is in error because of SCA AIR-3 allows either type of "Tier 4 engine" to be used, including the less-protective *Tier 4 Interim* equipment. The VDECS "Level 3" standards, on which the City relies, also allow the use of "Tier 4i" (*Tier 4 Interim*) equipment. (*Id.*, FN 16); CARB Verification Procedure[2]. Therefore, the only emissions reduction that can be "assumed" by SCA AIR-3's requirement to use "Tier 4 engines" is the lesser reduction provided by *Tier 4 Interim* engines.

There is no evidence in either the CEQA Analysis or the Appeal Report that the Project's significant cancer risk would be "substantially mitigated" to less than significant levels by the use of *Tier 4 Interim* engines because the City did not analyze emissions reductions using *Tier 4 Interim* engines. The City only analyzed emission reductions using *Tier 4 Final* engines. Therefore, the City lacks substantial evidence to conclude that the Project's health risk will be adequately mitigated by SCA AIR-3.

3. *There is No Evidence In the Record That the Applicant Can Procure 100% Tier 4 Final Equipment for the Project.*

The Appeal Report does not contain any evidence demonstrating that the Applicant has located, let alone procured, any *Tier 4 Final* equipment for the Project's 2-3 year construction period. And neither the CEQA Analysis nor the Appeal Report requires them to do so because SCA AIR-3 and the Construction Emissions Minimization Plan only require "Tier 4 engines." (Appeal Report at 2.) Therefore, the City's reliance

[1] https://www.epa.gov/regulations-emissions-vehicles-andengines/ final-rule-control-emissions-air-pollution-nonroad-diesel and https://www.gpo.gov/fdsys/pkg/FR-2004-06-29/pdf/04-11293.pdf

[2] https://ww3.arb.ca.gov/diesel/verdev/vt/cvt.htm

on the Applicant's use of "Tier 4 Final" equipment entirely speculative and unsupported.

4. *Demolition Dust Emissions Remain an Undisclosed Significant Impact.*

Nowhere in the City or Applicant's CEQA Analysis, Conditions of Approval or Appeal Report is the potential risk and significant impact of dust and TAC emissions from the demolition of the existing structure at 1750 Broadway analyzed and mitigated. The CEQA Analysis discloses that demolition of the existing structure may release Asbestos and pose a health risk to workers and nearby receptors. (CEQA Analysis at 55.) Yet the City failed to analyze how compliance with SCA AIR-4 or AIR-6 would mitigate this impact, and merely stated that the Project will comply with applicable laws and regulations. (*Id.*; SCAs at 8.) Second, there is no disclosure or analysis of any kind for how the dust or TACs contained within will be controlled during demolition. SCA AIR-1 addresses dust controls that will be ongoing for the project—yet there is no mitigation measure for dust controls during demolition. (SCAs at 4.) The SCAs only mention of demolition dust control is a suspension of demolition when winds exceed 20 mph. Due to the many nearby sensitive receptors and proximity of the Residents to the demolition, a demolition dust suppression control plan needs to be added as an additional mitigation measure. The City's Appeal Report fails to address this concern and its conclusory response is completely unsupported by any analysis or evidence. (Appeal Report at 8.)

B. Construction Noise Remains Significant and Unmitigated

The CEQA Analysis failed to conduct a noise study and incorrectly claimed, without supporting evidence, that the Project's construction noise impacts would be less than significant. The Appeal Report contains a new noise study which is intended to support the noise conclusions in the CEQA Analysis ("Noise Report"). (Appeal Report, Attachment F.) However, the Noise Report acknowledges that the Project will have significant construction noise impacts that require mitigation: ***We expect that noise levels could temporarily exceed the ordinance criteria without noise reduction measures at the nearest properties when construction is occurring close to the properties.*** (*Id.* at 2.)

The Noise Report further acknowledges that "construction of the project is considered long-term [2-3 years]" and that these noise impacts will be acutely significant to the 1770 Broadway neighbors. (*Id.* at 3-5.)

In order to "substantially mitigate" these noise impacts, the Noise Report explains that two forms of mitigation are required – (1) compliance with the City's SCAs for noise, and (2) implementation of additional mitigation measures recommended by EBRRD's noise consultant, Mr. Derek Watry of Wilson Ihrig. (*Id.* at 2.) Thus, the Appeal Report confirms that the City's SCAs are not adequate to reduce the Project's noise impacts and that further mitigation is required. This alone renders the City's reliance on both the Class 32 Infill Exemption and the Streamlining Infill Exemptions improper.

