

HIGH & MACARTHUR MIXED-USE PROJECT

Response to Comments Document



City of Oakland

July 2013

URBAN
PLANNING
PARTNERS
INC.

HIGH & MACARTHUR MIXED-USE PROJECT

Response to Comments Document
SCH 2011052049

Prepared for the City of Oakland

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July 2013



CITY OF OAKLAND

Department of Planning and Building
250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612-2032

COMBINED NOTICE OF RELEASE AND AVAILABILITY OF THE RESPONSE TO COMMENTS AND NOTICE OF PUBLIC HEARING ON THE HIGH AND MACARTHUR MIXED USE PROJECT

PROJECT TITLE: HIGH AND MACARTHUR MIXED USE PROJECT EIR
CASE NOS. CMDV10-312; ER10-0001
PROJECT SPONSOR: AMG AND ASSOCIATES, LLC

PROJECT LOCATION: The project site is approximately 0.93 acres and is comprised of 3 parcels located at the southwest corner of the High Street and MacArthur Boulevard intersection. Addresses for the project site are 4311 and 4317 MacArthur Boulevard; APNs for the site parcels are 030-1982-121, 030-1982-122, and 030-1982-123. The site is on the Cortese List of hazardous waste sites.

DESCRIPTION OF PROJECT: The proposed project consists of a five-story mixed use senior housing development with 115 one-bedroom senior apartments, approximately 3,446 square feet of ground floor commercial space, and 65 parking spaces. The commercial space would be in two separate areas with the main commercial area located at the corner of High Street and MacArthur Boulevard. A separate retail area labeled as a "kiosk" on the floor plans would front onto High Street. A residential lobby fronting High Street is proposed between the two commercial spaces. Parking is proposed to be behind the commercial spaces on the ground level, which would also include a loading zone, various mechanical/equipment rooms, and an art feature located at the corner of High Street and MacArthur Boulevard. Above the ground floor uses, the building would include four stories of residential use with approximately 28-29 units per floor. The residential component of the building would be designed around an interior central courtyard. All the units are proposed to be one-bedroom and would average approximately 540 square feet. The maximum building height is 60 feet, with the tallest portion along the High Street elevation.

ENVIRONMENTAL REVIEW: A Draft Environmental Impact Report (DEIR) was prepared for the project and released for a public review period. All comments that were received have been compiled and responded to in the Response to Comments Document (RTC), along with changes and clarifications to the Draft EIR. The preparation of the RTC has been overseen by the City's Environmental Review Officer and the conclusions and recommendations in the document represent the independent conclusions and recommendation of the City. The RTC Document, together with the Draft EIR, constitutes the Final EIR for the proposed project.

Starting on July 5, 2013, copies of the RTC are available for distribution to interested parties at no charge at the Department of Planning and Building, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m. The RTC is also available on the City of Oakland website at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.

PUBLIC HEARING: The City Planning Commission will conduct a public hearing to consider the High and MacArthur Mixed Use Project and certification of the Final EIR on **July 17, 2013 at 6:00 p.m.** in Hearing Room 1, City Hall, 1 Frank H. Ogawa Plaza.

If you challenge the environmental document or project in court, you may be limited to raising only those issues raised at the Planning Commission public hearing described above, or in written correspondence received by the City of Oakland, Department of Planning and Building on or prior to 4:00 p.m. on July 17, 2013.

For further information, please contact Lynn Warner at 510-238-6983 or lwerner@oaklandnet.com.

June 28, 2013
Case File Numbers CMDV10-312; ER10-0001


Scott Miller
Zoning Manager, Environmental Review Officer

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I. INTRODUCTION

A. PURPOSE OF THE RESPONSE TO COMMENTS DOCUMENT

This document has been prepared to respond to comments received on the Draft Environmental Impact Report (Draft EIR or High & MacArthur Draft EIR) prepared for the High & MacArthur Mixed-Use Project (SCH# 2011052049). The Draft EIR identifies the likely environmental consequences associated with the implementation of the proposed project, and recommends standard conditions of approval to reduce potentially significant impacts. This Response to Comments (RTC) Document provides responses to comments received on the Draft EIR and makes revisions to the Draft EIR, as necessary, in response to these comments or to amplify or clarify material in the Draft EIR.

This RTC Document, together with the Draft EIR, constitutes the Final EIR for the proposed project.

B. ENVIRONMENTAL REVIEW PROCESS

According to CEQA, lead agencies are required to consult with public agencies having jurisdiction over a proposed project and to provide the general public with an opportunity to comment on the Draft EIR.

The City of Oakland circulated a Notice of Preparation (NOP), which stated that the Draft EIR will address the potential environmental effects only for certain aesthetics factors (scenic vistas, scenic resources and visual character), air quality, hazards/hazardous materials, noise, and transportation/traffic. The NOP was published on May 18, 2011, and the public comment period for the scope of the EIR lasted from May 18, 2011 to June 16, 2011. A scoping meeting was held in conjunction with a Planning Commission meeting on June 15, 2011. Comments received by the City on the NOP at the public scoping meeting were taken into account during the preparation of the EIR.

The Draft EIR was made available for public review on October 26, 2012 and distributed to applicable local and State agencies. Copies of the Notice of Availability of the Draft EIR (NOA) were mailed to all individuals previously requesting to be notified of the EIR, in addition to those agencies and individuals who received a copy of the NOP.

The CEQA-mandated 45-day public comment period for the Draft EIR ended on December 10, 2012. A public hearing was held before the City of Oakland Planning Commission on December 5, 2012. Copies of all written comments received during the comment period and comments made at the public hearing before the Planning Commission are included in Chapter III of this document.

C. APPROACH TO ENVIRONMENTAL ANALYSIS

The following presents a summary of the EIR's approach to environmental review, much of which was explained in the Draft EIR. However, given many of the comments received on the Draft EIR questioned the approach the discussion is reiterated and expanded. Additionally since the Draft EIR was published, the CEQA Guidelines were amended to include §15183.3, Streamlining for Infill Projects, implementing Public Resources Code §21094.5 and §21094.5.5 (SB 226—Infill Streamlining). The proposed project meets the criteria to qualify as an infill project and as such, is eligible to be exempt from CEQA as the proposed project generally would not cause any new specific effects or more significant effects than those discussed in the Housing Element EIR, and in instances where new specific effects occur, Standard Conditions of Approval would mitigate the potential impacts to less than significant. A more detailed discussion of this is provided below.

1. 2007-2014 Housing Element EIR and CEQA Guidelines §15183 - Projects Consistent with a Community Plan, General Plan or Zoning

The proposed project site is identified as an opportunity site in the Housing Element and the Housing Element EIR and the development intensity of the project is consistent with what was projected for the site in the Housing Element EIR. Therefore, the environmental impacts of the High & MacArthur Mixed-Use Project were considered and evaluated in the Housing Element EIR. Because the High & MacArthur Mixed-Use project was considered in the Housing Element EIR, the High & MacArthur EIR can tier off the Housing Element EIR pursuant to CEQA Statutes Sections 21093, 21094, 21083.3 and CEQA Guidelines Sections 15152, 15385, 15183.

On December 21, 2010, the Oakland City Council adopted the 2007-2014 Housing Element (Housing Element) and certified the Housing Element EIR. The Housing Element EIR, which included the Initial Study (see Appendix of the Housing Element EIR), evaluated the impacts associated with development of 13,501 housing units needed to meet the Regional Housing Needs Assessment (RHNA) target at potential locations throughout the city. This potential build-out under the Housing Element is comparable to the projected residential development identified in the Land Use and Transportation Element of the General Plan, for which an EIR was certified in 1998. The Housing Element EIR also identified the potential locations of these 13,501 units, which included the location of the High & MacArthur Mixed Use Project.

The Housing Element EIR, including the Initial Study, identified the potential environmental impacts and associated Standard Conditions of Approval and Mitigation Measures designed to substantially reduce or eliminate impacts that would result from adoption and implementation of the Housing Element. The Housing Element EIR determined that the Housing Element would result in less-than-significant impacts related

to: aesthetics/shadows/winds, agricultural resources, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology/water quality, land use/planning, mineral resources, population/ housing, public services, recreation, and utilities/service systems.

The Housing Element EIR incorporates several CEQA documents by reference, one of which is the EIR for the Land Use and Transportation Element, adopted in 1998, which extensively discussed hazards/hazardous materials. The Housing Element EIR concluded that impacts associated with hazards/hazardous materials would be less than significant when in compliance with applicable federal, State and local regulations, including the City's General Plan policies, Municipal Code, and Standard Conditions of Approval (SCAs) 35, 41-42, 61-67, 68, 69, and 70-73.

The Housing Element EIR further evaluated impacts related to transportation, air quality, noise, and climate change. The Housing Element EIR concluded criteria air pollutant and diesel particulate matter impacts would be less than significant for projects that comply with SCA-25 and SCA-94. While not legally required by CEQA, the Housing Element EIR, in each relevant chapter, also addressed significant unavoidable impacts at the project level; that is, impacts that might result from specific housing development projects, such as:

- Transportation: identified roadway segments impacts, previously identified impacted intersections, at-grade railroad crossings impacts, and identified State Highway impacts; and
- Air Quality: gaseous Toxic Air Contaminants (TACs) and odor impacts.

Although certain future housing projects would be required to perform additional studies and must follow the feasible recommendations resulting from such studies, the Housing Element EIR found that no further CEQA review would be required for the above identified project-level impacts, as such impacts have already been identified as significant and unavoidable. Thus, specific residential developments would not have to prepare an EIR and/or Mitigated Negative Declaration solely based upon such impacts/recommendations.

Further, the Housing Element EIR identifies project-level less-than-significant impacts which might occur at a specific housing development, but which would not result in a significant impact under CEQA. For example, in the Climate Change chapter, under Impact CC-1 (Project-Level thresholds), the analysis states future residential development projects would result in less-than-significant Greenhouse Gas impacts and would not be required to undergo project-specific GHG analysis under CEQA because (a) residential development under the Housing Element would not exceed the BAAQMD project-level threshold of 4.6 MT CO₂e per service population; or (b) alternatively, individual residential developments

of less than 172 units would not exceed the BAAQMD project-level Threshold of 1,100 MT CO₂e.¹

As the proposed project is within the scope of the Housing Element EIR, the project-level analysis of these impacts was not required per CEQA Guidelines §15183, which requires that any subsequent analysis only consider environmental effects that:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Are not analyzed as significant effects in the Housing Element EIR, with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the Housing Element EIR, or
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

Based on the analysis completed for the project, which is summarized above relative to these criteria and included in the High & MacArthur Initial Study, the Draft EIR, and this RTC Document collectively, the City determined that any impacts peculiar to the parcel or to the project were addressed as a significant effect in the Housing Element EIR, or they can be substantially mitigated by the imposition of uniformly applied development policies or standards (i.e., City Standard Conditions of Approval), as contemplated by subdivision (e) of §15183. As a result and consistent with §15183, an additional project-level EIR did not need to be prepared

Nevertheless, the City packaged the additional information and analysis into an EIR and followed the EIR process, in order to provide information to the public and decision makers. Given all the criteria listed above were met, the High & MacArthur Draft EIR does not identify any new significant impacts or recommend any new mitigation measures.

A discussion of each of the findings listed above relevant to the proposed project is provided below.

¹ City of Oakland. *Housing Element Draft Environmental Impact Report*. August 2010.

a. Project Site

The City of Oakland has several freeways that traverse through the City: the I-880, I-580, I-980, SR-13, and SR-24. The project site is one of many properties that abut a freeway on which residential uses are allowed by the General Plan and Zoning. Additionally, this is one area of approximately 1,100 properties that abut the scenic portion of I-580 (which extends from the I-980 interchange to the border of San Leandro). Most of those properties are low density residential in nature and the zoning and general plan reflect this. The project site is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5 and a recent search of the EnviroStor website shows that there are 213 hazardous materials sites located within the City of Oakland on the EnviroStor.² This evidences that potential environmental effects are not peculiar to the project or the parcel on which the project would be located.

As stated in CEQA Guidelines 15183(c), if an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, then an additional EIR need not be prepared for the project solely on the basis of that impact. As the proposed project site exhibits characteristics that are present in numerous sites throughout the city, potential environmental impacts are not solely particular to the proposed project and site. The Housing Element EIR fully discussed and analyzed the issues of developing housing on contaminated sites and sites adjacent to freeways.

b. Standard Conditions of Approval

The Draft EIR identifies applicable federal, State, and local policies, and Standard Conditions of Approval that substantially mitigate potential environmental impacts of the project. SCAs are identified throughout the Draft EIR to reduce the effects of significant environmental impacts and: 1) would be included as part of the design, construction, and operations of the proposed project; 2) would be made conditions of approval for the project; and 3) would be subject to the monitoring and reporting requirements of CEQA and the terms of the discretionary approvals of the project.

The City's Uniformly Applied Development Standards are incorporated into projects as SCAs regardless of a project's environmental determination. As applicable, the SCAs are adopted as requirements of an individual project when it is approved by the City and are designed to, and will, substantially mitigate environmental effects, in part, pursuant to CEQA Guidelines section 15183. In reviewing project applications, the City determines which of the SCAs are applied, based upon the zoning district and the type(s) of

² California Department of Toxic Substances Control. EnviroStor Website.
<http://www.envirostor.dtsc.ca.gov/public/>. Accessed January 22, 2013.

permit(s)/approvals(s) required for the project. Depending on the specific characteristics of the project type and/or project site, the City will determine which SCAs apply to each project; for example, SCAs related to creek protection permits will only be applied to projects on creekside properties.

The SCAs incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects. Where there are peculiar circumstances associated with a project or project site that will result in significant environmental impacts despite implementation of the SCAs, the City will determine whether there are feasible mitigation measures to reduce the impact to less-than-significant levels in the course of appropriate CEQA review (mitigated negative declarations or EIRs). Moreover, any required technical studies and/or recommendations from such studies are part of the SCAs. The SCAs were adopted by the City Council in 2008 and are required to be imposed on projects, pursuant to Oakland Planning Code Section 17.130.070.

c. Project-Level and Cumulative Impacts

Additionally, as the Housing Element EIR identified traffic and air quality impacts as significant and unavoidable (discussed in the Housing Element EIR section above), no further CEQA review would be required for those particular project-level impacts. The proposed project does not result in any significant project or cumulative impacts that were not discussed in the Housing Element EIR nor will it result in more severe adverse impact than discussed in the Housing Element EIR. While additional environmental review may not have been required pursuant to CEQA Guidelines §15183, the Draft EIR nevertheless analyzed project-level and cumulative impacts to provide information to the public and decision-makers.

2. CEQA Guidelines §15183.3 - Streamlining for Infill Projects

In January 2013, the Secretary for the California Natural Resources Agency adopted CEQA Guidelines implementing Public Resources Code section 21094.5 and 21094.5.5 (SB 226—Infill Streamlining), which went into effect on February 14, 2013. According to CEQA Guidelines §15183.3(c), CEQA does not apply to the effects of an eligible infill project under two circumstances.

1. First, if an effect was addressed as a significant effect in a prior EIR for a planning level decision, then, with some exceptions, that effect need not be analyzed again for an

individual infill project even when that effect was not reduced to a less than significant level in the prior EIR.

2. Second, an effect need not be analyzed, even if it was not analyzed in a prior EIR or is more significant than previously analyzed, if uniformly applicable development policies or standards, adopted by the lead agency or a city or county, apply to the infill project and would substantially mitigate that effect. Depending on the effects addressed in the prior EIR and the availability of uniformly applicable development policies or standards that apply to the eligible infill project, streamlining under this section will range from a complete exemption to an obligation to prepare a narrowed, project-specific environmental document.

CEQA Guidelines §15183.3 establishes eligibility requirements for projects to qualify as infill projects. Table I-1 shows that the proposed project meets these requirements, and therefore qualifies as an infill project.

CEQA Guidelines §15183.3(d)(2)(A) states that no additional environmental review is required if the infill project would not cause any new specific effects or more significant effects, or uniformly applicable development policies or standards would mitigate such effects. As stated in the Draft EIR, the proposed project generally would not cause any new specific effects or more significant effects than those discussed in the Housing Element EIR, and in instances where new specific effects occur, SCAs would mitigate the potential impacts to less than significant. Though additional environmental review may not have been required pursuant to CEQA Guidelines 15183.3, the Draft EIR nevertheless analyzes project-level impacts to provide information to the public and decision-makers.