1. *The City's Noise SCAs Are Non-Binding and Ineffective.*

EBRRD's supporting noise study from Mr. Watry explained that the City's reliance on the Noise SCAs to mitigate construction noise impacts was unsupported because the SCAs do not require mandatory noise-reduction actions by the Applicant. The Appeal Report continues to rely on these ineffective, non-binding SCAs to reduce noise impacts.

Neither the SCAs nor the CEQA Analysis provides a performance standard to determine the feasibility of these measures. Thus, if the Applicant determines that any of these measures are "not feasible," they will not be implemented. The CEQA Analysis incorrectly assumes that all of these noise-reduction measures will be implemented. Thus, the City still lacks substantial evidence to conclude that the Noise SCAs will result in substantial noise reductions.

C. Direct and Secondary Impacts on Public Transit Remain Significant and Unmitigated

The Appeal Report contains a new transit study ("Transit Report") which acknowledges that the Projects' impacts on public transit must be analyzed if "it would cause significant secondary effects." (Appeal Report, Attachment G, p. 2.) The Transit Report fails to analyze this impact, and concludes, without supporting evidence, that transit impacts are less than significant. (*Id.* at 5.) By failing to analyze these impacts, the City has overlooked substantial evidence demonstrating that increased BART (and AC Transit) ridership results in secondary impacts from increased crime, wear and tear on trains, tracks, and stations, which may require new police and security facilities or the construction of new and larger transit facilities at

stations near the Project site.[3] The transit assessment is simply far out of date and does not consider any of the recent changes in the Downtown area.

Furthermore, the Residents currently have BART access from an elevator directly from the 1750 Broadway building, and the site is also joined or adjacent to bus stops, or ingress and egress to and from such stops. Residents would likely lose access to the BART station elevator as a result of the Project, as well as all other surrounding residents, and no analysis was performed to evaluate how bus access would be affected.

D. City and Applicant Fail to Incorporate Affordable Housing Units in the Project

Applicant has committed itself to pay into the City of Oakland's impact fee fund for affordable housing instead of providing even a single unit that is less than market-rate, out of 307 proposed apartments. (CEQA Analysis at A-19.) This is unacceptable. At a minimum, the City and Applicant should commit to setting aside 15% of the units (46 units) at 1750 Broadway for very low income, lower-income, and moderate-income tenants.

E. Contamination at the 1901 Franklin and 1730 Broadway Project Site Raises Unusual Circumstances

As the Residents argued and provided substantial evidence in support thereof, the Project improperly relies on CEQA exemptions and would cause significant and unmitigated adverse impacts to public health and safety. And the dangers of improper reliance on exemptions and failing to implement necessary mitigation is all too real. In fact, the Alameda County Health Services Agency ("ACHCSA") published a letter on February 14, 2020, relating to the residential project at 1901 Franklin and 1930 Broadway—less than a block away from the Project site. (Exhibit A.) The project site at Franklin and Broadway, similarly relying on CEQA exemptions and failing to conduct a full environmental review, was found contaminated from historic land uses with metals, total petroleum hydrocarbons, and VOCs. Further assessment is now required before that project continues. The hazardous materials deposited by historic uses found at Franklin and Broadway can be disturbed by excavations required for

[3] See e.g. https://www.sfchronicle.com/bayarea/philmatier/article/Rise-in-thefts-of-devices-on-BART-as-transfixed-14993367.php (showing increase in crime and police presence at 19th Street BART station from increased ridership).

large buildings such as the one proposed here—almost the same size as the one at 1901 Franklin and 1930 Broadway.

This raises the question of whether the Project site *here* is similarly contaminated, and whether additional assessments should be carried out. Under CEQA, this issue constitutes "unusual circumstances" because there is now a "reasonable possibility" that the Project will have significant and unmitigated environmental effects if the City or Applicant can rely on categorical exemptions to avoid full environmental review with an EIR. The relevant framework for unusual circumstances can be found in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. App. 4th 1086, 1104. If the Residents can show via substantial evidence that hazardous wastes may exist on the Project site (crucially wastes that were not previously identified by the CEQA Analysis) that could pose a significant environmental impact—the City cannot rely on exemptions to skirt a full CEQA review. (*McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal. App. 3d 1136 (explaining that the presence of hazardous wastes at a project site constitutes unusual circumstances).)