TABLE I-1 PROJECT INFILL ELIGIBILITY

Eligibility Criteria	Eligible?
Located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter?	Yes
Performance Standards Related to Project Design:	
<i>Renewable Energy</i>	Not applicable as criteria only applies to non-residential projects
<i>Soil and Water Remediation.</i> If the project site is included on any list compiled pursuant to §65962.5 of the Government Code, the project shall document how it has remediated the site, if remediation is completed. Alternatively, the project shall implement the recommendations provided in a preliminary endangerment assessment or	Yes. The storage, use, generation, transport, and disposal of hazardous materials are highly regulated by federal, State, and local agencies. The City of Oakland General Plan contains a policy related to hazards and the City of Oakland Standard Conditions of Approval, which will be adopted as part of the project, address hazards and hazardous materials. SCA

TABLE I-I PROJECT INFILL ELIGIBILITY

Eligibility Criteria	Eligible?
comparable document that identifies remediation appropriate for the site.	HAZ-1 through SCA HAZ-6, which would be adopted as requirements of the proposed project if the project is approved by the City of Oakland will help ensure no significant hazard and hazardous material impacts occur. Specifically SCA HAZ-3 requires Phase I and/or Phase II Reports that make recommendations for remedial action prior to issuance of a demolition, grading, or building permit. Additionally SCA HAZ-4 establishes the process for remedial action if the environmental site assessment report recommends remedial action.
<i>Residential Units Near High-Volume Roadways and Stationary Sources.</i> If a project includes residential units located within 500 feet, or other distance determined to be appropriate by the local agency or air district based on local conditions, of a high volume roadway or other significant sources of air pollution, the project shall comply with any policies and standards identified in the local general plan, specific plan, zoning code or community risk reduction plan for the protection of public health from such sources of air pollution.	Yes. The City of Oakland General Plan includes several policies related to Air Quality and the City of Oakland Standard Conditions of Approval, which will be adopted as part of the project, address air quality in projects. SCA AIR-2 and SCA AIR-3, which would be adopted as requirements of the proposed project if the project is approved, requires projects to incorporate appropriate measures into the project design to minimize exposure to air pollution.
Additional Performance Standards by Project Type – Residential ^a	
Projects located within 1/2 mile of an Existing Major Transit Stop or High Quality Transit Corridor. A residential project is eligible if it is located within 1/2 mile of an existing major transit stop or an existing stop along a high quality transit corridor.	Yes. The proposed project site is located within ½ mile of a “Major Transit Stop.” The bus stop at High and MacArthur is located adjacent to the proposed project site and is a stop to 12 bus lines. Line 14 and Line 57 have service intervals of 15 minutes during the morning and afternoon peak commute hours, thus meeting the definition of a “major transit stop.”
Be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, except as provided in subdivisions (b)(3)(A) or	Yes. The proposed project is located in Oakland which is within the boundaries of a metropolitan planning organization (MTC) for which a sustainable communities strategy is currently being drafted. Additionally, the proposed project exceeds 20 units per acre,

TABLE I-I PROJECT INFILL ELIGIBILITY

Eligibility Criteria	Eligible?
<p>(b)(3)(B) below.</p> <p>Only where an infill project is proposed within the boundaries of a metropolitan planning organization for which a sustainable communities strategy or an alternative planning strategy will be, but is not yet in effect, a residential infill project must have a density of at least 20 units per acre, and a retail or commercial infill project must have a floor area ratio of at least 0.75.</p> <p>Where an infill project is proposed outside of the boundaries of a metropolitan planning organization, the infill project must meet the definition of a small walkable community project in subdivision (e)(6), below.</p>	<p>thereby meeting subdivisions (b)(3)(A) criterion.</p>
<p>a. Where a project includes some combination of residential, commercial and retail, office building, transit station, and/or schools, the performance standards in this section that apply to the predominant use shall govern the entire project</p>	

3. Environment's Effect on a Project

CEQA requires the analysis of potential adverse effects of the project on the environment. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA. *Ballona Wetlands Land Trust et al. v. City of Los Angeles* (2011) 201 Cal.App.4th 455 (*Ballona Wetlands*) held that the environment's effects on a proposed project do not have to be analyzed under CEQA. On March 21, 2012, the California Supreme Court denied the petition for review and requests for depublication of the Second District Court of Appeal's opinion in *Ballona Wetlands*.

Accordingly, the *Ballona Wetlands* precedent stands as controlling law on all superior courts throughout the state.³ In so holding, a wide range of impacts previously analyzed in CEQA documents may now be considered outside CEQA's statutory jurisdiction. This could exempt from CEQA analysis, for example, the impact of existing toxic air contaminant emissions from nearby stationary sources or highways or existing groundwater or soil

³ Jennifer Hernandez and Chelsea Maclean. *Recommendations for Complying with Balboa Wetlands' Definitive Rejection of 'Converse-CEQA' Analysis*. June 14, 2012.
<http://www.mondaq.com/unitedstates/x/181772/Environmental+Law/Recommendations+for+Complying+with+Ballona+Wetlands+Definitive+Rejection+of+ConverseCEQA+Analysis>. Accessed January 18, 2013.

contamination at/near the project site on future residents of infill housing projects⁴ as concurred by Leila H. Moncharsch in her comment letter (Comment Letter B1). So while the potential effects of the environment were legally not required to be analyzed or mitigated under CEQA, the Draft EIR nevertheless analyzes potential effects of the environment on the project to provide information to the public and decision-makers.

4. Policy Conflicts

Policy conflicts in and of themselves, in the absence of adverse physical impacts, are not considered to have significant effects on the environment. Specifically, the Oakland General Plan states the following:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

Thus pursuant to CEQA, the fact that a specific project does not meet all of the General Plan goals, policies and objectives does not inherently result in a significant effect on the environment.

D. NEW INFORMATION IN THE FINAL EIR

If significant new information is added to an EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and re-circulate the EIR for further comments and consultation. (*Laurel Heights Improvement Association v. Regents of the University of California*, 6 Cal 4th 112, (1993)) None of the corrections or clarifications to the Draft EIR identified in this document constitutes significant new information pursuant to §15088.5 of the CEQA Guidelines. As a result, a Recirculation of the Draft EIR is not required.

Specifically, as required under CEQA Guidelines §15088.5, the new information, corrections or clarifications presented in this document do not disclose that:

⁴ Holland & Knight. *CEQA Update: Court of Appeal Concludes That the Environment's Effect on a Project Need Not Be Analyzed Under CEQA*. January 13, 2012. <http://www.hklaw.com/publications/ceqa-update-court-of-appeal-concludes-that-the-environments-effect-on-a-project-need-not-be-analyzed-under-ceqa-01-13-2012/>. Accessed January 18, 2012.

1. A new significant environmental impact would result from the project or from a new mitigation measure [or standard condition] proposed to be implemented.
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures [or standard conditions] are adopted that reduce the impact to a level of insignificance.
3. A feasible project alternative or mitigation measure [or standard condition] considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
4. The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Information presented in the Draft EIR and this document support the City's determination that recirculation of the Draft EIR is not required.

E. DOCUMENT ORGANIZATION

This RTC Document consists of the following chapters:

- *Chapter I: Introduction.* This chapter discusses the purpose and organization of this RTC Document and the Final EIR, and summarizes the environmental review process for the project.
- *Chapter II: List of Commenting Agencies, Organizations and Individuals.* This chapter contains a list of agencies, organizations, and persons who submitted written comments or spoke at the public hearing on the Draft EIR during the public review period.
- *Chapter III: Comments and Responses.* This chapter contains reproductions of all comment letters received on the Draft EIR as well as a summary of the comments provided at the public hearing. A written response for each CEQA-related comment received during the public review period is provided. Each response is keyed to the preceding comment.
- *Chapter IV: Text Revisions.* Corrections to the Draft EIR necessary in light of the comments received and responses provided, or necessary to amplify or clarify material in the Draft EIR, are contained in this chapter. Text with underline represents language that has been added to the Draft EIR; text with ~~strikeout~~ has been deleted from the Draft EIR. Revisions to figures are also provided, where appropriate.

II. LIST OF COMMENTING AGENCIES, ORGANIZATIONS AND INDIVIDUALS

This chapter presents a list of written and verbal comments received during the public review period and describes the organization of the letters, emails and public hearing comments that are included in Chapter III, Comments and Responses, of this document.

A. ORGANIZATION OF COMMENT LETTERS AND RESPONSES

Chapter III includes a reproduction of each letter received on the Draft EIR and a summary of comments made at the public hearing before the Planning Commission. The comments are grouped by the affiliation of the commenter, as follows: State, local and regional agencies (A); individuals (B); and the public hearing (C).

The comment letters are numbered consecutively following the A, B, and C designations. The letters are annotated in the margin according to the following code:

- State, Local and Regional Agencies: A#-#
- Individuals and Organizations: B#-#
- Public Hearing: C1-#

The letters are numbered and comments within that letter are numbered consecutively after the hyphen.

B. LIST OF AGENCIES, ORGANIZATIONS, AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

Each written comment submitted to the City during the public review period is listed in Table II-1. The comments are listed in order by the date of the correspondence.

TABLE II-I LIST OF AGENCIES, ORGANIZATIONS, AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

Reference Number	Commenter	Date
State, Local and Regional Agencies		
A1	State Clearinghouse, Scott Morgan, Director	December 11, 2012
A2	Department of Transportation, Erick Alm, AICP, District Branch Chief	December 10, 2012
A3	East Bay Municipal Utility District, William R. Kirkpatrick, Manager of Water Distribution Planning	December 10, 2012
A4	Alameda County Transportation Commission, Beth Walukas, Deputy Director of Planning	November 8, 2012
Individuals		
B1	Leila H. Moncharsh, representing Commercial & Retail Attraction & Development for the Laurel (CRADL) Attachment to Letter from Leila H. Moncharsh – Index of Submitted Documents as part of Comments to Draft EIR Attachment to Letter from Leila H. Moncharsh – Petra Pless, Pless Environmental, Inc. (Letter & Resume)	December 10, 2012
B2	Jeanette Benson	December 10, 2012
B3	Amy Dawson	December 10, 2012
B4	Thomas Wong	December 10, 2012
B5	Charles Pine	December 9, 2012
B6	Luan Stauss	December 9, 2012
B7	Maureen Dorsey	December 8, 2012
B8	Ruth Malone	December 7, 2012
B9	Alecto Caldwell	December 5, 2012
B10	B. Perez-Stable	December 5, 2012
B11	Dorothy Okamoto	December 4, 2012
B12	Rafael Landea	December 3, 2012
B13	C. Danford Cieloha	November 29, 2012
B14	Craig Cooper	November 20, 2012
B15	Ilene Wagner	November 6, 2012
B16	Michael McDonough	November 2, 2012
B17	Jean Komatsu	November 1, 2012
B18	Teresa Miller	October 31, 2012

TABLE II-I LIST OF AGENCIES, ORGANIZATIONS, AND INDIVIDUALS COMMENTING ON THE DRAFT EIR

Reference Number	Commenter	Date
Public Hearing		
C-1	Donald Hamilton	December 5, 2012
C-2	Tina Garcia Zito	December 5, 2012
C-3	Leila H. Moncharsh	December 5, 2012
C-4	Amy Dawson	December 5, 2012

Source: Urban Planning Partners, 2013; City of Oakland Planning and Zoning Division, 2012.

III. COMMENTS AND RESPONSES

This chapter includes copies of the written comments received by hand-delivered mail or electronic mail during the public review period on the Draft EIR. This chapter also includes comments made at the Public Hearing on the Draft EIR on December 5, 2012. Mail and electronic mail received during the public review period on the Draft EIR are provided in their entirety and summary of the comments made at the Public Hearing on the Draft EIR is also provided.

Each comment letter or email is immediately followed by responses keyed to the specific comments. The comments are grouped by affiliation of the commenting entity as follows: State, local, and regional agencies (A); individuals (B); and public hearing comments (C).

Responses specifically focus on comments that pertain to the adequacy of the analysis in the Draft EIR or other aspects pertinent to the environmental analysis of the proposed project pursuant to CEQA. Comments that address topics beyond the purview of the Draft EIR or CEQA are noted as such for the public record. Where comments and/or responses have warranted changes to the text of the Draft EIR, these changes appear as part of the specific response and are repeated in Chapter IV Text Revisions, where they are listed generally in order of where the original text appeared in the Draft EIR document.

A. STATE, LOCAL AND REGIONAL AGENCIES



Edmund G. Brown Jr.,
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

December 11, 2012

Lynn Warner
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Subject: High & MacArthur Mixed Use Project
SCH#: 2011052049

Dear Lynn Warner:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 10, 2012, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

Document Details Report State Clearinghouse Data Base

SCH# 2011052049
Project Title High & MacArthur Mixed Use Project
Lead Agency Oakland, City of

Type EIR Draft EIR

Description Construct a new mixed use development containing 115 senior apartments, ~3,446 sf of ground floor commercial space, and 65 parking spaces.
 The City prepared and circulated an IS that identified areas of probable environmental effects and screened out environmental factors that will not be further studied in the DEIR. The factors not further studied in the DEIR include: agricultural resources, biological resources, cultural resources, geology and soils, hydrology and water quality, land use and planning, mineral resources, population and housing, public services, recreation and utilities and service systems.

Lead Agency Contact

Name Lynn Warner
Agency City of Oakland
Phone (510) 238-6983 **Fax**
email
Address 250 Frank H. Ogawa Plaza, Suite 3315
City Oakland **State** CA **Zip** 94612

Project Location

County Alameda
City Oakland
Region
Lat / Long 37° 47' 13.0" N / 122° 11' 41.5" W
Cross Streets High Street & MacArthur Boulevard
Parcel No. 030-1982-121, 122, & 123
Township **Range** **Section** **Base**

Proximity to:

Highways I-580
Airports
Railways
Waterways
Schools
Land Use C-30 District thoroughfare Comm.; S-4 Design Review Combining; C-31 Special Retail Comm./Neighborhood Center Mixed Use.

Project Issues Air Quality; Noise; Toxic/Hazardous; Traffic/Circulation; Cumulative Effects

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 3; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Regional Water Quality Control Board, Region 2; Department of Toxic Substances Control; Native American Heritage Commission

Date Received 10/26/2012 **Start of Review** 10/26/2012 **End of Review** 12/10/2012

Letter A1

State Clearinghouse

Scott Morgan, Director

December 11, 2012

Response A1-1: This is a transmittal letter of agency comments received by the State Clearinghouse; no further response is necessary. Responses to comments submitted by the respective agencies are included in subsequent responses.

Sent By: CALTRANS TRANSPORTATION PLANNING; 510 286 5560;
To: STATECLEARINGHOUSE At: 919163233018

Dec-10-12 4:45PM;

Page 1/1

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN JR., Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 711



*Flex your power!
Be energy efficient!*

RECEIVED

DEC 10 2012

STATE CLEARING HOUSE

ALAS80858

ALA-580-R40.21

SCH#2011052049

December 10, 2012

Ms. Lynn Warner
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Dear Ms. Warner:

High and MacArthur Mixed-Use Project – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the High and MacArthur Mixed-Use Project. The following comments are based on the Draft Environmental Impact Report.

Impacts to State Facilities

The transportation section of the DEIR only analyzed transportation impacts at the MacArthur Boulevard/High Street intersection. From Table IV.D-3 on page 194, the DEIR indicates that the proposed project will generate 501 daily trips. Due to the large number of trips generated in close proximity to State facilities, please analyze impacts to on and off-ramps at Interstate (I-) 580 at High Street.

Please indicate allowable movements for the proposed loading area on MacArthur Boulevard in Figure 4d-3. The proposed driveway appears to be immediately across the I-580 on-ramp and may impact its operation. As a result, Caltrans recommends that the proposed driveway shall be right turn in and right turn out movements only.

Should you have any questions regarding this letter, please call Yatman Kwan of my staff at (510) 622-1670.

Sincerely,

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

"Caltrans improves mobility across California"

A2-1

A2-2

A2-3

Letter A2

Department of Transportation,
Erick Alm, AICP, District Branch Chief
December 10, 2012

Response A2-1: This introductory comment does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.

Response A2-2: The daily trip generation for the proposed project would be just over 500 trips, but because the project would be an age-restricted senior housing project, the majority of trips would occur outside the peak hours resulting in no more than 5 peak hour trips being added to either ramp at I-580 and High Street. (Detailed discussion regarding senior housing trip generation is contained on Page 198 of the Draft EIR.) Given that both ramps are operating at LOS D or better, no further analysis of either ramps was required per Caltrans' December 2002 *Guide for the Preparation of Traffic Impact Studies*. Given this information and the characteristics of senior housing, Yatman Kwan of Caltrans concurred that an analysis of impacts to the ramps would not be warranted.¹

Page 203 of the Draft EIR is revised to include the following recommendation to be imposed as a condition of project approval:

Recommendation TRANS-1: In consultation with City of Oakland staff, consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management (TDM) plan required by SCA TRANS-1. If considered feasible, implement the City-approved shuttle service.

Response A2-3: Page 204 of the Draft EIR is revised to include the following recommendation to be imposed as a condition of project approval:

Recommendation TRANS-2: Limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and prohibit deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone.

¹ Email communication between Yatman Kwan from Caltrans and Urban Planning Partners. February 6, 2013.



December 10, 2012

Lynn Warner, Planner III
City of Oakland
Community and Economic Development
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Notice of Availability of a Draft Environmental Impact Report for High and
MacArthur Mixed Use Project - Oakland

Dear Ms. Warner:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the High and MacArthur Mixed Use Project (Project) located in the City of Oakland. EBMUD's comments regarding Water Service and Water Conservation in EBMUD's response to the Notice of Preparation of a Draft EIR for the Project, dated June 13, 2011 (enclosed), still apply to the Project.

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning at (510) 287-1365.

Sincerely,

A handwritten signature in blue ink, appearing to read 'WRK', followed by a stylized flourish.

William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:CMN:sb
sb12_242.doc

Enclosure

cc: Alexis Gevorgian
AMG and Associates, LLC
16633 Ventura Boulevard, Suite 1014
Encino, CA 91436

A3-1



June 13, 2011

Lynn Warner, Planner III
City of Oakland
Community and Economic Development
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Notice of Preparation of a Draft Environmental Impact Report for the
High and MacArthur Mixed Use Project, Oakland

Dear Ms. Warner:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the High and MacArthur Mixed Use Project located in the City of Oakland (City). EBMUD has the following comments.

A3-2

WATER SERVICE

EBMUD's 39th Avenue Pressure Zone, with a service elevation between 200 and 325 feet, will serve the proposed development. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the proposed development. Engineering and installation of new services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

The project sponsor should be aware that EBMUD will not inspect, install or maintain pipeline or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may pose a health and safety risk to construction or maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install pipeline or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. Applicants for EBMUD services requiring excavation in contaminated areas must submit to EBMUD copies of existing information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and/or groundwater.

A3-3

Lynn Warner, Planner III
June 13, 2011
Page 2

EBMUD will not design the installation of pipelines or services until soil and groundwater quality data and remediation plan are received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation or EBMUD may perform such sampling and analysis at the applicant's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

A3-3
cont.

WATER CONSERVATION

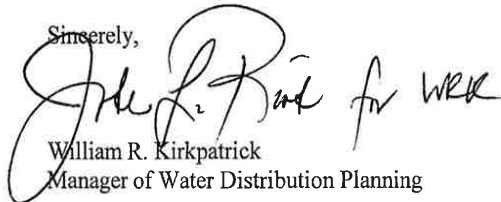
The proposed project presents an opportunity to incorporate water conservation measures. EBMUD would request that the City include in its conditions of approval a requirement that the project sponsor comply with the California Model Water Efficient Landscape Ordinance (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsors' expense.

A3-4

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning at (510) 287-1365.

A3-5

Sincerely,



William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:AMW:sb
sb11_090.doc

cc.: Alexis Gevorgian
AMG and Associates, LLC
16633 Ventura Blvd., Suite 1014
Encino, CA 91436

Letter A3

East Bay Municipal Utility District

William R. Kirkpatrick, Manager of Water Distribution Planning

December 10, 2012

Response A3-1: This comment references an enclosed letter and responses to those comments are presented in subsequent responses; no further response to this comment is necessary.

Response A3-2: This introductory comment does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.

Response A3-3: This comment regarding water service does not relate to the adequacy of the Draft EIR. As noted in SCA UTIL-1, the applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers. Management of hazardous materials in soil and groundwater during construction activities are regulated by federal, State, and local laws and regulations. Additionally, SCA HAZ-1 through HAZ-6 require assessment, remedial actions, and utilization of best management practices (BMPs) during cleanup activities.

Response A3-4: This comment regarding water conservation does not relate to the adequacy of the EIR. The City of Oakland, as a General Condition of Approval for all projects, requires, prior to issuance of a demolition, grading, P-job, or other construction related permits, compliance with all other applicable federal, State, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency.

Response A3-5: This closing comment does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.



1333 Broadway, Suites 220 & 300

Oakland, CA 94612

PH: (510) 208-7400

www.AlamedaCTC.org

November 8, 2012

Lynn Warner
Planner III
City of Oakland
Department of Planning, Building, and Neighborhood Preservation
250 Frank H. Ogawa Plaza Suite 3315
Oakland, CA 94612

Dear Ms. Warner,

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the High and MacArthur Mixed Use Project. The project site is approximately 0.93 acres comprised of 3 parcels at the southwest corner of the High Street and MacArthur Boulevard intersection. The proposed project consists of a five-story mixed use senior housing development with 115 one-bedroom senior apartments, approximately 3,446 square feet of ground floor commercial space, and 65 parking spaces. The project would generate an estimated 35 p.m. peak hour trips.

A4-1

We have reviewed the Initial Study and determined that the proposed project will not generate 100 p.m. peak hour vehicle trips in excess of the existing land uses at the project site. This project is therefore exempt from conformance with the Tier I Land Use Analysis Program of the Congestion Management Program.

A4-2

Please do not hesitate to contact me at 510.208.7405 if you require additional information.

Sincerely,

A handwritten signature in blue ink that reads "Beth Walukas".

Beth Walukas
Deputy Director of Planning

Cc: Matthew Bomberg, Assistant Transportation Planner

File: CMP – Environmental Review Opinions – Responses - 2012

Letter A4

Alameda County Transportation Commission

Beth Walukas, Deputy Director of Planning

November 8, 2012

Response A4-1: This introductory comment does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.

Response A4-2: This comment supports the adequacy of the Draft EIR in regards to traffic analysis per the Alameda County Congestion Management Program; no further response to this comment is necessary.

B. INDIVIDUALS

Warner, Lynn

From: Leila H. Moncharsh [101550@msn.com]
Sent: Monday, December 10, 2012 4:20 PM
To: Warner, Lynn
Subject: RE: Comment letter re AMG & Index

We dropped off hard copies of all our submitted documents, the two Pless documents (letter and resume), the Index of the submitted documents in chronological order, and my comment letter. Heather Klein accepted the documents (in a box) from Maureen Dorsey about an hour or so ago.

If you would still like a pdf. version of my comment letter, as well as the hard copy already delivered, let me know. I am not at the office and my letter is on the office computer, but I can send a pdf. version to you in the morning.

Leila

Subject: RE: Comment letter re AMG & Index
Date: Mon, 10 Dec 2012 14:02:49 -0800
From: LWarner@oaklandnet.com
To: 101550@msn.com

Dear Leila,

I have an old version of Word (2003) and cannot open this file. Could you please resend it, perhaps in a PDF?

Thanks,

Lynn

From: Leila H. Moncharsh [mailto:101550@msn.com]
Sent: Monday, December 10, 2012 1:25 PM
To: Warner, Lynn
Subject: Comment letter re AMG & Index

Dear Lynn,

Please find attached my comment letter to the Draft EIR for the AMG Project (High & MacArthur Mixed Use Project). Also attached is an index of documents that I am submitting as part of my comments to the DEIR. Please acknowledge receipt of these two documents. The documents referenced in the Index will be delivered to your office today in hard copy format.

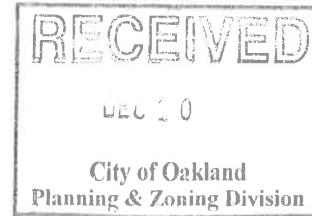
Thanks, Leila

B1-1

DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

December 10, 2012



Ms. Lynn Warner
Planner III, City of Oakland
Dept. of Planning, Building
Suite 3315
250 Frank H. Ogawa Plaza
Oakland, CA 94612

RE: AMG Project – CMD10-312; ER10-0001

Dear Ms. Warner:

I represent Commercial & Retail Attraction & Development for the Laurel (CRADL), comprised of concerned Laurel merchants and residents, and Citizens4Oakland, comprised of Oakland citizens, concerned about impacts of city-wide concern due to the proposed project. We are submitting numerous documents as part of our comments in response to the draft EIR (DEIR). We have indexed the documents we are submitting as part of our comments to this EIR and are providing a copy of that index. These documents were in the city file, but apparently never reviewed by the EIR preparer, based upon our review of the DEIR.

B1-2

This is our comment letter discussing legal issues we are raising concerning the DEIR, which is legally inadequate, based on erroneous data, and fails to provide meaningful mitigations for the proposed project's impacts. Before reviewing the individual impact sections, we discuss the improper use of tiering to get around mitigating the obvious environmental impacts associated with this project.

I. THE TOTAL RELIANCE ON STANDARD CONDITIONS OF APPROVAL FROM A 2010 HOUSING ELEMENT UPDATE EIR WAS LEGALLY IMPERMISSIBLE UNDER THE CIRCUMSTANCES OF THIS PROJECT

A. While Courts Encourage Cities to Avoid Duplicative EIRs, They Do Not Encourage Using Earlier EIRs to Avoid Adequately Evaluating Project-Specific Environmental Impacts and Mitigating Them

B1-3

The draft EIR for the AMG project relied on tiering, described in Public Resources Code §§ 21903, 21094 and on a statutory partial exemption under PRC § 21083.3. None of these sections allow the city to jump from a very general EIR for a housing element General Plan update to using standard conditions of approval (SCAs) as mitigations for the proposed project. Courts encourage tiering from General Plan EIRs, only to the extent that the project specific EIR does not repeat the same information and analysis contained in the General Plan EIR.

Ms. Lynn Warner
Planner III, City of Oakland
Suite 3315
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Re: AMG Project
December 10, 2010
2 | P a g e

“CEQA directs agencies to ‘tier’ EIR’s whenever feasible, in part to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s. (PRC § 21093; *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307.) PRC § 21068.5 defines ‘tiering’ as the ‘coverage of general matters and environmental effects in an [EIR] prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIR’s] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR].’ (See CEQA Guidelines § 15153, italics added.)

For example, an EIR for a General Plan normally will discuss topics, such as the impact on traffic congestion from increasing construction throughout a city during the next 10 years. The analysis might cover which intersections can be expected to become more congested and provide mitigations designed to address that congestion. If later on a project applicant seeks to construct, say, a hotel that might add to the congestion of nearby intersections, already discussed in the General Plan EIR, the city can rely on, (i.e., “tier” off) that General Plan EIR for mitigations or SCAs to address the increased congestion. The city does not have to require a new EIR that would repeat the same analysis and mitigations for the project impact of adding congestion to a nearby intersection.

If the hotel project, however, potentially created traffic hazards due to the configuration of the exits from the proposed hotel, that impact would be “project-specific” and not covered by the General Plan discussion of general congestion at an intersection near the hotel. In that event, the city should require an EIR to analyze the impacts to traffic caused by the exits and mitigations to prevent traffic hazards. If the hotel project potentially contributed to congestion at nearby intersections *and* potentially created traffic hazards due to the configuration of its exits, the city would do both in a project-specific EIR - tier off the General Plan EIR in addressing the increased congestion and analyze the project-specific impact due to the configuration of the exits. The EIR for the hotel would not have to include a repetition of the analysis, contained in the General Plan EIR, regarding traffic congestion at nearby intersections.

A statutory partial exemption from CEQA review can also avoid repetitive EIRs. However, the proposed project here does not qualify for the partial exemption claimed by the city.

B1-3
cont.

Ms. Lynn Warner
 Planner III, City of Oakland
 Suite 3315
 250 Frank H. Ogawa Plaza
 Oakland, CA 94612
 Re: AMG Project
 December 10, 2010
 3 | Page

B. The Statutory Partial Exemption Does Not Apply

Guideline § 15183 applies to “various special circumstances [where] CEQA offers partial or conditional exemptions which operate much like ‘piggy-backing.’ [This] partial exemption applies to a residential development project that is consistent with a general plan for which an EIR has been certified.” (*Gentry v. City of Murrieta* (1995) 38 Cal.App.4th 1359, 1374.)

This Guideline requires the city to limit its environmental examination to impacts that:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, **or**
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the [General Pla] EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

Under all four tests, the statutory exemption does not apply.

(1) There are Impacts Peculiar to the Proposed Project or the Parcel Upon Which it Would Exist

The General Plan housing element EIR that was certified by the city in 2010 will not apply to the proposed project if CRADL presents a fair argument that there is a “reasonably foreseeable *project-specific* significant change in the environment that is *peculiar* to the [project] or its site.” (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 288.) “Peculiar” is defined as “a physical change in the environment [that] belongs exclusively or especially” to the project or its site. (*Id.* at pg. 294.) The effects of the environmental change peculiar to the project can occur directly or indirectly, but they must be reasonably foreseeable and not speculative. (*Id.* at p. 288.)

B1-4

Ms. Lynn Warner
Planner III, City of Oakland
Suite 3315
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Re: AMG Project
December 10, 2010
4 | P a g e

Here, CRADL's expert environmentalist, Dr. Pless, has opined that there are reasonably foreseeable impacts from the hazardous materials that have not been cleaned from the site. She also opined that the SCAs offered by the city are nothing more than "canned" generalizations, having nothing to do with mitigating those impacts. During the first round of hearings regarding the identical project, CRADL's other experts also wrote about impacts, specific to the project that were not discussed in the EIR for the housing element update. We have resubmitted those expert reports.

(2) The Policies Cited by the EIR are Very General and Do Not Address the Specific Project impacts.

Staff apparently is relying on Guideline § 15183 (f), which states in part:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR . . .

There are three reasons why this subsection (f) does not apply: First, there is substantial new information from CRADL's expert environmentalist and its other experts that these policies and SCAs do not mitigate the impacts that they found related to the project and its site.

Second, almost all of the policies and SCAs are so general as to be basically irrelevant to the proposed project or its impacts. Third, and very significantly, the city has failed to identify any specific mitigations based on its references and incorporate them into an MMRP. We will discuss *post* this important failing.

(3) The Impacts Identified by CRADL's Experts Include Potentially Significant Off-site Impacts and On-site Impacts that Were Not Addressed in the 2010 Housing Element Update EIR

B1-4
cont.

Ms. Lynn Warner
Planner III, City of Oakland
Suite 3315
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Re: AMG Project
December 10, 2010
5 | Page

It is not sufficient for the 2010 EIR to just list pending or possible projects and then announce that anything the 2010 EIR concludes can then be applied to the instant project. There are no indications that the expert reports that were extant for the instant project, from either the developer or from the community were even reviewed and discussed in the 2010 housing element update EIR.

**(4) Significant Impacts Identified Here Have a More Severe
Adverse Impact than Discussed in the 2010 EIR**

At the time of the 2010 EIR, nobody realized, and the 2010 EIR does not mention, that the property owners and developers were completely non-compliant with the governmental agencies charged with supervising the cleanup of the site. Nor is there any mention in the 2010 EIR as to what, exactly needs to be done to identify the source of the pollution at the project site. The 2010 EIR simply states that the city's policy is to remove leaking gas tanks! That is insufficient to meet CEQA's informational requirements for the public and decision makers.

**C. The City Overlooked Its Legal Obligation to Provide a MMRP for
the Proposed Project**

The city acknowledged in its Initial Study that there were substantial environmental impacts. Instead of identifying specific, feasible mitigations, the city essentially threw into the project EIR a bunch of policies and SCAs. The EIR overlooks the informational function of CEQA, which requires the city to specifically identify the potential mitigations and impose them through a Mitigations Monitoring Reporting Program.

PRC § 21083.3, relied upon by the city to avoid obtaining a complete EIR, specifically states that to rely upon this section, the city must "undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report or, if not, then the provisions of this section have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken." (PRC §§ 21083.3 (c) and 21081.6, subd. (a)(1), and Guideline § 15283 (e) (1 and 2).)

As the planner assigned to the AMG project pointed out, gleefully, "There are no mitigations in this EIR!"

B1-4
cont.

B1-5

Ms. Lynn Warner
Planner III, City of Oakland
Suite 3315
250 Frank H. Ogawa Plaza
Oakland, CA 94612
Re: AMG Project
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II. THE EIR'S USE OF "TIERING" DID NOT RELIEVE THE CITY OF THE REQUIREMENT TO MITIGATE THE SIGNIFICANT IMPACTS OF THE PROJECT.

A. The City Could Not Tier Off the 2010 EIR Without Also Analyzing And Mitigating Project Specific Impacts

As the California Supreme Court explained:

Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases. For example, to evaluate or formulate mitigation for "site specific effects such as aesthetics or parking" (*id.*, § 15152) it may be impractical when an entire large project is first approved; under some circumstances analysis of such impacts might be deferred to a later tier EIR.

(*Vineyard Area Citizens for Responsible Growth* (2007) 40 Cal.4th 412, 431.)

The city chose to tier from its EIR prepared for its 2010 Housing Element Update. Admittedly, that EIR did not discuss Hazardous Materials or Aesthetics (including the scenic highway designation) and as to those two issues, the EIR for the AMG project should not tier and rely on the 2010 EIR. (See, EIR, p. 60, first paragraph.) There was no opportunity for public comment for the 2010 EIR regarding Hazardous Material or Aesthetics, one of CEQA's requirements. A city cannot legally just produce an EIR for a General Plan, decide not to include two topics based on its initial study, and then later use that EIR as a basis for avoiding analyzing and mitigating impacts as to those two topics.

The city seeks to tier off its 2010 EIR as to air quality and traffic. The EIR misleads the reader, however, by the statement that "... the Housing Element EIR provided CEQA clearance for new residential projects that are consistent with the Housing Element and EIR, such as the proposed project." (EIR, p. 60.) The Housing Element EIR did no such thing. It only allowed, at most, the city to limit its EIR analysis to Aesthetics and Hazardous Materials since those impacts were NOT covered in the 2010 EIR. As to these two issues, the city was required to mitigate any significant impacts to the environment. As to Air Quality and Traffic, the city was still required to either incorporate the mitigations from the 2010 EIR or analyze and mitigate the mitigations in the current EIR. PRC §21094 states, in part:

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(a) (1) If a prior environmental impact report has been prepared and certified for a . . . [general] plan, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(A) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) Examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

PRC § 21081(a) (1) states:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

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Instead, the city merely copied boilerplate SCAs from the 2010 EIR for the Housing Element update into the current EIR. To the extent that SCAs are being used as mitigations, they need to be identified and enforced as such.

Furthermore, the city overlooked the significance of the Initial Studies for the 2010 EIR and the current draft EIR. "Section 21094 states the procedure to be followed for tiered EIR's. Subdivision (a) provides in pertinent part: Where a prior [EIR] has been prepared and certified for a program [or] plan, ... the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered [EIR], except that the report on the later project need not examine those effects which the lead agency determines were... examined at a sufficient level of detail in the prior [EIR].... Subdivision (c) provides: 'For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project *may cause significant effects on the environment* that were not examined in the prior [EIR].'" (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318-1319.)

In other words, the city first had to analyze in its Initial Study for the AMG project whether it poses significant impacts on the environment that were not evaluated in the 2010 EIR (i.e., Hazardous Materials and Traffic). Then, it had to apply the mitigations listed in the 2010 EIR to the AMG project through mitigation measures, changes to the project, or conditions of approval as to the topics that allegedly did cover project impacts (i.e., Air Quality and Traffic). As to Aesthetics and Hazardous Materials, which were NOT covered in the 2010 Housing Element EIR, and which the Initial Study for the project listed as potentially significant, the EIR had to analyze those impacts, independent of the 2010 EIR for the Housing Element.

Instead, the AMG EIR mentions a bunch of SCAs for all four topics. These SCAs do nothing to mitigate the substantial impacts described in the AMG project's Initial Study and in many cases, are not even relevant to reducing those impacts.

B. Aesthetics

The 2010 EIR did not discuss scenic highways and instead referred the reader to the Initial Study for that EIR, which stated there would need to be an independent CEQA review for each project near the freeway. The Initial Study for the Housing Element Update also referenced the many extant general plan policies designed to preserve the highway 580 scenic corridor. (See, 2010 EIR, pg. 3.1-5, and 2010 Initial Study pp. 26-29.)

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The current Initial Study acknowledges that the AMG project will likely have a substantial adverse effect on a scenic vista, substantially damage scenic resources including a state designated scenic highway, and substantially degrade the existing visual character or quality of the site and its surroundings. It concludes that:

The project site is located immediately adjacent to I-580, which is a State designated Scenic Highway from the I-980/CA-24 interchange in Oakland to the Oakland/San Leandro border; it is also designated as a Scenic Highway in the Scenic Highways Element of the General Plan. I-580 has won several awards for landscaping in this section of Oakland and is known for its spectacular views of the San Francisco Bay, San Francisco, and Oakland. The site is visible from I-580, and construction of the proposed five-story structure may impact these publicly-accessible views. The proposed project may result in a potentially significant impact to scenic vistas. This topic will be fully analyzed in the EIR.