The City and Project Applicant failed to conduct a historical assessment of the Project site's past uses or do any soil sampling that could reveal the presence of hazardous wastes from historical uses, such as those identified in Exhibit A, as possibly being present on the Project site's area similar to what was found at the Franklin and Broadway site (See Exhibit B for other possible historic uses of the Project site that may have left behind contaminated soil: a planning mill, laundry facilities, plating and polishing factories, paints, vulcanizing, plumbing supplies, and automotive repair. )

This new evidence demands a full CEQA review and the submission of an EIR to protect the health and safety of the Residents.

## II. RESIDENTS HEREBY REQUEST THE CITY IMPOSE ADDITIONAL CONDITIONS OF APPROVAL ON THE PROJECT APPLICANT

As explained above, the City can impose Conditions for a project before approvals and permitting are performed, as part of the CEQA process, to ensure adequate mitigation measures are in place to ameliorate a project's environmental impacts. The City should do so here, or it should deny the Project Applicant permits and approval for the Project. As the analysis above makes clear, as well as all other comments and responses incorporated by reference hereto—there are significant undisclosed

environmental impacts for this Project, mitigation measures that are not supported by substantial evidence, and an inappropriate attempt to use CEQA infill project exemptions to avoid submitting an EIR and doing a proper analysis and mitigation to ensure the health and safety of the nearby residents of the 1750 Broadway Project.

In order to ensure that the Residents of 1770 Broadway are adequately protected against noise, air quality, and transportation impacts, the Residents hereby submit the following proposed Conditions to the City for their consideration and approval:

a. SITE ASSESSMENT

1. Before building permits are issued and with the permission of the owner of 1770 Broadway, the Applicant agrees to hire a qualified and independent seismic engineer to perform a structural stability assessment of 1770 Broadway to evaluate the impact of demolition and construction of 1750 Broadway on the structural stability of 1770 Broadway.

2. Prior to the issuance of building permits, Applicant agrees to hire an independent qualified expert specified by the Residents to perform a health risk assessment of 1750 Broadway for the potential release of airborne contaminants during demolition and construction that could affect the air quality of 1770 Broadway occupants.

b. HEALTH AND SAFETY/AIR QUALITY

1. Applicant agrees that construction cranes will not be permitted to cross over the top of the 1770 Broadway building. A limit switch shall also be used on any construction crane so it is prevented from swinging over the 1770 Broadway building.

2. Construction nets shall be used around every side of the Project that meets building or construction code requirements, if applicable.

3. Applicant will provide a sufficient number of CARB ETL certified air purifiers with HEPA filters to each resident of 1770 Broadway to cover their entire living area. The same air purifiers

shall also be provided sufficient to cover all of the common living spaces of 1770 Broadway.

4. Applicant shall provide heating and cooling window air conditioning units with MERV-13 air filters sufficient to cover the entire living area of each unit at 1770 Broadway. Applicant shall also provide for the installation of the units by a certified technician or reimburse residents for installation costs. Before building permits are issued for the Project, Applicant will obtain permission from the 1770 Broadway owner to install the air conditioning units. Applicant shall also undertake any improvement to the 1770 Broadway (with permission from the owner before building permits are issued) electrical system should it be necessary to support the operation of the AC units and/or air purifiers simultaneously operating for an extended period of time.

5. Applicant shall reimburse residents of 1770 Broadway on a monthly basis for the cost of owning and operating the units specified in b(2) and b(3) during the entire construction period of the Project.

6. Installation of a Heliostat to provide sunlight to windows in the lightwell.

7. Applicant shall comply with all current and applicable CARB construction vehicle emissions standards during the Project. And only the use of CARB "Tier 4 Final," or the highest standard available at the time of equipment procurement, compliant off-road diesel-powered construction vehicles shall be used.

8. Before the issuance of any building permits and with the permission of the owner of 1770 Broadway (if permission shall be necessary), noise and dust barriers shall be erected by the Applicant between 1770 Broadway and 1750 Broadway sufficient to cover the south and east-facing sides of 1770 Broadway; and sufficient to protect against the intrusion of construction dust to the extent feasible. The type of barrier to be constructed shall be

based on the recommendations of an independent construction air quality expert.

9. Applicant shall provide proof of an insurance policy and policy limits to cover claims for personal injury or property damage resulting from the Project.

10. Applicant shall place funds to cover personal injury and property damages to 1770 Broadway residents in a bond to be maintained by a third party.

11. Applicant shall retain an independent and certified expert to analyze the demolition dust emissions and recommend a demolition dust suppression control plan, and Applicant shall implement all of the expert's recommended measures.

c. NOISE REDUCTION

1. Applicant agrees that construction activities shall only take place between the hours of 7:00 AM and 6:00 PM, Monday-Friday. No noise-generating activities should be performed at or next to the Project site—including but not limited to staging and the delivery of materials—until 7:00 AM on Monday-Friday. Applicant will also provide residents a clear and streamlined process for reporting complaints and issuing notices of violation.

2. Applicant shall implement all previously recommended noise mitigation measures mentioned elsewhere in this letter, and retain an independent construction noise mitigation expert to assess and make recommendations on appropriate noise mitigation measures for 1770 Broadway Residents and implement such recommendations according to the highest industry standards.

3. Before the issuance of any permits and approvals for the Project, Applicant shall obtain consent from the owner of 1770 Broadway to install double-paned windows on all existing exterior facing windows of 1770 Broadway, and complete installation of every window before construction on the site commences.

4. The construction plans (including the demolition phase), including any timetables and schedules for commencement and end of the phases of construction, should be distributed to the Residents as soon as they become available.

d. TRANSIT AND ACCESSIBILITY

1. Applicant shall ensure continued access to all existing pedestrian walking paths or sidewalks next to or adjacent to the Project, or ensure pedestrian walking paths or sidewalks are reasonably relocated prioritizing their accessibility.

2. Applicant shall ensure continued access to all municipal bus stops next to or adjacent to the Project, or ensure bus stops are reasonably relocated prioritizing their accessibility.

3. Applicant shall ensure continued access to the 19th BART station elevator via the existing infrastructure or else ensure that elevator access to this station is reasonably relocated prioritizing its accessibility based on the existing access locations.

e. RELOCATION ASSISTANCE

1. Relocation assistance shall be offered as an option to each tenant residing at 1770 Broadway, regardless of any mitigation measures imposed or analysis of tenant's health and safety during construction. The relocation assistance shall take the form of a lump sum payment to each tenant.

(a) The *amount of the lump sum payment* will be determined by the average market rent for a unit in the San Francisco Bay Area, depending on the type of unit the tenant resides in at 1770 Broadway (e.g., studio, 1 bedroom, 2 bedrooms). The total amount of the lump sum payment is determined by the length of the construction period for 1750 Broadway. The length of the construction period shall be the Applicant's best estimate of the period at the time permits are issued for the Project. If the Applicant can only feasibly provide a range of time when construction shall begin and

end, for example, 36-48 months, the time period shall be the longer period.

An example of how the lump sum payment shall be calculated is as follows: (36 months - length of construction period) x ($2845 - average market rent for a one-bedroom apartment)= $102,420.00.

(b) If a tenant leaves the unit after construction has commenced, the calculation for the lump sum payment will be amended to account for the shorter period. For example, if a tenant leaves 6 months after constriction has commenced and construction is estimated to be 36 months, the payment will be calculated based upon a 30 month time period.

(c) The Applicant shall give tenants a minimum of *two months' notice* of the actual construction start date.

(d) The tenants shall receive their lump sum payments at least *one month* prior to the construction start date.

(e) If a tenant does not leave their 1770 Broadway unit at any time during the construction period, no lump sum payment is owed.

(f) *Moving costs* will be reimbursed to tenants within 30 days upon the furnishing of a receipt. The costs of moving shall include moving both to and from the tenant's 1770 Broadway unit, should they choose to return to the unit. Tenants may elect to self-move or use a professional moving service.

f. SITE INSPECTIONS

1. Routine site inspections shall occur at the Applicant's expense to ensure continued compliance with all proposed and approved Conditions.

2. Routine site inspections shall occur at the Applicant's expense to monitor the health and safety of the Residents with the ability to

determine and provide timely notice of any moderate to severe health or safety risks that may trigger the need for relocation.

g. EIR

1. Applicant shall commence and complete a full, CEQA-compliant, EIR that does not make use of any CEQA exemptions to eliminate analysis or mitigation of any impacts.