Development on the project site would result in changes to the visual character and quality of the site and its surroundings. The proposed building height is taller than most buildings in the area and the community has raised concerns regarding the building height. The proposed project's potential impacts to visual character will be analyzed in the EIR. (Initial Study for AMG Project, pp.11-13.)

The proposed project EIR contains photos showing what the scenic vista looks like now and what it will look like after the project is constructed. Sure enough, the building's height and mass is right in the scenic viewshed from the freeway to the hills. There is no other building even remotely close to the height of this one in that viewshed or anywhere near it. We next expect to read how this EIR plans to mitigate the impact to the scenic highway designation and the vista that it is blocking. Instead, the EIR goes off into a ditch by improperly relying on the 2010 Housing Element EIR and stating:

However, the Housing Element Initial Study determined that compliance with existing General Plan policies, Municipal Code standards, and Standard Conditions of Approval would ensure that potential impacts to aesthetic resources would be less than significant. The Initial Study also concluded that impacts to the aesthetic resources would be less than significant because each specific development project would be reviewed individually. No significant aesthetic impacts were identified and no mitigation measures were required.

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In fact, the Initial Study explained that development under the Housing Element would not damage the scenic highway designation **IF** the city required “Compliance with the *LUTE* policies, *OSCAR Element* policies, and Scenic Highway Element policies, and Chapter 15.52 of the Municipal Code [which] would reduce scenic view and vista impacts to less than significant.” The Initial Study set forth the exact requirements for avoiding damage to the vistas, one of which was to not build in the viewshed to begin with. (The 2010 EIR did not analyze aesthetics, based on the Initial Study findings (2010 EIR, p. S-6).)

The 2010 Initial Study goes on to specifically discuss the scenic highway designation and adds that there needs to be CEQA review of each development. It mentions two specific general plan policies in the general plan that are directed at the 580 freeway. They provide that visual intrusions within the scenic corridor should be removed, converted, buffered, or screened from the motorist’s view. Also, “New construction within the scenic corridor should demonstrate architectural merit and a harmonious relationship with the surrounding landscape.” (See, 2010 Initial Study, pp. 26-29.)

Instead of informing the decision makers and public about the very important policies that are listed in the Housing Element Initial Study, on pages 86-89, the EIR drowns the reader under a ton of irrelevant policies including items such as reducing the costs of development, the development of parking, street tree selection, design of street signs, and public art requirements. Then, instead of proposing mitigations for a project that is obviously in the viewshed where it does not belong, the EIR recommends standard conditions of approval for landscaping without any requirement that the landscaping even buffer the motorists’ view of the building.

There is no discussion in the EIR regarding the project’s inconsistency with the controlling policies listed in the Housing Element Initial Study. Instead, the EIR ridiculously concludes that it does not matter whether the project blocks views to the hillsides because people all drive so fast on the freeway, nobody will notice the intrusion into the viewshed anyway. (EIR, p. 96-97.)

Further on page 97, there is a claim by the planner, based on a hearsay discussion with a CalTrans employee, that the freeway would not receive the scenic highway designation today, if the city applied for it. The implication appears to be speculative that the designation has somehow gone away, so why bother following the General Plan policies to preserve it?! This statement in the EIR does not conform with CEQA’s requirement for accuracy. “Argument, speculation, unsubstantiated opinion or narrative,

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or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support[ed] by facts." (Guidelines, § 15064, subd. (f) (5).)

When the project was considered previously in 2008, the community submitted to the city a great deal of information about the scenic highway designation, including a letter from the CalTrans Scenic Highway Coordinator, Mr. Walker. In 2007, he commented on the status of the Highway 580 scenic designation and warned that while this project, alone, would not cost the city this important designation, it was a nail in the coffin, given its height and mass. He explained that the designation was "fragile" given the circumstances of Oakland's lack of protection for it.

Also submitted were documents demonstrating Oakland's historical commitment to preserving the scenic highway designation and the city's reasons. Today, the reasons for preserving the viewshed and the scenic highway designation include the state prohibitions against heavy trucks on 580, prohibitions against overhead utilities without a CPUC exception, and prohibitions against all outdoor advertising visible from the freeway. There is also a CalTrans website that describes why cities value the designation. The documents included a history of the 580 designation, including how it benefited the city. The designation is still intact today and there is no documentation or reason to believe or even suspect that CalTrans is about to remove it. Nor is there any reason stated in the EIR to think that the city would not fight de-designating the freeway.

The EIR preparer should have reviewed the prior document submission. (These documents are being re-submitted to the city by the community.) Further, if the planner believed that the designation had been removed or was about to be removed, then the EIR should have discussed the environmental impacts to aesthetics from its removal, including the potential for heavy trucks returning to 580, overhead utilities, and proliferation of billboards.

C. Hazardous Materials

This topic also was not covered in the 2010 EIR because the Initial Study found that the SCAs would reduce the above list of impacts to below a level of significance. (2010 EIR, p. S-6.) On page 113-114 of the Initial Study for the 2010 Housing Element Update, the author said that the presence of a site on the Cortese List does not preclude development, but does require adequate CEQA review to make sure that the hazardous materials do not present a danger to the public. Also, there is a discussion about the

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importance of obtaining Phase II evaluations when there is evidence after Phase I that hazardous waste may exist at the site.

The Initial Study for the AMG project concluded that the proposed project presented a significant hazard to the public or the environment due to disposal of hazardous materials, emitting hazardous emissions or acutely hazardous materials, and was located on the Cortese List of hazardous waste sites. As to the leaking underground gas tanks, the Initial Study concluded: "The project site was previously used by PG&E as a service yard and for an auto repair shop; as a result, it is included on the California Environmental Protection Agency's list of leaking underground storage tank sites. An analysis of potential hazard and hazardous materials impacts and relevant mitigation measures will be included in the EIR." (Initial Study for AMG project, pp. 34-36.)

The EIR incorporates SCAs from the 2010 Housing Element Initial Study, but overlooked the Initial Study's comment about the need for analysis on a "project-by-project basis." Just listing a bit of history about the site is not sufficient for that analysis. It also overlooked the discussion in the 2010 Initial Study about obtaining Phase II results when analyzing the proper way to remedy the hazardous waste site.

In her letter, Dr. Pless, an environmental expert, emphasized the need for the city to obtain Phase II results and for the EIR to discuss those results. The EIR should also provide a mitigation plan before the final EIR is certified. Instead, the EIR defers the analysis of where the gas is leaking from, what contaminants still remain on the site, and the clean-up mitigations to a future, unknown date.

It is improper for the EIR to defer to another agency or someone in the future to figure out where the leaking tanks are located and what should be done about the hazardous plume that they are creating below the project site. Many of the SCAs are nothing more than promises that a city employee or another agency will look at something before the project is built out. None of these efforts to get around the informational requirements can legally succeed. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the First District Court of Appeal rejected putting off CEQA review to another day:

By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. . . [T]he Supreme Court approved the principle that the environmental impact should be assessed as early as possible in government planning. Environmental problems

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should be considered at a point in the planning process where genuine flexibility remains. A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Cites.]

(*Id.* at p. 307.)

Similarly, CEQA does not allow deferral of analysis and mitigation, even when the city is relying on a prior General Plan EIR. “[T]iering is not a device for deferring the identification of significant environmental impacts. . . . While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built. (*Vineyard* 40 Cal.4th 412, 429.) “Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” (Cal. Code Regs., tit. 14, § 15152, subd. (b).)

Dr. Pless provided examples of EIRs where cities obtained sufficient information, following Phase II, so that the decision makers could decide whether to grant permits after the EIRs informed them as to the exact nature of the hazardous waste and a plan for remedying it. The EIR for the proposed project does not even indicate whether the site can be adequately cleaned or whether it can be cleaned to residential standards. These are important considerations for the decision makers before they grant permits for the project.

The EIR also does not discuss the feasibility of using conditions of approval for this project given: 1. The developer’s and former owners’ long history of non-compliance with governmental agencies legally charged with testing and cleaning the site of hazardous material; and 2. The problem with the ownership status of the property. The community has previously submitted volumes of records from agencies attempting to get cooperation from the prior owners and their developer without success. They are now resubmitting those documents with a copy of the recent lawsuit in which there is a request of the court to set aside the current deeds, which now have AMG as the owner of the property. If that occurs, there is no reason to believe that the former owners will agree, or follow, any of these proposed SCAs. There is no reason to think AMG will follow them either, given the number of years that there has been no compliance.

D. Air Quality

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The 2010 EIR for the Housing Element did analyze Air Quality and concluded:

While not legally required by CEQA, the DEIR, in each relevant chapter, also addresses significant unavoidable impacts at the project-level; that is, impacts which might result from *specific* housing development projects, such as:

- ☐ *Transportation*: identified roadway segments impacts, previously identified impacted intersections, at-grade railroad crossings impacts, and identified State Highway impacts; and
- ☐ *Air Quality*: gaseous Toxic Air Contaminants (TACs) and odor impacts.

Although certain future housing projects would be required to perform additional studies and must follow the feasible recommendations resulting from such studies, no further CEQA review would be required for above identified project-level impacts, as such impacts have already been identified as significant [and] unavoidable.

Despite the finding in the 2010 of significant and unavoidable air quality impacts for housing development between 2007 and 2014, the city chose to obtain a project level EIR analysis of air quality impacts. The construction impacts on air quality fall within CEQA. However, the placement of seniors, who are sensitive receptors, next to the freeway and two major arterials (i.e., next to the air pollution from gasoline emissions) does not legally fall within CEQA, according to current case law. Regardless, the EIR's analysis of air quality is chock full of errors, according to the analysis of its data by Dr. Pless. In her letter, she painstakingly goes through the data and the modeling that was performed, demonstrating those errors.

A major public controversy regarding the proposed project has consistently been the callousness of placing seniors next to three major sources of air pollution from the 580 freeway on one side of the triangular shaped project site, and next to High St. and MacArthur Blvd. on the other two sides. All three of these roadways carry very high levels of traffic. The project proponent has responded with an equally callous suggestion that he will install filtration devices and air conditioning units. Thus, the solution has been to hermetically seal the seniors inside the building, since the minute they open any windows, they will be exposed to admittedly high levels of air pollutants.

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Dr. Ankunding, an anesthesiologist, and citizens with experience caring for elderly people wrote comment letters, during the last review of this project, explaining that seniors are much more sensitive and at risk for pneumonia and other ailments if placed in an environment with excessive air pollution. Many citizens excoriated the city for even considering placing seniors within 65 feet of the freeway. The community is again submitting these same documents in response to the project EIR.

The EIR attempted to downplay the significance of the air quality impacts on the senior tenants. The EIR cannot manipulate the data for the purpose of “selling” the decision makers on the project. Having done so, it has put the entire EIR in question as to its validity. Under very similar circumstances, the First District Court of Appeal soundly rejected such tactics in another air quality case:

Much information of vital interest to the decision makers and to the public pertaining to toxic air contamination was simply omitted. In other instances, the information provided was either incomplete or misleading . . . These violations of CEQA constitute an abuse of discretion. The Port must meaningfully attempt to quantify the amount of mobile-source emissions that would be emitted from normal operations conducted as part of the ADP, and whether these emissions will result in any significant health impacts. If so, the EIR must discuss what mitigation measures are necessary to ensure the project's conformance with all applicable laws, ordinances, standards, and regulations related to public health protection.

(*Berkeley KeepJets Over The Bay Comm. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1371.)

E. Traffic

The 2010 EIR for the Housing Element Update considered traffic impacts from generally increasing housing in Oakland from 2007 to 2014. However, it did not address project-specific traffic impacts. The EIR for the proposed project has failed to discuss the environmental impacts that were raised by Traffic Engineer Brohard and residents during prior consideration of the proposed project in 2008. The community is resubmitting those documents.

For example, the EIR failed to consider the Initial Study item: Will the project substantially increase traffic hazards due to motor vehicles, bicycles, or pedestrians due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? The LOS of F for the intersection of High and MacArthur is

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indicative that it carries a great deal of traffic. Traffic Engineer Brohard explained that since the seniors would generally not have cars, they would need to cross this major intersection to access groceries and other necessities. The signal lights needed to be timed to allow seniors with walking assists to get across the very wide crosswalks safely and without causing traffic accidents from changing lights preceding their safely making their way through the crosswalks.

The mitigation proposed by the developer was that there would be a shuttle service, paid for by the developer, to shuttle the seniors safely across the street and to shopping. The issue then became how many times a day the shuttle would run – the community sought four times a day and the planner would only recommend two times per day. In the current EIR, there is no discussion of the shuttle or the safety issue. Instead, it contains Oakland’s standard boilerplate provision for a traffic design management plan that considers topics, completely unrelated to seniors such as a bicycle management plan to reduce daily traffic congestion, valet parking services to avoid over-crowding the parking lot, etc.

Another problem discussed in 2008 was that the traffic study contained misinformation regarding the usefulness of a turn-in-one-direction, only sign. These signs had been tried in the Laurel District and failed. Further, there was misinformation in the traffic study, which assumed people would turn out of the proposed project and head towards Mills College, when in fact, they head the other direction towards the freeway or the Laurel District. Similarly, there was mistaken information about the route used by drivers to divert around crowded 580 when the traffic backs up.¹ All of these errors were brought to the city’s attention in correspondence by the community and the documents will be resubmitted. The EIR failed to address any of these traffic issues.

III. THE PROJECT DESCRIPTION IS INADEQUATE AND MISLEADING.

A. The EIR Project Description Does not Match Either the Original Project Application or the Initial Study

From the very first page, the EIR contradicts the Initial Study project description with a brand new description. We are told that the project “would include construction of a five-story building containing 115 market-rate and affordable, one-bedroom, senior apartments . . .” Conspicuously absent is any breakdown as to how many of the units will

¹ The traffic discussion about the traffic congestion on 580 belies the EIR claim that people drive too fast to notice the proposed project, blocking the view to the hills and jeopardizing the scenic highway designation.

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be reserved for affordable housing and how many for market-rate housing. This vague description continues throughout the EIR. For example, on page 7, we are told that the project seeks to provide four “key elements,” one of which is providing market-rate and affordable senior housing, again with no breakdown of the number of units. On pages 61-62, and 244, we are again informed that the project objectives include providing market-rate and affordable senior housing.

The original, identical project specifically offered 115 units of affordable senior housing while the current project application specifies that the project is for 110 units of housing with a rental amount in the “range from 525 – 750.” (It appears that this is the rental cost rather than the square footage, since page 7 lists the square foot as “approximately 540 square feet. See, page 2 of the document entitled “Request for Environmental Review” attached to the current project application.)

The zoning analysis would be very different for senior market-rate housing than for senior affordable housing. As best explained by Planner Merkamp in 2008, the state requires cities to provide affordable housing and therefore, cities tend to relax the zoning code requirements to accommodate it:

Finally, the project will develop 115 units of affordable senior housing. The State of California has enacted tough measures to essentially force jurisdictions to grant waivers to zoning standards for projects that provide affordable housing. . . The General Plan identifies the provision of such housing as a critical goal to fulfill on a local and regional basis and staff believes such benefits help justify a relaxation of the above zoning standards. (Staff report, February 20, 2008.)

**B. If the Project is Primarily Market-Rate, the Initial Study
Overlooked Conflicts with Zoning**

The Initial Study stated that there was a less than significant impact from conflicts between the proposed project and the zoning or land use policies. (Appendices, pp. 44-47.) One of the bases for that conclusion was that “The Land Use Element encourages the construction of affordable senior housing to meet a critical need in both the City of Oakland and the region for providing affordable residences for senior citizens.” The Initial Study cited to several policies encouraging increased housing development generally. However, there is no discussion in the Initial Study or the EIR of the conflict between the zoning limitations for the project site and the need for variances to get around height and density restrictions. If the project is market-rate, then the variances not only conflict with existing land use policy and zoning, but also present the potential for

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setting a precedence such that other property developers of market rate housing can also obtain similar variances.

The problem started with an inadequate project description in the EIR, the Initial Study, or both. The project description must be accurate, stable and consistent throughout the EIR process. "An accurate, stable and finite project description is the *sine quo non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 45; CEQA Guidelines § 15124 (d).)

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IV. THE LEAD AGENCY MUST RECIRCULATE THE DEIR

Dr. Pless correctly stated in her comment letter that after the errors are corrected and the EIR provides mitigation measures, the lead agency must recirculate and re-notice the DEIR. Public Resources Code §21092.1 provides:

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

This code section applies when there is significant new information that is developed during the period of time after the DEIR is released and before certification of a final EIR. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1993) 6 Cal.3d 1112, 1130.) Recirculation is required because the public needs an opportunity to vet the new information and to comment on it. The decision makers need an opportunity to consider those comments.

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For example, if the lead agency simply includes in the final EIR the hazardous testing results and corrections for the interpretation errors, discovered by Dr. Pless, there would be no opportunity for the public to vet and comment on the testing results and offered corrections before the planning commission certified the EIR. The public would also be precluded from vetting and commenting on any mitigations resulting from the Phase II testing. That process would violate the very informational purpose of CEQA. (*Ibid.* at p. 1129-1130.)

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V. THE EIR VIOLATES CEQA

The "heart" of CEQA is the provision requiring preparation of an environmental impact report (EIR). (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 84.) The objective of the EIR is to compel government at all levels to make decisions with environmental consequences in mind. (Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 283.) 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." (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810.) It is an abuse of discretion for a city to grant a permit for a proposed project when the environmental impacts have not been analyzed in an EIR.

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A prejudicial abuse of discretion occurs "if the failure to include relevant information [in the EIR] precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.