2. If any new findings on significant environmental impacts are found, that have heretofore not been disclosed and sufficiently mitigated, those mitigation measures should be developed, implemented, and enforced for the Project, in addition to any measures imposed here as proposed Conditions.

h. AFFORDABLE HOUSING

1. Applicant shall set aside at least 15% of the Project units for very low income to moderate-income tenants.

h. SETBACK AND HEIGHT REQUIREMENTS

1. Independent setback and height requirements for 1750 Broadway should be established based on an independent study, or mutually acceptable professional guidelines or standards, to ensure all 1770 Broadway windows receive adequate natural light or direct sunlight.

## III. RESPONSE TO THE BAY AREA HOUSING ACTION COALITION'S JANUARY 29 LETTER TO THE CITY COUNCIL

On January 29, 2020, the Bay Area Housing Action Coalition ("BayHAC") submitted a letter to the City Council claiming that the Housing Accountability Act ("HAA") effectively removes the City Council's discretion to deny permitting or approval for the Project as it exists—and if they did so—the City would open itself up to litigation risks. This position is simply incorrect. The HAA places a limit on COAs that can be imposed before approval and permitting—but only COAs that impose design changes, lower density, or changes that make the Project infeasible. (Gov. Code § 65589.5 (a)(1).) Second, the HAA only applies to Projects that are CEQA compliant.

The Residents only request mitigation measures for their building, or relocation assistance, which will not affect the design of 1750 Broadway or lower its density.

This includes demands that the Project become CEQA compliant—which would subsume Residents' concerns. And as the above arguments make clear, the Project does not comply with CEQA. Thus the question of HAA liability is premature.

A. The Residents Do Not Request a Denial of the Project or COAs Changing Feasibility or Density

The HAA only applies to Projects that may be denied approval altogether or where conditions are imposed that would reduce the Project's density, or otherwise make the Project infeasible. In *North Pacifica, LLC. v. City of Pacifica*, the District Court addressed the limitations imposed by Government Code Section 65589.5(j) on a local agency's discretion to "disapprove the project or to impose a condition that the project be developed at a lower density." ((N.D. Cal. 2002) 234 F. Supp. 2d 1053, 1059, aff'd sub nom. *North Pacifica LLC v. City of Pacifica* (9th Cir. 2008) 526 F.3d 478; Gov. Code § 65589.5(j).) Neither issue is relevant here because the Residents do not ask the City to disapprove of the Project or reduce its density.

The Residents' Appeal and Proposed Conditions simply ask the City to comply with CEQA and impose additional mitigation measures that would protect their health and safety. Thus the City could not be liable under the HAA because a full CEQA review and subsequent compliance would not alter the physical characteristics of the Project such that its density would be reduced or it may become infeasible.

B. BayHAC Intentionally Evades the Threshold Question Because the Project is Not CEQA Compliant

Unless a Project complies with CEQA, an analysis under the HAA is premature. Government Code Section 65589.5(e) mandates that projects subject to the HAA must comply with CEQA. (*Schellinger Brothers v. City of Sebastopol* (2009) 179 Cal. App. 4th 1245, 1262, 1270; *Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal. App. 5th 927, 944, fn9.) If the Residents are correct that the Project may cause significant and unmitigated adverse impacts on public health and safety; and that the Project fails to otherwise comply with CEQA as analyzed in their Appeal and above, BayHAC's argument is premature.

As the Residents have argued and provided substantial evidence in support thereof, the Project improperly relies on CEQA exemptions and would cause significant and unmitigated adverse impacts to public health and safety. And the dangers of improper reliance on exemptions and failing to implement necessary mitigation is all too real as

explained above relating to the 1730 Broadway and 1901 Franklin project site. And those toxins may be present in the soil on the Project site here. If BayHAC, or the Project's developer, wants the protection of the HAA—they should start by complying with CEQA.

## IV. CONCLUSION

Residents request that the City submit an EIR for this Project, institute all of the proposed Conditions, or else deny Applicant permits and approval to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my office.