The resort to irrelevant and inapplicable SCAs, the misleading analysis of air quality data, the failure to apply the mitigations necessary to protect the scenic highway viewshed, and the erroneous project description individually, and together, preclude informed decisionmaking. The EIR should be redrafted and recirculated with an adequate comment period.

Thank you for considering our comments.

Very truly yours,

Leila H. Moncharsh

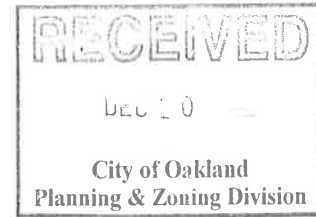
Leila H. Moncharsh, J.D., M.U.P.
Veneruso & Moncharsh

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cc: Clients

INDEX OF SUBMITTED DOCUMENTS
AS PART OF COMMENTS TO DEIR

December 10, 2012



- A July 19, 1996 – Phase 1 Assessment Report from Jonas & Associates, Inc. for the PG&E former substation on High Street, 3120 High St.
- C November 15, 2002 – Stellar Environmental Solutions, Inc.
- A March 31, 2003 – JMK testing and results of Phase II study for motor oil and diesel (not to be confused with USTs.)
- A December 1, 2004 – Testing results re Phase II for motor oil and diesel. Questa letter to Donald Flanner. (Not to be confused with current leaking UST problem.)
- A April 2005 – “Air Quality and Land Use Handbook: A Community Health Perspective” by the California Environmental Protection Agency, California Air Resources Board.
- B March 1, 2006 – City planner wrote to AMG regarding the city’s requirements for the project, including a CUP for the ground floor parking.
- F May 4, 2006 – City Council resolution – appointment of Charles Hahn (AMG project property owner) to the civil service commission with a term from May 4, 2006 to May 4, 2009.
- B June 5, 2006 – Laurent Merchants wrote to city planner that the proposed project would be in the gateway to the Laurel shopping area and the merchants wished to be included in all aspects of the planning process.
- B July 10, 2006 – Laurel District merchants write to AMG confirming AMG’s information that the project will be a three to five story building on top of ground floor with a small commercial space of 1,700 square feet.
- B July 27, 2006 – Letter from Laurel merchants to AMG with list of problems with the proposed project.
- D August 10, 2006 – Application from AMG for affordable housing project.
- E September 1, 2006 – Letter to planner from Laurel merchants association listing problems with the proposed project.
- B September 18, 2006 – letter from merchants to planner, outlining the merchants’ objections to the project.

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- B September 26, 2006 – Letter from CRADL’s attorney re lack of evidence to support zoning variances. Photos attached.
- A December 11, 2006 & Email attached. Correspondence from Alameda County Health Care Services to Alex Hahn re hazardous materials.
- B, C December 18, 2006 – Email to planner from Public Works, transportation division.
- A January 26, 2007 – EnviroStor Database report for the property. One page.
- B February 2007 – list of 16 letters from merchants and residents opposing project due to change from retail to residential, zoning permits without adequate findings, health and safety hazards for seniors from air pollution and traffic, and precedent setting variances.
- B February 19, 2007 – Letter from CRADL’s attorney regarding zoning issues.
- B February 19, 2008 – Emails from Jovida Ross, John Donivan, Stephanie Woodbury, opposing the project.
- B February 27, 2007 – Letter from CRADL’s attorney to Planning Commission.
- B February 27, 2007 – Letter from Maureen Dorsey with maps attached.
- D February 28, 2007 – Staff Report. Staff called out the permits.
- B, C April 24, 2007 – Expert report and resume from traffic engineer Tom Brohard.
- B September 13, 2007 – Letter from Melissa Escaron.
- B September 17, 2007 – Email from Michael Marriner.
- B September 17, 2007 – Letter from CRADL’s attorney to Planning Commission.
- B September 18, 2007 – Email from Kathleen Rolinson opposing project.
- B September 18, 2007 – Email from Renais Winter and Doug Stone.
- B September 18, 2007 – Email with attachments from the CalTrans Scenic Highway Coordinator.
- B September 18, 2007 – Email from Christine Boudreau.
- B December 7, 2007 – Email from Charles Pine re design review.

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cont.

- B December 11, 2007 – Expert report from Oakland architect Andy Carpentier, submitted by CRADL.
- D December 12, 2007 – Design review agenda.
- D December 17, 2007 – Staff Report for Design Review Committee.
- B January 5, 2007 – Email correspondence between planner, AMG, and city transportation engineer.
- B January 11, 2008 – Email from CRADL’s attorney to Planning Commission re lack of any changes to plans or input from community.
- D January 22, 2008 – Email from CRADL’s attorney to planning commission.
- D February 14, 2008 – Memo from CRADL to Planning Commission.
- B, D February 15, 2007 – Emails between planner and city traffic engineer re parking and the shuttle.
- D February 19, 2008 – Letter to Planning Commission from CRADL with attachments.
- B February 20, 2008 – Statement by Christine Ralls opposing project.
- D February 20, 2008 – Email from James Reyff of Ilingsworth.
- B February 20, 2008 – Email from Mark Baldwin, who was on the merchants board of directors.
- D February 20, 2008 – Staff Report.
- B February 26-28, 2007 Emails from Kathleen Rolinson, Aleto Caldwell, Laurel merchants, Laurel Village Association, opposing project.
- C February 27, 2007 – Urban Crossroads letter to AMG with Abrams response to Brohard comment letter attached. 12 pages.
- D February 28, 2008 – Approval letter from city on 4-0 vote.
- D February 29, 2008 – Appeal filed with letter to city council from CRADL’s attorney.
- A, B May 15, 2008 – Letter from Petra Pless, who has doctorate in Environmental Science and Engineering.
- C May 19, 2008 – Volumes One – Four of the County Environmental records for the project site. (Misabeled “2007” instead of 2008.)

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cont.

- D October 14, 2010 – Application for current project. Applicant is listed as Pacific Companies in one of the documents in the application and AMG & Associates, LLC in other documents.
- D December 22, 2010 – Set of plans from 2008 and 2010.
- F August 21, 2012 – Lawsuit filed by investors against AMG and prior investment partnership managers (Alex Hahn, et al.)
- D Undated letter from David Ralston (City of Oakland Project Manager – Neighborhood Commercial Revitalization Unit.)

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cont.

Pless Environmental, Inc.

440 Nova Albion Way, Suite 2
San Rafael, CA 94903
(415) 492-2131 voice
(815) 572-8600 fax

Via Email

December 8, 2012

Leila H. Moncharsh
Law Offices of Veneruso & Moncharsh
5705 Redwood Rd., Suite 100
Oakland, CA 94619

Re: Review of Draft Environmental Impact Report for the High & MacArthur Mixed-Use Project

Dear Ms. Moncharsh,

Per your request, I have reviewed the Draft Environmental Impact Report ("Draft EIR") for the High & MacArthur Mixed-Use Project ("Project") published by the City of Oakland ("City")¹ as the lead agency under the California Environmental Quality Act ("CEQA") for potential impacts on air quality and public health.

My qualifications as an environmental expert include a doctorate in Environmental Science and Engineering from the University of California Los Angeles. My professional experience includes the areas of air quality and soil and groundwater contamination. In my professional practice, I have reviewed and commented on numerous CEQA documents including dozens of residential and commercial developments. My résumé is attached to this letter.

As discussed in my comments below, the Draft EIR is deficient and should be revised and recirculated for public review.

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¹ City of Oakland, High & MacArthur Mixed-Use Project, Draft Environmental Impact Report, October 2012, SCH No. 2011052049; available at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>, accessed November 28, 2012.

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I. Background

The proposed High & MacArthur Mixed-Use Project seeks to redevelop a vacant site in central Oakland on the edge of the Laurel District. The mixed-use development project would include construction of a five-story building containing 115 one-bedroom senior apartments; 3,446 square feet of ground-floor commercial space; and 65 parking spaces. The 0.93-acre, triangular-shaped site is bound by MacArthur Boulevard to the north and east, MacArthur Freeway (I-580) to the south, and High Street to the west. The project site includes three privately owned parcels. The parcels are currently vacant except for a billboard (to be removed as part of the project) and were at one time occupied by a Pacific Gas & Electric service yard, an auto repair shop, and a market.²

B1-16
cont.

The residential component of the building would be designed around an interior central courtyard. All the units are proposed to be one-bedroom and would average approximately 540 square feet in size. The maximum building height is 60 feet, with the tallest portion along the High Street elevation as the terrain slopes down from the corner to the freeway.³

II. The Draft EIR's Project Description Is Inadequate and Inconsistent with the Initial Study

According to the Draft EIR, the Project would provide "115 market-rate and affordable, one-bedroom, senior apartments."⁴ The Draft EIR fails to specify the actual number of "market-rate" and "affordable" apartments the Project would provide. Further, the inclusion of "market-rate" units is inconsistent with the description and analysis provided in the Initial Study⁵, which did not once mention "market-rate" units but instead described the Project as a "mixed-use affordable senior housing development" that would provide for the "critical need in both the City of Oakland and the region for providing affordable residences for senior citizens."⁶ The Draft EIR does not provide a discussion of this change. The Draft EIR should be revised to clearly identify the respective number of affordable and market-rate housing units and determine whether the Project as revised to include market-rate apartments would continue to meet the City's land use development objectives.

B1-17

² Draft EIR, p. 1.

³ Draft EIR, p. 3.

⁴ Draft EIR, p. 1.

⁵ Initial Study provided in Draft EIR, Appendix A.

⁶ Initial Study, pp. 4 and 45; emphasis added.

III. The Draft EIR's Analysis of Air Quality Impacts Is Inadequate

III.A The Draft EIR Fails to Identify Significant Impacts on Sensitive Receptors due to Particulate Matter Emissions during Construction

The Draft EIR provides an analysis of the potential risks to sensitive receptors based on the CEQA Guidelines published by the Bay Area Air Quality Management District ("BAAQMD") and the City of Oakland's significance criteria which specify the following significance criteria for any project that would expose persons to substantial levels of toxic air contaminants through the siting of new source or a new receptor:

- (a) a *cancer risk* level greater than 10 in a million,
- (b) a *non-cancer risk (chronic or acute) hazard index* greater than 1.0, or
- (c) an increase of greater than 0.3 micrograms per cubic meter (" $\mu\text{g}/\text{m}^3$ ") of *annual average concentrations of particulate matter equal to or smaller than 2.5 micrometers ("PM2.5")*.

Based on these criteria, the Draft EIR finds that the Project would not have significant impacts due to construction emissions. The Draft EIR's conclusions are based on the results of a health risk assessment for diesel particulate matter ("DPM"), which is a toxic air contaminant, and modeling of total PM2.5 concentrations during the construction period. Both analyses are not adequately supported and appear to be flawed indicating that the Draft EIR's conclusions may be erroneous.

Both analyses are based on determination of annual emissions of DPM and total PM2.5 based on results from URBEMIS modeling (provided in Appendix B) and modeling of DPM (PM10 exhaust) and total PM2.5 concentrations with SCREEN3. The Draft EIR's analyses appear to include several errors.

Annual Emission Estimates Based on URBEMIS Modeling

First, the Draft EIR claims that annual DPM and total PM2.5 emissions from URBEMIS modeling equal about 0.055 short tons per year ("ton/year") DPM⁷ and 0.048 ton/year total PM2.5.⁸ These estimates are not supported by any calculations and the Draft EIR fails to specify how they were derived. Review of the URBEMIS modeling

⁷ The Draft EIR refers to "approximately 0.05 metric tonnes of DPM per year," which is equivalent to 0.055 short tons per year.

⁸ Draft EIR, pp. 129, 130, and 133, and Appendix B, PDF pp. 160 and 164.

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results (provided in Appendix B) shows that the Draft EIR incorrectly determined annual emissions of these pollutants. Total annual emissions for the 12-month construction can be calculated based on the unmitigated emissions in pounds per day ("lb/day") from the URBEMIS model run provided in Appendix B as shown in the inset table below.

Time Slice	Active Days	Particulate Matter Emissions	
		DPM (PM10 Exhaust)	PM2.5 Total
1/1/2011 – 2/28/2011	41	1.17 lb/day	1.08 lb/day
3/1/2011 – 4/29/2011	44	1.13 lb/day	1.04 lb/day
6/1/2011 – 8/31/2011	66	0.66 lb/day	0.64 lb/day
9/1-2011 – 12/30/2011	87	1.64 lb/day	1.55 lb/day
Total annual unmitigated emissions		283.93 lb/year^a 0.142 ton/year^b	267.13 lb/year^a 0.134 ton/year^b

a Total annual unmitigated emissions (lb/year) = Sum of (active days/year × DPM or PM2.5 emissions in lb/day for each time slice)

b Total annual unmitigated emissions (ton/year) = (total emissions in lb/year) / (2000 lb/ton)

The Draft EIR states that the analysis assumes implementation of the City's Standard Condition of Approval ("SCA") AIR-1 (Basic and Enhanced measures).⁹ Only four of these measures would reduce DPM emissions: SCA AIR-1 Basic (f) limit vehicle speeds and (g) minimize idling times to five minutes; and SCA AIR-1 Enhanced (t) minimize idling time to two minutes and (u) develop plan demonstrating that off-road equipment achieve a 45 percent particulate matter reduction compared to the most recent California Air Resources Board ("CARB") fleet average. Since URBEMIS does not quantify idling emissions, only SCA AIR-1 Enhanced (t) would reduce total annual unmitigated DPM emissions. The inset table below shows total annual unmitigated and mitigated DPM and total PM2.5 emissions, respectively, based on a 45 percent reduction of particulate matter emissions from exhaust.

	Particulate Matter Emissions	
	DPM (PM10 Exhaust)	PM2.5 Total
Total annual unmitigated emissions	0.142 ton/year	0.134 ton/year
Mitigation Efficiency	45%	45%
Total annual mitigated emissions^a	0.0781 ton/year	0.0735 ton/year^b

a Total annual mitigated emissions (lb/year) = total annual unmitigated emissions (lb/year) × (1 - mitigation efficiency)

b Because the percentage of non-exhaust PM2.5 in total PM2.5 is very small (about 2 percent), the control efficiency of fugitive dust mitigation measures has not been accounted for

⁹ Draft EIR, p. 129.

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cont.

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As shown in the above table, annual mitigated emissions of DPM and total PM2.5, 0.078 and 0.074 ton/year, respectively, are higher by 42¹⁰ and 53¹¹ percent, respectively, than those assumed by the Draft EIR (0.055 ton/year DPM and 0.048 ton/year total PM2.5). Thus, the Draft EIR underestimated annual emissions of these particulate matter pollutants and, consequently, health risks because both the Draft EIR's determination of cancer and non-cancer risks and the modeling of annual average PM2.5 concentrations are based on these erroneous emission estimates.

1-Hour Maximum Pollutant Concentrations from SCREEN3 Modeling

The Draft EIR states that maximum 1-hour pollutant concentrations for DPM and total PM2.5 were modeled with SCREEN3 at 2.672 and 2.481 µg/m³, respectively.¹² However, the SCREEN3 model runs provided in Appendix B¹³ show considerably higher 1-hour maximum pollutant concentrations of 14.31 DPM and 4.322 µg/m³ total PM2.5 *i.e.*, 436%¹⁴ and 74%¹⁵ higher, respectively, than claimed by the Draft EIR. The Draft EIR fails to discuss this glaring discrepancy. Because these 1-hour maximum pollutant concentrations are used to determine health risks and PM2.5 concentrations from construction emissions, these analyses are flawed and their results underestimated.

Average Annual Maximum Total PM2.5 Concentrations

Based on methodology provided by the Office of Environmental Health Hazard Assessment ("OEHHHA"), the Draft EIR calculates annual average pollutant concentrations of total PM2.5 at 0.28 µg/m³ and concludes that this result is less than the threshold of 0.3 µg/m³ (criterion c).¹⁶ However, as discussed above, because the Draft EIR underestimated annual emissions by 53% and relied upon considerably lower maximum 1-hour PM2.5 concentrations than obtained by the SCREEN3 modeling (2.481 µg/m³ instead of 4.322 µg/m³), its estimate of 0.28 µg/m³ annual average total

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cont.

¹⁰ (0.0781 ton/year) / (0.055 ton/year) = 1.42.

¹¹ (0.0735 ton/year) / (0.048 ton/year) = 1.53.

¹² Draft EIR, p. 129 and 134.

¹³ Draft EIR, Appx. B, PDF p. 155 (DPM: C:\Documents and Settings\hqureshi\Desktop\07195 Screen3\DPM.scr) and PDF p. 154 (PM2.5: C:\Documents and Settings\hqureshi\Desktop\07195 Screen3PM25.scr)

¹⁴ (14.31 µg/m³) / (2.672 µg/m³) = 5.36.

¹⁵ (4.322 µg/m³) / (2.481 µg/m³) = 1.74.

¹⁶ Draft EIR, pp. 129 and 134.

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PM2.5 concentrations is incorrect and therefore its conclusion of less-than-significance is incorrect. Based on the results of the SCREEN3 model alone and otherwise relying on the Draft EIR's assumptions and methodology, average annual concentrations of total PM2.5 can be estimated at $0.49 \mu\text{g}/\text{m}^3$,¹⁷ which by far exceeds the $0.3 \mu\text{g}/\text{m}^3$ threshold of significance. Sensitive receptors that may be adversely affected by these excessive pollutant concentrations include residences located within 300 feet of the Project site to the south, northeast, and east and the St. Lawrence o'Toole K-8 parish school, located about 1,000 feet of the Project site to the northeast at 3695 High Street. The Draft EIR fails to identify this significant impact.

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cont.

III.B The Draft EIR Fails to Adequately Analyze Health Risks to Future Occupants of Project

Recognizing the health risks of traffic-related emission, CARB, the state agency entrusted with the protection of California's air quality, developed guidelines to protect vulnerable populations. These guidelines expressly advise against siting new "sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day." The CARB's recommendations are based on the consistent health research findings demonstrating that proximity to high-traffic roadways results in both cancer and non-cancer health risks. Sensitive land uses deserve special attention because children, pregnant women, the elderly, and those with pre-existing health problems are especially vulnerable to the non-cancer effects of air pollution including reduced lung function and increased asthma hospitalizations, asthma symptoms, bronchitis symptoms, and medical visits.¹⁸

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The Project would locate future residents adjacent to and within approximately 60 feet of the I-580 freeway.¹⁹ The Draft EIR acknowledges that future occupants could be exposed to health risks due to the location of the Project:

The proposed project would place residential uses within approximately 60 feet of the nearest edge of the MacArthur Freeway. However, the CARB Air Quality Land Use Handbook recognizes that there is no "one size fits all" solution to land use planning, and that in addressing housing and transportation needs, the benefits of urban infill, community economic development priorities and other quality of life issues are also important, and these must be considered and

¹⁷ $(1\text{-hour total PM2.5: } 4.322 \mu\text{g}/\text{m}^3) \times (0.5) \times (2,000 \text{ hours}) / (8,760 \text{ hours}) = (\text{SCREEN3 1-hour total PM2.5: } 4.322 \mu\text{g}/\text{m}^3) / (\text{Draft EIR 1-hour total PM2.5: } 2.481 \mu\text{g}/\text{m}^3) \times (\text{Draft EIR annual average total PM2.5: } 0.28 \mu\text{g}/\text{m}^3) = \text{annual average total PM2.5: } 0.493 \mu\text{g}/\text{m}^3$.

¹⁸ California Air Resources Board, Air Quality and Land Use Handbook: *A Community Health Perspective*, April 2005; <http://www.arb.ca.gov/ch/handbook.pdf>, accessed December 7, 2012.

¹⁹ Draft EIR, p. 134.

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weighed by local decision-makers when siting projects. The Handbook also acknowledges that the relative risk from site to site can vary greatly, and that to determine actual risk near a particular facility, a site-specific analysis (e.g., health risk assessment) is necessary.²⁰

Failure to Include All Pollutants and Emission Sources

Accordingly, the Draft EIR presents the results of a site-specific health risk assessment finding that the carcinogenic and chronic and acute non-carcinogenic impacts are below the applicable thresholds and are therefore less-than-significant.²¹ However, the Draft EIR's health risk assessment suffers from a number of flaws and therefore its conclusions cannot be relied upon.

First, the Draft EIR's health risk assessment only considers emissions from vehicles traveling on MacArthur Freeway (and fails to specify how these emissions were derived). The Draft EIR does not address emissions from vehicles traveling the off-ramp from I-580. Further, the intersection of MacArthur Boulevard and High Street, where the Project is located, is a major transit hub including a bus stop on MacArthur Boulevard next to the proposed building. Currently, six AC transit lines run by the proposed site, providing 24-hour service. Most AC buses are currently diesel-powered and would stop directly underneath the windows facing MacArthur Boulevard. Scientific studies indicate that diesel exhaust emissions from transit buses are substantially higher than those from diesel trucks.^{22,23} Emissions from these mobile sources must be included in the health risk assessment.

Second, the Draft EIR claims that "[i]n addition to examining the risks from diesel exhaust particulate, this assessment includes the exhaust from gasoline-fueled vehicles."²⁴ Yet, review of the modeling provided in Appendix B shows that only diesel particulate matter emissions were included in the residential exposure scenarios.²⁵ Diesel particulate matter represents about 70 percent of the potential cancer risk from vehicle traffic on a typical urban freeway (truck traffic of 10,000-20,000/day). The other 30 percent are

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cont.

²⁰ Draft EIR, p. 134.

²¹ Draft EIR, p. 135.

²² S.A. Fruin, A.M. Winer, and C.E. Rhodes, Black Carbon Concentrations in California Vehicles and Estimation of In-Vehicle Diesel Exhaust Particulate Matter Exposures, *Atmospheric Environment*, Vol. 38, 2004, pp. 4123-4133.

²³ M. Bizjak and J. Tursic, Measurement of Aerosol Black Carbon Concentration Inside the City Buses of Ljubljana, *Journal of Aerosol Science*, v. 29, Supplement 1, 1998, pp. S291-S292.

²⁴ Draft EIR, Appx. B, PDF p.8.

²⁵ Draft EIR, Appx. B, Table A1, A2, A3, PDF pp. 169, 170, 171, respectively.

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attributed to benzene and 1,3-butadiene emissions from passenger vehicles.²⁶ Here, truck traffic on I-580 is restricted, and therefore, the percentage of cancer risk from benzene and 1,3-butadiene are higher than for a typical freeway. The Draft EIR fails to include exhaust emissions of benzene and 1,3-butadiene.

Third, the BAAQMD recommends including all sources within 1,000 feet of the roadway be evaluated to estimate the impact to the maximally exposed receptor (here occupants of the new residential development).²⁷ Thus, the health risk assessment must include emissions from the gas station/auto repair shop located on the northeast corner of the High Street and MacArthur Boulevard intersection.²⁸ Finally, if the Project's commercial space would allow for occupancy by a dry cleaner, associated emissions must also be included.

Fourth, there is growing concern about the health effects of ultrafine particle pollution (smaller than 0.1 micrometers) near busy roadways. This type of particle pollution originates from gasoline- as well as diesel-powered vehicles. In fact, the majority of particles from vehicle exhaust are in the size range of 20-130 nanometers ("nm") (0.02-0.13 μm) for diesel engines and 20-60 nm (0.02-0.06 μm) for gasoline engines. Recent toxicological studies have indicated that at the same mass concentration, ultrafine particles are more toxic than larger particles with the same chemical composition. These particles are observed mostly close to the roadway, and, when the wind blows directly from the road, the concentration of fine and ultrafine particles drops off by about 50 percent at 300 to 500 feet away as shown in the figure below.

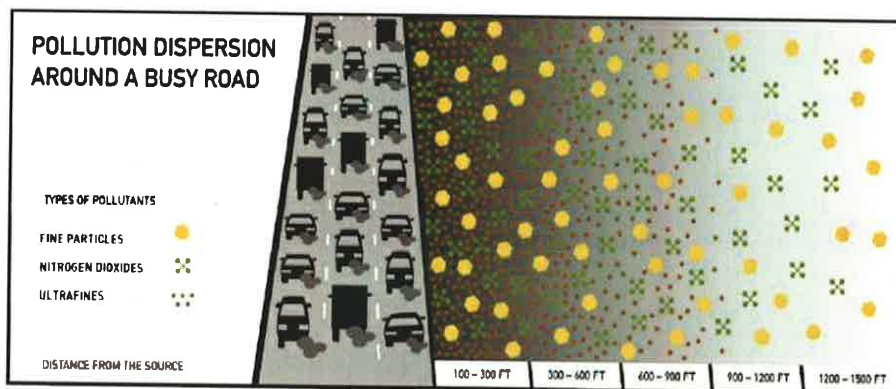
B1-19
cont.

²⁶ M. Bizjak and J. Tursic, Measurement of Aerosol Black Carbon Concentration Inside the City Buses of Ljubljana, *Journal of Aerosol Science*, v. 29, Supplement 1, 1998, p. 8.

²⁷ BAAQMD, *Recommended Methods for Screening and Modeling Local Risks and Hazards Version 2.0*, May 2011, pp. 3, 6, 7, 13, and 83; available at <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>, accessed December 7, 2012.

²⁸ See Draft EIR, Figure IV.A-1b, p. 78.

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Traffic spreads pollutants up to 1,500 from the roadway
(from Environmental Defense Fund, *All Choked Up*, March 2007)

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cont.

Most of the smallest fraction of these particles is found within 100 to 200 feet of the roadway. Laboratory studies have found that while new engine technology and fuel reformulation decreased particle mass concentrations emitted from vehicles, ultrafine particle number concentrations remained unchanged or even increased.²⁹ As discussed further below, MERV-13 filters, which are proposed for the Project, do not effectively filter out ultrafine particles.

Exposure to traffic-related emissions has been implicated with a variety of cancer as well as non-cancer health risks including acute and chronic respiratory disease and heart attacks as well as premature death in elderly individuals with heart disease. (See inset figure below.)^{30,31} A scientific study found that particulate matter pollution also raises the risk of deep vein thrombosis, a particular concern for elderly people including the future occupants of the building.³²

²⁹ Y. Zhu, W.C. Hinds, S. Kim, and C. Sioutas, Concentration and Size Distribution of Ultrafine Particles Near a Major Highway, *Journal of the Air and Waste Management Association*, Vol. 52, pp. 1032-1042.

³⁰ Environmental Defense, *All Choked Up, Heavy Traffic, Dirty Air, and the Risk to New Yorkers*, March 2007; available at http://www.edf.org/sites/default/files/6117_AllChokedUp_NYCTrafficandHealthReport.pdf, accessed December 7, 2012.

³¹ California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective*, April 2005; available at <http://www.arb.ca.gov/ch/handbook.pdf>, accessed December 7, 2012.

³² A. Baccarelli, I. Martinelli, A. Zanobetti, P. Grillo, L.F. Hou, P.A. Bertazzi, P.M. Mannucci, J. Schwartz, Exposure to Particulate Air Pollution and Risk of Deep Vein Thrombosis, *Arch Intern Med.* 168(9):920-7,

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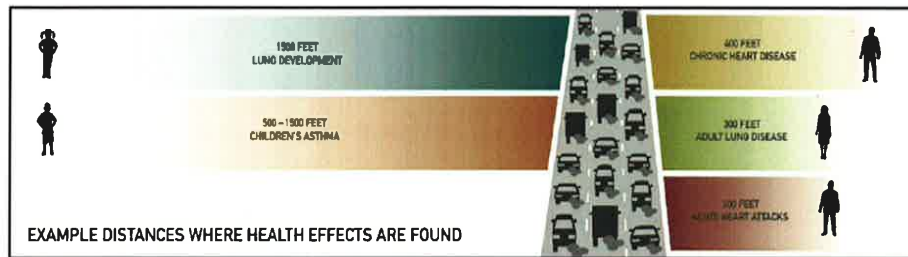


Figure 1: Health risks in proximity to traffic
(from Environmental Defense, All Choked Up, March 2007)

While these risks posed by fine and ultrafine particles cannot be quantified, they nonetheless must be discussed during the CEQA review of the Project so the City can make an informed decision about locating vulnerable elderly people (who may have pre-existing chronic respiratory problems) at this particular site.

ISCST3 Pollutant Concentration Modeling

The Draft EIR models DPM concentrations resulting from diesel-powered vehicle emissions on I-580. As mentioned before, the Draft EIR fails to demonstrate how these emissions were derived. The Draft EIR also does not explain how it derived the input parameters for the ISCST3 pollutant concentration modeling including the emission rate of 0.00048 g/sec of DPM, or the assumption of a line source consisting of 18 sources with a side length of 30.48 meters each.³³ The Draft EIR should be revised to provide an adequate explanation.

Finally the ISCST3 modeling was run for a flagpole height of 1.5 meters only. The resulting pollutant concentrations from the modeling run, and consequently, the results of the health risk assessment, disregard the fact that occupants reside on four floors above ground level, one of which is eyelevel with the freeway. The modeling and health risk assessment must address the respective locations on these floors in relation to the emission sources rather than just relying on one pollutant concentration.

May 12, 2008; abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/18474755>, accessed December 7, 2012.

³³ See Draft EIR, Appx. B, PDF p. 172.

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cont.

Inadequate Mitigation

The Draft EIR requires with EIR SCA AIR-2.A that the Applicant either 1) conduct a health risk assessment to determine the exposure of project residents/occupants/users to air pollutants and implement its recommendations or 2) implement a number of building design measures including a central heating and ventilation system or other air take system in the building, or in each individual residential unit.³⁴ This SCA permitting alternative compliance is not adequate for this specific project.

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cont.

First, the Draft EIR fails to discuss whether the included health risk assessment is adequate to satisfy the option (1) under SCA AIR-2.A.

Second, in light of the above discussed risks of fine and ultrafine particle pollution, which were not addressed by the Draft EIR, and the fact that the Project would locate particularly vulnerable occupants (seniors) at this site, all design measures listed under SCA AIR-2.A option (2) must be integrated.

IV. Hazards and Hazardous Materials

The Draft EIR discusses several prior land uses at the Project site associated with hazardous materials including a service station, automobile repair shop and a Pacific Gas & Electric Company substation and the status of a number of historic remediation activities and active investigations for soil and groundwater. Active investigations addressing contamination include petroleum hydrocarbons and benzene, toluene, ethylene and ("BTEX") and methyl tert-butyl-ether ("MTBE") in groundwater beneath the site and in a commingled plume originating from the adjacent Unocal station and the former Shell Service Station. To address the existing contamination and required remediation that must be conducted to adequately clean up the site for residential uses, the Draft EIR requires the following Standard Conditions of Approval:

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SCA HAZ-3: Phase I and/or Phase II Reports. *Prior to issuance of a demolition, grading, or building permit.*

Prior to issuance of demolition, grading, or building permits the project applicant shall submit to the Fire Prevention Bureau, Hazardous Materials Unit, a Phase I environmental site assessment report, and a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor,

³⁴ Draft EIR, pp. 23, 121, and 136.

Professional Geologist, or Professional Engineer.

SCA HAZ-4: Environmental Site Assessment Reports Remediation. *Prior to issuance of a demolition, grading, or building permit.*

If the environmental site assessment reports recommend remedial action, the project applicant shall:

- a) Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.
- b) Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.
- c) Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.³⁵

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cont.

The Draft EIR finds that with implementation of these Standard Conditions of Approval, impacts would be less than significant.³⁶ However, these canned mitigation measures (Standard Conditions of Approval) are not appropriate for this Project due to the on-going investigation of known contamination and therefore improperly defer analyses (e.g., Phase I/II environmental site assessments).

IV.A The Draft EIR Improperly Defers Analysis and Remediation of Groundwater Contamination

CEQA calls for environmental review of discretionary projects *at the earliest meaningful stage* to serve its purposes of public participation and informed decision-making. Therefore, lead agencies typically require preparation of comprehensive environmental site assessments ("ESAs"), when available information indicates that hazardous materials may be present (as is the case here), to characterize the extent of contamination and required cleanup to determine whether the site is suitable for the proposed uses. For example, the CEQA review for the following residential/mixed-use

³⁵ Draft EIR, pp. 35 and 152-153.

³⁶ Draft EIR, pp. 154-170.

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and commercial land use projects relied upon the results of Phase II site assessments to address the suspected presence of hazardous materials:

- City of San Luis Obispo's EIR for the *Four Creeks Rezoning Project*: The project consists of a General Plan amendment and rezoning of industrial land for high-density residential and mixed-use buildings including 264 residential units and 10,000 square feet of commercial floor area. A Phase II site assessment was performed to evaluate the presence of agricultural chemicals, metals, and petroleum hydrocarbons related to past land use at the site, as well as surrounding properties.³⁷
- City of Novato's EIR for *Hanna Ranch Mixed Use Development Project*: The project consists of developing a vacant 19.7-acre site with a mix of retail, office, restaurant and hotel uses and the extension of a street and infrastructure onto the project site. The Phase I site assessment identified contaminants of potential concern in soil on the site associated with former agriculture, farm buildings, a repair shop, fuel storage tanks, and adjacent railroad tracks. Subsequently, a Phase II site assessment was prepared to evaluate the contaminants of potential concern associated with these former and ongoing land uses.³⁸

Some agencies even require preparation of ESAs for all projects *regardless* of the existence of prior knowledge of contamination before accepting an application for CEQA review as complete. For example, the City of San Francisco's Planning Department requires that all applications for projects that would "involve work on a site with an existing or former gas station, auto repair, dry cleaners, or heavy manufacturing use or a site with underground storage tanks" submit a Phase I ESA, otherwise the application is deemed incomplete. Based upon the results, a Phase II ESA (e.g., soil testing) may then be required by Planning Department staff.³⁹

Here, it is well known that contamination exists at the site and that active investigations are underway to determine the extent of groundwater contamination and

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cont.

³⁷ City of San Luis Obispo, *Four Creeks Rezoning Project*, Final Environmental Impact Report, May 2005, SCH No. 2004071043, Part 6: Hazards, Utilities, Aesthetics, pp. HAZ-1, -14, -15, -21; available at <http://www.slocity.org/communitydevelopment/docsandforms/envirdocs.asp>, accessed November 26, 2012.

³⁸ City of Novato, *Hanna Ranch Mixed Use Development Project*, Environmental Impact Report, Chapter 6: CEQA-Required Assessment Conclusions, p. 333; available at <http://www.ci.novato.ca.us/Modules/ShowDocument.aspx?documentid=7471>, accessed November 26, 2012.

³⁹ City of San Francisco, *Environmental Evaluation Application*, v. 7.24.2012, Part 3, Question 8; available at <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=8253>, accessed November 26, 2012.

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required remediation. Yet, the City defers analyses into the future despite being explicitly advised by the Department of Toxic Substances Control ("DTSC") in its June 2, 2011 comment letter on the Notice of Preparation to address further investigation and required remediation in the Draft EIR:

The Project Site called Roberts Tires Site (Site) is in the DTSC Envirostor and State Water Resources Control Board Geotracker databases. DTSC conducted remediation for soil contaminated with lead in 2002 and the property owner conducted additional soil remediation for soil contaminated with total petroleum hydrocarbon (TPH) motor oil and TPH diesel in 2004. DTSC referred the Site to the Alameda County Department of Environmental Health since the groundwater at the Site is contaminated with TPH motor oil, TH diesel, TPH gasoline, benzene, toluene, ethylbenzene and xylene. According to the Geotracker database, the extent of the groundwater contamination has not been determined, and potential risks, threats or other environmental concerns have not been adequately identified and assessed. Based on the previous environmental investigation reports, there may be multiple underground storage tanks (USTs) remaining at the site.