Sincerely,

Mitchell M. Tsai
Attorneys for Residents of 1770 Broadway

Attachments:

**Exhibit A** – Alameda County Health Care Services Agency Fact Sheet on Environmental Investigations & Corrective Actions for 1901 Franklin and 1930 Broadway Site Cleanup

**Exhibit B** – 1900 Broadway Follow Up Email Chain with Alameda County Department of Environmental Health, available at https://geotracker.waterboards.ca.gov/getfile?filename=/regulators%2Fdeliverable_documents%2F6727554798%2FR03413_CORRES_L_2020-02-07.pdf

**EXHIBIT A**

ALAMEDA COUNTY
**HEALTH CARE SERVICES AGENCY**
COLLEEN CHAWLA, Director

DEPARTMENT OF ENVIRONMENTAL
HEALTH LOCAL OVERSIGHT PROGRAM
1131 HARBOR BAY PARKWAY
ALAMEDA, CA 94502
(510) 567-6700
FAX (510) 337-9335

February 14, 2020

**FACT SHEET ON ENVIRONMENTAL INVESTIGATIONS & CORRECTIVE ACTIONS**
**19 BWAY Tower Development LLC**
1901 Franklin and 1930 Broadway, Oakland, California
Site Cleanup Program Case No. RO0003413
GeoTracker Global ID No. T10000014012

**Summary** – This fact sheet has been prepared by Alameda County Department of Environmental Health (ACDEH) to inform community members and other interested stakeholders of the status of environmental investigations and proposed corrective actions to be implemented in conjunction with redevelopment activities at 1901 Franklin and 1930 Broadway in Oakland, California (the Site). It includes an overview of the historic land use at the Site, environmental investigations, and proposed corrective actions to be implemented in conjunction with Site redevelopment, along with information contacts.

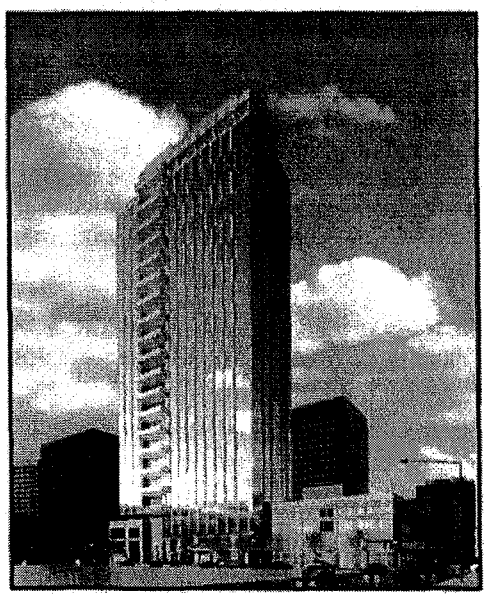
## Community Meeting

Alameda County Department of Environmental Health (ACDEH) invites interested community members to attend a community meeting to learn more about the proposed Site remediation plan, discuss community protection measures, and answer questions.

**When:** Thursday, February 20 from 5:30 to 7:00PM

**Location:** Suffolk Office, 1970 Broadway, Suite 110, Oakland CA 94612

**Site Background** – The Site is located near the northeast corner of Broadway and 19th Street within a commercial area of Oakland. The site was developed as early as 1889 with a Chinese laundry, blacksmith, and wagon shop. Since the 1930s, the site has been developed with a single-story retail building, a 12-story office building, and a single-story movie theater. Office and retail tenants included jewelers, physician offices, photo shop, automobile sales, and a cleaners. The theater and office buildings were demolished in 1992 and 1993 and the basements were backfilled with fill material including concrete, metal, glass, and wood to depths of approximately 12 feet. The 1930 Broadway retail building was demolished in December 2019 and the foundations removed in January 2020. The current property owner, 19th & BWAY Associates, LLC acquired the property in 2014 and 2017 and has been permitted by the City of Oakland to construct a 39-story residential tower and four-story office/retail and residential amenity podium, with one level of subsurface parking that will cover the footprint of the Site.



View of the proposed development from Broadway and 19th Streets.

**Site Investigation & Proposed Corrective Actions** – Environmental investigations were conducted in 2016, 2017, and 2018 without regulatory oversight to assess the type and extent of contamination in soil and groundwater at the Site from historic land uses. Results of these investigations indicate that soil and groundwater have been impacted with metals, total petroleum hydrocarbons as diesel and motor oil, and volatile organic compounds (VOCs). While some of these chemicals are present at levels above regulatory

screening levels, this does not indicate adverse impacts to human health or the environment, rather that further assessment is warranted. In February 2020, the developer entered into a voluntary agreement with ACDEH to provide regulatory oversight of additional environmental investigation activities, and development of corrective actions and community protection measures to reduce human health risk to the adjacent community and future occupants of the building from soil and groundwater contamination.