The NOP for the draft EIR under the Geology and Soils Section discusses the presence of USTS and indicates that analysis of impacts associated with the removal of USTs will be included in the Hazards and Hazardous Materials analysis in the Focused EIR. However, since groundwater is contaminated with high levels of benzene and other volatile organic compounds, *DTSC recommends further groundwater investigation and remediation under the oversight of the Alameda County Department of Environmental Health, the current lead agency for the Site.* Indoor air issues in the proposed residential units also need to be addressed. *The remediation activities would then need to be addressed in the California Environmental Quality Act (CEQA) compliance document.*⁴⁰

The Draft EIR entirely disregards the DTSC's recommendation to remediate the site *before* preparation of the Draft EIR for the Project and instead improperly defers analysis to the future.

IV.B Further Investigations of Groundwater Contamination

Since 2005, the Alameda County Department of Environmental Health ("ACEH"), the lead agency responsible for oversight of the site, requested numerous times that the site owner, Hahn & Kang, LLC, conduct additional site investigations. In April of 2012, the ACEH transferred its responsibility to the San Francisco Bay Regional

⁴⁰ Karen Toth, Department of Toxic Substances Control, Letter to Lynn Warner, City of Oakland, June 2, 2011; included in Appendices to Draft EIR, PDF pp. 92-93; *emphasis* added.

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Water Quality Control Board ("RWQCB") for enforcement due the persistent recalcitrance of the site owner to conduct the requested investigations.⁴¹

Since, ownership of the site was transferred from Hahn & Kang, LLC to AMG & Associates, LLC ("AMG") through foreclosure.⁴² AMG, as the current property owner, and Hahn & Kang Equity I, L.P., as the former property owner, are both considered responsible parties for site investigation and cleanup. The new owner, AMG, has contacted the RWQCB and submitted a *Subsurface Environmental Site Assessment Work Plan*, which was approved by the RWQCB on November 27, 2012.⁴³ Well installation reports are expected in February 2013.⁴⁴ Based on the results of this, and potentially additional, investigation, the RWQCB will determine the remediation activities required to clean up the existing groundwater contamination. This may require in-situ remediation and/or pump-and-treat and monitoring.⁴⁵ Until this investigation is completed and the extent of the groundwater contamination is properly defined, the extent and type of remediation and monitoring required remains unknown.⁴⁶ Depending on the extent of the plume, remediation activities could be completed within a year.⁴⁷

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Construction permits for the Projects cannot be issued until the RWQCB determines that the site has been remediated to meet specified cleanup levels. (The area is identified in the *San Francisco Bay Region Water Quality Control Board Basin Plan* as a

⁴¹ Mark Detterman, Alameda County Health Care Services Agency, Letter to Steven Hill, San Francisco Bay Regional Water Quality Control Board, Re: Notice of Enforcement Referral; Fuel Leak Case No. RO0002877 and Geotracker Global ID T0600193302, Roberts Tires, 4311-4333 MacArthur Boulevard, Oakland, CA 94619, April 20, 2012.

⁴² Bruce Wolfe, Regional Water Quality Control Board, Letter to Alexis Gevorgian, AMG & Associates, LLC, and Alex Hahn, Hahn & Kang Equity, LLP, Re: Approval of Work Plan and Requirement for Technical Reports, 4311-4333 MacArthur Boulevard, Oakland, Alameda County, November 27, 2012; available at http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/4456129312/01-3601%20-%20approve%20RI%20workplan%2011-27-12.pdf, accessed December 7, 2012.

⁴³ *Ibid.*

⁴⁴ See: http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0600193302, accessed December 7, 2012.

⁴⁵ Personal communication with Barbara Sieminski, Regional Water Quality Control Board, November 27, 2012.

⁴⁶ *Ibid.*

⁴⁷ Personal communication with Barbara Sieminski, Regional Water Quality Control Board, November 27, 2012.

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potential drinking water supply.⁴⁸ The RWQCB has not yet made a determination which level of groundwater cleanup, to non-drinking water levels or to drinking water levels, would be required.) Depending on the results of the remediation, a permanent monitoring station could potentially be required, which would affect site layout and design. Thus, the Draft EIR should be revised once the site is remediated and incorporate the RWQCB's recommendations and potential requirements for permanent monitoring.

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IV.C Potential Health Risks for Future Residents due to Groundwater Contamination with BTEX and Potentially Required Measures to Prevent Vapor Intrusion

The following provides a brief discussion of the potential health risks associated with BTEX, which have been found in elevated concentrations in the groundwater beneath the site.

Benzene is a carcinogen, adversely affects developing children and the reproductive system, and is suspected of harming the nervous (*i.e.* brain), cardiovascular (*i.e.* heart and blood vessels) and respiratory (*i.e.* lungs) systems. Toluene adversely affects developing children and is suspected of damaging the reproductive, respiratory, nervous and immune (*i.e.* increase risk of infectious disease and cancer) systems. Xylene is suspected of adversely effecting developing children, damaging the reproductive, immune and respiratory systems. Acute exposures to high levels of gasoline and its BTEX components have been associated with skin and sensory irritation, central nervous system depression, and effects on the respiratory system. Prolonged exposure to these compounds also affects these organs as well as the kidney, liver and blood systems. According to the U.S. Environmental Protection Agency ("USEPA"), there is sufficient evidence from both human epidemiological and animal studies that benzene is a human carcinogen.⁴⁹

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These chemicals can move with the groundwater, potentially migrating a substantial distance from the original discharge point. Due to their high volatilization

⁴⁸ State Water Resources Control Board, GeoTracker, Roberts Tires (T0600193302), Closure Review; http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0600193302, accessed November 20, 2012.

⁴⁹ For a summary, see, for example: Sierra Club, *Leaking Underground Storage Tanks: A Threat to Public Health & Environment*; available at <http://www.csu.edu/cerc/documents/LUSTThreattoPublicHealth.pdf>, accessed December 8, 2012; and Oregon Department of Human Services, *Technical Bulletin, Health Effects Information, BTEX*; available at <http://public.health.oregon.gov/healthyenvironments/drinkingwater/monitoring/documents/health/btex.pdf>, accessed December 8, 2012.

potential BTEX can volatilize out of the groundwater and enter the gaseous phase in the overlying soil, where they can migrate both vertically and laterally. From the soil gas, these volatile chemicals can migrate through cracks and holes in the foundation of buildings located above the contamination and into the indoor air of these buildings. As a result, people living or working in buildings above contaminated groundwater may be exposed to hazardous chemicals by inhaling chemicals that have seeped into indoor air. The resulting indoor-air concentration of chemicals depends on the nature of the building's construction, air turnover rates within the building, activities occurring within the building, and other factors. Buildings constructed using slab-on-grade design or with a basement, *i.e.* designs with significant direct contact between the concrete foundation and the underlying soil, are considered more vulnerable to soil vapor intrusion than buildings constructed with a crawl space or pier-and-beam construction.⁵⁰ Vapor intrusion can cause potentially serious risks if left unaddressed.⁵¹ Therefore, the risk caused by vapor intrusion must be investigated and quantified. The USEPA has developed detailed vapor intrusion guidance to aid in evaluating the potential for human exposure and the potential risks associated with this pathway.⁵²

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Steps can be taken before site redevelopment to prevent vapor intrusion. Some examples of prevention include: ensuring that volatile contaminants are removed from the site (and sent to a proper treatment and disposal facility); preventing upward contaminant migration with an impermeable barrier such as a clay cap; and venting soil gas to outdoor air before it can reach indoor spaces. Depending on the concentration of the remaining contaminants in groundwater and soil vapor (particularly of benzene which is highly volatile and carcinogenic), the developer may have to install a subslab depressurization system to vent the soil gas contamination to the outside so it cannot reach indoor air. In addition, measures to stop gas migration as far from structures as possible may have to be implemented to reduce the threat of fire or explosion associated with buildup of volatile compounds underneath or adjacent to buildings.⁵³

⁵⁰ United States Air Force, *Guide for the Assessment of Vapor Intrusion Pathway*, February 2006, IOH-RS-BR-SR-2006-0001; available at <http://www.clu-in.org/download/contaminantfocus/tce/VIpath2006.pdf>, accessed December 8, 2012.

⁵¹ USEPA, *Design Solutions for Vapor Intrusion and Indoor Air Quality*, March 2004; available at <http://snipurl.com/25tglga> [www.google.com], accessed December 8, 2012.

⁵² USEPA, *OSWER Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance)*, EPA530-D-02-004, November, 2002; available at <http://www.epa.gov/osw/hazard/correctiveaction/eis/vapor.htm>, accessed December 8, 2012.

⁵³ See USEPA, *Design Solutions for Vapor Intrusion and Indoor Air Quality*, March 2004.

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Depending on the remaining contamination after remediation and recommendations by the RWQCB, any or all of the above measures may be required.

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IV.D The Draft EIR Does Not Adequately Address Lead Contamination of Soil at Project Site

The Draft EIR discloses that the soil at the site was heavily contaminated with lead with concentrations in shallow soil as high as 36,400 milligrams per kilogram ("mg/kg"). In 2002, soil sampling delineated two areas that were contaminated with lead within the top half-foot of soil, likely due past automotive repair activities at the site. After excavation of soils in these areas and disposal off-site, the DTSC confirmed that the remaining lead concentrations in soil were below the approved cleanup goal for the site of 350 mg/kg.⁵⁴

The cleanup goal for lead in soils at the site of 350 mg/kg was based on the then current *Environmental Screening Levels* ("ESLs") for residential land uses established by the RWQCB.⁵⁵ For soils, ESLs are based on, and typically identical to, the *California Human Health Screening Levels* ("CHHSLs"). CHHSLs are those concentrations of hazardous chemicals in soil or soil gas that the California Environmental Protection Agency ("Cal/EPA") considers to be below thresholds of concern for risks to human health.⁵⁶

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Since the DTSC's 2002 approval of the soil remediation at the site, Cal/EPA twice lowered the CHHSLs for lead (and lead compounds) in soils for residential land uses based on new information on the toxicity of lead: in 2005 from 350 mg/kg to 150 mg/kg⁵⁷ and in 2009 from 150 mg/kg to 80 mg/kg.⁵⁸ The Draft EIR does not

⁵⁴ Draft EIR, p. 158.

⁵⁵ See Karen Toth, Department of Toxic Substances Control, Letter to Donna Drogos, Alameda County of Environmental Health, April 28, 2005; available at http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/7779218375/refer%20to%20county.pdf, accessed December 6, 2012.

⁵⁶ CHHSLs (or "Chisels") are developed by the OEHHA on behalf of Cal/EPA using standard exposure assumptions and chemical toxicity values published by the USEPA and Cal/EPA. The thresholds of concern used to develop the CHHSLs are an excess lifetime cancer risk of one in one million (10^{-6}) and a hazard quotient of 1.0 for non-cancer health effects.

⁵⁷ Cal/EPA, *Use of California Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties*, September 2005, Table 1; available at <http://www.calepa.ca.gov/brownfields/documents/2005/CHHSLsGuide.pdf>, accessed December 4, 2012.

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discuss that soils at the site still contains lead at concentrations the Cal/EPA now considers to be threshold of concern for risks to human health.

Review of the *Final Removal Action Implementation Report* for the soil remediation of lead at the site⁵⁹ shows that the two areas were excavated sequentially in 12-inch increments in each of the sample plots⁶⁰ until confirmation samples (taken at a depth of 3 inches below the excavation floor) resulted in lead concentrations in soil below the action level of 350 mg/kg. The confirmation sample at the northwestern corner of Area 1 (*i.e.*, the undeveloped area adjacent to the former Roberts Tire garage) resulted in concentrations of 130 mg/kg at 18 inches below ground surface (“bgs”)⁶¹ and was therefore not further excavated. This concentration exceeds the current CHHSL for lead in soil for residential land uses of 80 mg/kg – which would provide the basis for establishing the cleanup goal if the site were remediated today – by 50 mg/kg, *i.e.*, by more than 60 percent.⁶²

I recommend that the Applicant discuss the existing soil lead contamination at the site with the DTSC and the RWQCB to determine whether lower cleanup goals are required in light of the proposed residential use of the Project site and the current knowledge regarding the toxicity of lead which resulted in the Cal/EPA establishing considerably lower CHHSLs. The agencies’ recommendations and their approval of any required site remediation activities should then be incorporated into a revised Draft EIR.

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⁵⁸ Cal/EPA, *Revised California Human Health Screening Levels for Lead*, September 2009; available at <http://oehha.ca.gov/risk/pdf/LeadCHHSL091709.pdf>, accessed December 4, 2012.

⁵⁹ Engineering/Remediation Resources Group, *Final Removal Action Implementation Report, Roberts Tires, Oakland, California*, prepared for Department of Toxic Substances Control, November 2002; available at http://www.envirostor.dtsc.ca.gov/public/final_documents2.asp?global_id=01550004&doc_id=5012625, accessed December 5, 2012.

⁶⁰ Each confirmation sample represented a sample plot approximately 200 square feet to 300 square feet and to a depth of 6 inches to 12 inches. A total of ten confirmation soil samples were collected from Area 1 and two confirmation soil samples were collected from Area 2. (*See Final Removal Action Implementation Report*, Section 4.1.

⁶¹ *See Final Removal Action Implementation Report*, Figure 3 and Table 4-1, RTSC-12.

⁶² $(130 \text{ mg/kg}) / (80 \text{ mg/kg}) = 1.625$.

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V. Recommendation

Based on the above discussion, I recommend that the City prepare a revised Draft EIR for public review. This revised Draft EIR should include an adequately documented revised air quality impact analysis and a revised analysis of hazards and hazardous substances based on the recommendations of and *after* remediation has been deemed satisfactory by the RWQCB.

Please feel free to call me at (415) 492-2131 or e-mail at petra.pless@gmail.com if you have any questions.

With best regards,



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Dr. Pless is a court-recognized expert with over 20 years of experience in environmental consulting conducting and managing interdisciplinary environmental research projects and preparing and reviewing environmental permits and other documents for U.S. and European stakeholder groups. Her broad-based experience includes air quality and air pollution control; water quality, water supply, and water pollution control; biological resources; public health and safety; noise studies; California Environmental Quality Act ("CEQA"), Clean Air Act ("CAA"), and National Environmental Policy Act ("NEPA") review; industrial ecology and risk assessment; and use of a wide range of environmental software.

EDUCATION

Doctorate in Environmental Science and Engineering (D.Env.), University of California
Los Angeles, 2001

Master of Science (equivalent) in Biology, Technical University of Munich, Germany, 1991

PROFESSIONAL HISTORY

Pless Environmental, Inc., Principal, 2008–present

Environmental Consultant, Sole Proprietor, 2006–2008

Leson & Associates (previously Leson Environmental Consulting), Kensington, CA,
Environmental Scientist/Project Manager, 1997–2005

University of California Los Angeles, Graduate Research Assistant/Teaching Assistant, 1994–1996

ECON Research and Development, Environmental Scientist, Ingelheim, Germany, 1992–1993

Biocontrol, Environmental Projects Manager, Ingelheim, Germany, 1991–1992

REPRESENTATIVE EXPERIENCE**Air Quality and Pollution Control**

Projects include CEQA/NEPA review; CAA attainment and non-attainment new source review; prevention of significant deterioration ("PSD") and Title V permitting; control technology analyses (BACT, LAER, RACT, BARCT, BART, MACT); technology evaluations and cost-effectiveness analyses; criteria and toxic pollutant and greenhouse gas emission inventories; emission offsets; ambient and source monitoring; analysis of emissions estimates and ambient air pollutant concentration modeling. Some typical projects include:

- Critically reviewed and prepared technical comments on the air quality, biology, noise, water quality, and public health and safety sections of CEQA/NEPA documents for numerous

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commercial, residential, and industrial projects (e.g., power plants, airports, residential developments, retail developments, university expansions, hospitals, refineries, slaughterhouses, asphalt plants, food processing facilities, printing facilities, mines, quarries, and recycling facilities) and provided litigation support in a number of cases filed under CEQA.

- Critically reviewed and prepared technical comments on the air quality and public health sections of the Los Angeles Airport Master Plan (Draft, Supplement, and Final Environmental Impact Statement/Environmental Impact Report) for the City of El Segundo. Provided technical comments on the Draft and Final General Conformity Determination for the preferred alternative submitted to the Federal Aviation Administration.
- Prepared comments on proposed PSD and Title V permit best available control technology (“BACT”) analysis for greenhouse gas emissions from a proposed direct reduced iron facility in Louisiana.
- Prepared technical comments on the potential air quality impacts of the California Air Resources Board’s *Proposed Actions to Further Reduce Particulate Matter at High Priority California Railyards*.
- For several California refineries, evaluated compliance of fired sources with Bay Area Air Quality Management District Rule 9-10. This required evaluation and review of hundreds of source tests to determine if refinery-wide emission caps and compliance monitoring provisions were being met.
- Critically reviewed and prepared technical comments on draft Title V permits for several refineries and other industrial facilities in California.
- Evaluated the public health impacts of locating big-box retail developments in densely populated areas in California and Hawaii. Monitored and evaluated impacts of diesel exhaust emissions and noise on surrounding residential communities.
- In conjunction with the permitting of several residential and commercial developments, conducted studies to determine baseline concentrations of diesel exhaust particulate matter using an aethalometer.
- For an Indiana steel mill, evaluated technology to control NOx and CO emissions from fired sources, including electric arc furnaces and reheat furnaces, to establish BACT. This required a comprehensive review of U.S. and European operating experience. The lowest emission levels were being achieved by steel mills using selective catalytic reduction (“SCR”) and selective non-catalytic reduction (“SNCR”) in Sweden and The Netherlands.
- For a California petroleum coke calciner, evaluated technology to control NOx, CO, VOCs, and PM10 emissions from the kiln and pyroscrubbers to establish BACT and LAER. This required a review of state and federal clearinghouses, working with regulatory agencies and pollution control vendors, and obtaining and reviewing permits and emissions data from other similar facilities. The best-controlled facilities were located in the South Coast Air Quality Management District.
- For a Kentucky coal-fired power plant, identified the lowest NOx levels that had been permitted and demonstrated in practice to establish BACT. Reviewed operating experience of European, Japanese, and U.S. facilities and evaluated continuous emission monitoring data. The lowest NOx levels had been permitted and achieved in Denmark and in the U.S. in Texas and New York.