A Corrective Action Plan will be developed based on the results of the environmental investigations. Currently proposed corrective actions include:

- Excavation of contaminated soil. Construction of the tower requires excavation of the entire site to depths of 26 to 32 feet, which is expected to remove soil with concentrations above residential regulatory screening levels from the site;
- Transportation of contaminated soil to a licensed, off-Site disposal facility.

Additional corrective actions may be required based on the results of the additional field investigation.

**Community Protection Measures** – Prior to the demolition of the 1930 Building in December 2019, a hazardous materials survey was conducted, and site features were abated for lead and asbestos. All future excavation work will be conducted in accordance with the ACDEH approved Soil and Groundwater Management Plan, Dust Monitoring Plan, and Corrective Action Plan. These documents collectively describe best practices to ensure the ongoing safety of on-site construction workers and the surrounding community. Protection measures include:

- Dust control measures, such as spraying water and surfactants, covering soil with plastic tarps, and stopping work on windy days;
- Performing real-time air monitoring during soil disturbing work;
- Perimeter air monitoring during soil disturbing activities;
- Cleaning truck tires and undercarriages to prevent dust track out;
- Adhering to a City of Oakland approved Construction Management Plan (CMP) and truck route(s);
- Stationing flaggers and installing traffic control notifications to manage area traffic and allow trucks to safely enter and exit the Site.

**Next Steps** – ACDEH will host a community meeting:

**When:** Thursday, February 20, 2020
**Time:** 5:30 to 7:00 p.m.
**Location:** Suffolk Office, 1970 Broadway, Suite 110, Oakland, CA 94612

During this meeting, ACDEH staff and the Developer's environmental consultant will provide an overview of the environmental investigations conducted to date, additional future investigations, development and implementation of the Corrective Action Plan and community protection measures, and answer any environmental related questions for the Site.

ACDEH will consider all public comments as part of its approval of the Corrective Action Plan. ACDEH will prepare a Response to Comments document and will provide a copy to all individuals that provided comments.

**For More Information** – Individuals that would like more information or have questions are encouraged to call:

Drew York,
ACDEH Case Manager
1131 Harbor Bay Parkway
Alameda, CA 94502
510-639-1276
andrew.york@acgov.org

Pamela White
LPC West, Inc.
322 Pine Street, Suite 500
San Francisco, CA 94104
925-784-1183
pwhite@lpc.com

**EXHIBIT B**

| | |
|---|---|
| **From:** | Roe, Dilan, Env. Health |
| **To:** | Pamela White |
| **Cc:** | Colin Behring; Nick Walchuk; Frank Haase; Chris Candell; Khatri, Paresh, Env. Health; York, Andrew, Env. Health; Low, Tim |
| **Subject:** | RE: 1900 Broadway Follow Up |
| **Date:** | Friday, February 7, 2020 2:20:03 PM |

Hi Pam:

This email provides a summary of the discussions had during the meeting yesterday (02/07/2020) with Alameda County Department of Environmental Health (ACDEH), City of Oakland, 19 Behring Capital, Lincoln Property Company, and Ramboll US Corporation to discuss the subject site. I have copied Drew York and Paresh Khatri with ACDEH on this email as they will be helping with moving your project forward as discussed yesterday.

Based on discussion during the meeting ACDEH understands the following:

-The 0.7-acre subject site consists of two land parcels associated with Assessor's Parcel Numbers (APNs) 008-0638-006-05 and 008-0638-007-10. The current site owner is 19th & BWAY
Associates, LLC however a property transaction with Behring Capital is pending;
-Site redevelopment activities have been permitted by the City of Oakland and will include excavation of depths of 32 feet below ground surface (bgs) and construction of subsurface
parking and an office/retail tower;
-Historic land use at the site dates back as early as 1889 and includes but is not limited to dry cleaning, blacksmith and wagon shop, office , typewriter and carbon ribbon company,
physician offices, automotive, photoshop, theater, and parking lots;
-Historic land use at nearby properties include a brewery, planning mill, laundry, plating and polishing facility, paints, vulcanizing, plumbing supplies, and motorcycle repair
-Undocumented fill material (including debris consisting of concrete, metal, glass, and wood) has been document to depths of approximately 12 feet bgs;
-Results from limited site investigations conducted in 2016 document chemicals of concern in soil and groundwater at concentrations above environmental risk based screening levels; and
-Demolition activities of existing structures has been initiated and is being conducted under a City of Oakland Demolition Permit;

Based on a review of available data, ACDEH has made a determination that environmental regulatory oversight is required during the site redevelopment activities to ensure that risks to the community, construction and utility workers, and users of the new on-site facility have been adequately evaluated and appropriate corrective actions implemented.
As discussed in the meeting yesterday, ACDEH identified an aggressive path forward to allow your team to continue with site redevelopment activities as listed below:

Administrative
02/10/2020 - Submittal of Regulatory Oversight Fees to ACDEH
02/10/2020 - Site Cleanup Program case opened by ACDEH
02/10/2020 - Transmittal of a Voluntary Remedial Action Agreement (VRAA) for execution by 03/13/2020 (after pending property transaction)
02/14/2020 - Responsible party upload of all environmental documents uploaded to the State Water Resources Control Board's Geotracker database

Site Demolition Activities (under City of Oakland Demolition Permit)
02/06/2020 - Submittal of a Soil and Groundwater Management Plan (SGMP) to ACDEH for review
02/07/2020 to 2/11/2020 - Full time representative of Ramboll onsite to soil and groundwater management and monitor dust emissions during soil disturbance activities until Dust
Monitoring Plan (DMP) and SGMP approved by ACDEH
02/10/2010 - Submittal of DMP to ACDEH
02/11/2020 - ACDEH review and approval of DMP and SGMP

02/11/2020 - Dust monitoring equipment installed at site in accordance with DMP
02/21/2020 - Demolition Complete

Community Notification
02/11/2020 - Submittal of Draft Fact Sheet to ACDEH
02/13/2020 - ACDEH Mailing of Fact Sheet
02/20/2020 - Community Meeting (location to be arranged by Developer)

Installation of Foundation Casings (under City of Oakland Building Permit)
02/24/2020 to 03/10/2020 - Installation of Cut-off Wall and Dewatering Wells (limited soil excavation conducted in accordance with ACDEH approved SGMP
03/06/2020 - Submittal of Construction Dewatering Plan & Remedial Action Plan - Soil Excavation (RAP) to ACDEH for review
03/13/2020 - Submittal of signed Voluntary Remedial Action Agreement to ACDEH with property transaction documentation
03/13/2020 ACDEH Conditional Approval of RAP and Construction Dewatering Plan
03/13/2020 to 5/15/2020 - Construction Dewatering, Soil Excavation, and Installation of Deep Foundation Casings

Vapor Intrusion/Migration Risk Evaluation
4/17/2020 - Submittal of Vapor Intrusion and Migration Risk Evaluation to ACDEH for review
5/15/2020 - ACDEH determination on whether Vapor Migration Engineering Controls (VMEC) are required
6/19/2020 - Submittal of Vapor Mitigation Engineering Controls (VMEC) design documents to ACDEH for review (if required)
7/17/2020 - ACDEH approval of VMEC design (if required)
8/14/2020 - Submittal of revised Building Department Plans incorporating ACDEH VMEC (if required)
8/28/2020 - ACDEH VMEC installation approval

Foundation Construction (under City of Oakland Building Permit)
Installation and of VMECs prior to pouring slab

Vertical Construction (under City of Oakland Building Permit)
Requirements to be determined at a later date

Please note, this schedule is subject to change if there are community concerns identified at the community meeting on 2/20/2020 or during the course of construction. Therefore, as discussed with your team, ACDEH requires strict environmental oversight during excavation and dewatering of contaminated soil and groundwater to protect the community during implementation of these activities.

To facilitate quick submittal and review/approval by ACDEH of project documents, we will send templates and examples of a Soil and Groundwater Management Plan, Dust Control Plan, Construction Dewatering Plan, Remedial Action Plan, and Fact Sheet for your use in a follow-up email.

Dilan Roe
Chief – Land & Water Division
Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
510-567-6767

-----Original Message-----
From: Pamela White <PWhite@LPC.com>
Sent: Friday, February 7, 2020 9:31 AM

To: Roe, Dilan, Env. Health <Dilan.Roe@acgov.org>
Cc: Colin Behring <cbehring@behringcompanies.com>; Nick Walchuk <nwalchuk@ramboll.com>; Frank Haase <FHaase@suffolk.com>; Chris Candell <ccandell@oaklandca.gov>
Subject: 1900 Broadway Follow Up

Good Morning Dilan:

Thank you again for your time yesterday. So we stay on track can you let us know when you will send the templates / materials discussed yesterday?

Thank you,

Pam

Pamela White