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- In support of efforts to lower the CO BACT level for power plant emissions, evaluated the contribution of CO emissions to tropospheric ozone formation and co-authored report on same.
- Critically reviewed and prepared technical comments on applications for certification ("AFCs") for numerous natural-gas fired, solar, biomass, and geothermal power plants in California permitted by the California Energy Commission. The comments addressed construction and operational emissions inventories and dispersion modeling, BACT determinations for combustion turbine generators, fluidized bed combustors, diesel emergency generators, etc.
- Critically reviewed and prepared technical comments on draft PSD permits for several natural gas-fired power plants in California, Indiana, and Oregon. The comments addressed emission inventories, greenhouse gas emissions, BACT, case-by-case MACT, compliance monitoring, cost-effectiveness analyses, and enforceability of permit limits.
- For a California refinery, evaluated technology to control NOx and CO emissions from CO Boilers to establish RACT/BARCT to comply with BAAQMD Rule 9-10. This required a review of BACT/RACT/LAER clearinghouses, working with regulatory agencies across the U.S., and reviewing federal and state regulations and State Implementation Plans ("SIPs"). The lowest levels were required in a South Coast Air Quality Management District rule and in the Texas SIP.
- In support of several federal lawsuits filed under the federal Clean Air Act, prepared cost-effectiveness analyses for SCR and oxidation catalysts for simple cycle gas turbines and evaluated opacity data.
- Provided litigation support for a CEQA lawsuit addressing the adequacy of pollution control equipment at a biomass cogeneration plant.
- Prepared comments and provided litigation support on several proposed regulations including the Mojave Desert Air Quality Management District Rule 1406 (fugitive dust emission reduction credits for road paving); South Coast Air Quality Management District Rule 1316, San Joaquin Valley Air Pollution Control District Rule 2201, Antelope Valley Air Quality Management District Regulation XIII, and Mojave Desert Air Quality Management District Regulation XIII (implementation of December 2002 amendments to the federal Clean Air Act).
- Critically reviewed draft permits for several ethanol plants in California, Indiana, Ohio, and Illinois and prepared technical comments.
- Reviewed state-wide average emissions, state-of-the-art control devices, and emissions standards for construction equipment and developed recommendations for mitigation measures for numerous large construction projects.
- Researched sustainable building concepts and alternative energy and determined their feasibility for residential and commercial developments, *e.g.*, regional shopping malls and hospitals.
- Provided comprehensive environmental and regulatory services for an industrial laundry chain. Facilitated permit process with the South Coast Air Quality Management District. Developed test protocol for VOC emissions, conducted field tests, and used mass balance methods to estimate emissions. Reduced disposal costs for solvent-containing waste streams by identifying alternative disposal options. Performed health risk screening for air toxics

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emissions. Provided permitting support. Renegotiated sewer surcharges with wastewater treatment plant. Identified new customers for shop-towel recycling services.

- Designed computer model to predict performance of biological air pollution control (biofilters) as part of a collaborative technology assessment project, co-funded by several major chemical manufacturers.
- Experience using a wide range of environmental software, including air dispersion models, air emission modeling software, database programs, and geographic information systems.

Water Quality and Pollution Control

Experience in water quality and pollution control, including surface water and ground water quality and supply studies, evaluating water and wastewater treatment technologies, and identifying, evaluating and implementing pollution controls. Some typical projects include:

- Evaluated impacts of on-shore oil drilling activities on large-scale coastal erosion in Nigeria.
- For a 500-MW combined-cycle power plant, prepared a study to evaluate the impact of proposed groundwater pumping on local water quality and supply, including a nearby stream, springs, and a spring-fed waterfall. The study was docketed with the California Energy Commission.
- For a 500-MW combined-cycle power plant, identified and evaluated methods to reduce water use and water quality impacts. These included the use of zero-liquid-discharge systems and alternative cooling technologies, including dry and parallel wet-dry cooling. Prepared cost analyses and evaluated impact of options on water resources. This work led to a settlement in which parallel wet dry cooling and a crystallizer were selected, replacing 100 percent groundwater pumping and wastewater disposal to evaporation ponds.
- For a homeowner's association, reviewed a California Coastal Commission staff report on the replacement of 12,000 linear feet of wooden bulkhead with PVC sheet pile armor. Researched and evaluated impact of proposed project on lagoon water quality, including sediment resuspension, potential leaching of additives and sealants, and long-term stability. Summarized results in technical report.

Applied Ecology, Industrial Ecology and Risk Assessment

Experience in applied ecology, industrial ecology and risk assessment, including human and ecological risk assessments, life cycle assessment, evaluation and licensing of new chemicals, and fate and transport studies of contaminants. Experienced in botanical, phytoplankton, and intertidal species identification and water chemistry analyses. Some typical projects include:

- Conducted technical, ecological, and economic assessments of product lines from agricultural fiber crops for European equipment manufacturer; co-authored proprietary client reports.
- Developed life cycle assessment methodology for industrial products, including agricultural fiber crops and mineral fibers; analyzed technical feasibility and markets for thermal insulation materials from natural plant fibers and conducted comparative life cycle assessments.
- For the California Coastal Conservancy, San Francisco Estuary Institute, Invasive Spartina Project, evaluated the potential use of a new aquatic pesticide for eradication of non-native, invasive cordgrass (*Spartina spp.*) species in the San Francisco Estuary with respect to water

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quality, biological resources, and human health and safety. Assisted staff in preparing an amendment to the Final EIR.

- Evaluated likelihood that organochlorine pesticide concentrations detected at a U.S. naval air station are residuals from past applications of these pesticides consistent with manufacturers' recommendations. Retained as expert witness in federal court case.
- Prepared human health risk assessments of air pollutant emissions from several industrial and commercial establishments, including power plants, refineries, and commercial laundries.
- Managed and conducted laboratory studies to license pesticides. This work included the evaluation of the adequacy and identification of deficiencies in existing physical/chemical and health effects data sets, initiating and supervising studies to fill data gaps, conducting environmental fate and transport studies, and QA/QC compliance at subcontractor laboratories. Prepared licensing applications and coordinated the registration process with German environmental protection agencies. This work led to regulatory approval of several pesticide applications in less than six months.
- Designed and implemented database on physical/chemical properties, environmental fate, and health impacts of pesticides for a major multi-national pesticide manufacturer.
- Designed and managed experimental toxicological study on potential interference of delta-9-tetrahydrocannabinol in food products with U.S. employee drug testing; co-authored peer-reviewed publication.
- Critically reviewed and prepared technical comments on applications for certification for several natural-gas fired, solar, and geothermal power plants and transmission lines in California permitted by the California Energy Commission. The comments addressed avian collisions and electrocution, construction and operational noise impacts on wildlife, risks from brine ponds, and impacts on endangered species.
- For a 180-MW geothermal power plant, evaluated the impacts of plant construction and operation on the fragile desert ecosystem in the Salton Sea area. This work included baseline noise monitoring and assessing the impact of noise, brine handling and disposal, and air emissions on local biota, public health, and welfare.
- Designed research protocols for a coastal ecological inventory in Southern California; developed sampling methodologies, coordinated field sampling, determined species abundance and distribution in intertidal zone, and conducted statistical data analyses.
- Designed and conducted limnological study on effects of physical/chemical parameters on phytoplankton succession; performed water chemistry analyses and identified phytoplankton species; co-authored two journal articles on results.

B1-25
cont.

PRO BONO ACTIVITIES

Founding member of "SecondAid," a non-profit organization providing tsunami relief for the recovery of small family businesses in Sri Lanka. (www.secondaaid.org.)

PUBLICATIONS & RECOMMENDATIONS

Available upon request.

Letter B1

Leila H. Moncharsh, representing Commercial & Retail Attraction & Development for the Laurel (CRADL) with Attachments

December 10, 2012

Response B1-1: This is a transmittal email for the materials submitted by Leila H. Moncharsh; no further response to this comment is necessary. Responses to comments in the materials submitted by Leila H. Moncharsh are provided in subsequent responses.

Response B1-2: This is an introductory comment summarizing the detailed issue-specific comments in the letter. Responses to the issue-specific comments are included in subsequent responses. A response to the index documents submitted is included in Response B1-15.

Response B1-3: There is nothing in Public Resources Code §21093², 21094 or 21083.3 that prohibits the preparation of a project-level CEQA and analysis, whether it be a Negative Declaration or an EIR, that does not identify mitigation measures and relies on conditions of approval. CEQA only requires that potential impacts be evaluated, and if they are found to be potentially significant that mitigation measures be identified. There is no requirement within the CEQA Statutes or Guidelines that require mitigation measures be imposed just because the lead agency conservatively chose to prepare an EIR.

CEQA Guidelines §15091(a) states that “no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects of the project, unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.”

One possible finding is that “changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (CEQA Guidelines §15091(a)(1)) When making this finding, “the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.” (CEQA Guidelines §15091(d))

² It is assumed that the comment letter meant to reference Public Resources Code §21093, not 21903 as 21903 is not a section in the Public Resources Code.

As discussed in Chapter I, Introduction, of the Draft EIR and this Response to Comments (RTC) document, the City of Oakland has adopted uniformly-applied development standards, pursuant to CEQA Guidelines Section 15183 (and more recently 15183.3), that are incorporated into projects as Standard Conditions of Approval (SCAs) and are designed to, and will, substantially mitigate environmental effects. In reviewing project applications, the City determines which of the SCAs are applied, based upon the zoning district, and the type(s) of permit(s)/approvals(s) required for the project. The SCAs incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects.

The SCAs cited in the Draft EIR apply to the specific characteristics of the project and project site and are required to be adhered to by the project proponent, pursuant to Oakland Planning Code Section 17.130.070, to mitigate potential environmental effects, which is in accordance with CEQA Guidelines. No mitigation beyond implementation of the SCAs was determined necessary to ensure no significant impacts would occur. As a result, no mitigation measures are identified or required.

Response B1-4: The comment references four tests that a project must meet to utilize §15183, Projects Consistent with a Community Plan or Zoning. The tests cited in the comment are not presented in Section 15183 as “tests”; they are instead listed as items that shall limit the scope of any subsequent analysis for projects that qualify for this statutory exemption. The section states that:

In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis [emphasis added].

- (1) Are peculiar to the project or the parcel on which the project would be located,*
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent,*
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or*
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.*

As discussed in Chapter I, Introduction, of this RTC Document, the proposed project would not result in any project-specific significant impacts that are peculiar to the project or its site beyond the program-level impacts identified in the Housing Element EIR, nor will it result in more severe adverse impacts than those discussed in the Housing Element EIR. The Draft EIR prepared for this project provides the analysis necessary to examine whether there would be project-specific significant effects peculiar to the project or its site or the three additional items listed above.

While additional environmental review would not have been required pursuant to CEQA Guidelines §15183, the Draft EIR nevertheless analyzes project-level impacts to provide additional information to the public and decision-makers despite that no additional impacts or mitigations measures were identified. There is nothing in § 15183 that prohibits a lead agency from conducting additional analysis. The analysis completed, in the form of an EIR, confirmed that the City could have utilized this statutory exemption.

Responses to Dr. Pless' comments are provided in subsequent responses and respond directly to her letter, beginning at Response B1-16. There is no substantial evidence provided that demonstrates that implementation of the SCAs referenced in the Draft EIR would not ensure that no significant impacts would occur. The SCAs referenced are regularly utilized by the City and have been determined adequate to ensure no significant impacts specific to the relevant environmental topic would occur.

There is no requirement under CEQA that would have required the Housing Element EIR to specifically utilize or reference the "expert reports" mentioned. The Draft EIR for this project referenced and utilized the "expert reports" to the extent that they were still relevant; although more current reports were typically available that superseded the older reports. Also see Response B1-15.

The comments related to the Housing Element EIR and the clean-up of the project site are noted; however they are not relevant to the adequacy of this EIR, particularly since an updated Hazards and Hazardous Materials analysis is provided in the Draft EIR for this project. The information contained in the Draft EIR for this project provides sufficient information to meet the requirements of CEQA.

Response B1-5: The SCAs would be adopted as requirements of the proposed project as mitigation to ensure no significant environmental impacts and a Mitigation Monitoring and Reporting Program (MMRP) will be prepared to ensure that the SCAs will be implemented. Section 15097 of the CEQA Guidelines requires that a Mitigation Monitoring and Reporting Program be adopted, but there is no requirement under CEQA that the program be provided as part of the Draft or Final EIR. See Article 9, Contents of Environmental Impact Reports.

As stated in Response B1-3 and Chapter I, Introduction, the SCAs are adopted as requirements of an individual project when it is approved by the City and are designed to, and will, substantially mitigate environmental effects. Since they are adopted as part of the project, they are not listed as mitigation measures. As the SCAs reduce all potential impacts to a less-than-significant level, additional mitigation measures were not required.

Response B1-6: The Draft EIR does not avoid analyzing and mitigating Hazardous Materials and Aesthetics impacts. The Draft EIR includes project-specific analysis for Hazardous Materials and Aesthetic impacts. However, since the analysis does not identify any significant impacts consistent with the findings of the Housing Element EIR, no subsequent analysis was necessary. The Draft EIR also includes project-specific analysis in regards to Air Quality and Traffic. Existing regulations along with SCAs required to be adopted as part of the project will mitigate potential air quality and traffic impacts to a less-than-significant level. Response B1-3 and Chapter I, Introduction, provide a discussion regarding the adequacy of SCAs to mitigate potentially significant environmental impacts. The SCAs that are being required to be adopted as part of the project are identified in the Draft EIR in Table II-1 and within each environmental topic section. The SCAs will be enforced through the approval and permitting process and monitored through a MMRP.

Additionally, the proposed project adheres to the mitigation required in the Housing Element EIR. For example, as stated in Subsection IV.D of the Draft EIR (page 173), “the Housing Element EIR requires preparation of a TIS [Traffic Impact State] for residential projects (see Housing Element Mitigation Measure TR1.1) and as such a TIS has been prepared for the proposed project.”

Response B1-7: The Draft EIR analyzed the impacts on aesthetic resources and focuses on the aspects of aesthetics as defined in the significance criteria, including impacts to the visual character, scenic vistas, and scenic resources within State scenic highways. The Aesthetics section of the Initial Study states that the proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment for three sub-topics, recommends a SCA for potential lighting impacts, and determines all other sub-topics would be “less than significant” impact or “no impact.” Due to this determination, the Draft EIR analyzed impacts on scenic vistas, scenic resources and visual character in accordance with the CEQA Guidelines. While the Draft EIR states that the potential significant environmental effects of the proposed project related to aesthetics are “adequately addressed” in the Housing Element EIR, a project-specific analysis was nevertheless completed.

The Draft EIR presents General Plan policies that are applicable to aesthetics and visual quality within and around the project site. The relevant policies contained in the Scenic Highways Element are presented on page 88 of the Draft EIR and do include the policies cited as missing in the comment. As discussed in the Introduction, policy conflicts in and

of themselves, in the absence of adverse physical impacts, are not considered to have significant effects on the environment under CEQA.

According to the Draft EIR, although the project would alter the views from the MacArthur Freeway, the qualities that contribute to the scenic character would remain with implementation of the project. The existing trees immediately adjacent to the freeway would be maintained, distant views of the hills for motorists traveling east bound would remain visible; and the existing billboard, which is an acknowledged degrading quality on the scenic highway, would be removed. Photo simulations were provided in the Draft EIR showing the existing views and the views with the project. In addition to those factors, the interference of views for motorists would be minimized by freeway speeds, and this part of the freeway would not qualify for scenic highway designation today according to Caltrans. For all those reasons stated above, the project would not substantially damage scenic resources. All of this analysis is provided in the Draft EIR, independent of the Housing Element EIR findings.

Personal communications with Thomas Packard, Landscape Associate at Caltrans Office of Landscape Architecture is not considered hearsay as he is the current Caltrans Scenic Highway Coordinator for District 4, in which this project is located. Additionally, there is no convention or guidance under CEQA that does not allow citations to personal communications. Per personal communication with Mr. Packard, the current scenic value would not qualify the MacArthur Freeway for designation today which establishes an existing condition. Mr. Packard in no way states that the scenic designation has gone away nor is the removal of the scenic designation considered as part of this project. Additionally, the prohibition of truck traffic along MacArthur Freeway is in no way related to its scenic designation as in 2000, the California State Legislature passed Assembly Bill 500, adding the I-580 truck restriction into the California Vehicle Code.³

In regards to the letter from Bryan Walker, cited in the comment, Mr. Walker is no longer the Caltrans Scenic Highway Coordinator (since replaced by Mr. Packard above), and the project considered in Mr. Walker's letter has been modified slightly since it was approved in 2008; thus Mr. Walker's letter does not relate to the currently proposed project and adequacy of the Draft EIR. Mr. Walker's letter stated that the effects of the previous project "won't necessarily impact the present scenic highway designation, however, cumulative impacts of this project as well as future projects may jeopardize subsequent consideration for maintaining the scenic highway designation." As discussed above, the Draft EIR demonstrates that the proposed project would not substantially damage scenic resources. The Draft EIR also includes an analysis of cumulative aesthetic resources

³ Caltrans. *Special Truck Restriction History - Route 580*.
<http://www.dot.ca.gov/hq/traffops/trucks/routes/restrict-hist-580.htm>. Accessed February 11, 2013.

impacts. The Draft EIR concludes that when considering the proposed project together with past, present, and reasonably foreseeable future projects that may be constructed along this stretch of scenic highway, the amount of change from this project would not be considered significant because the amount of change posed by the project is minimal, and the billboard removal is beneficial to the scenic highway views.

Response B1-8: As stated by the commenter and the Housing Element Initial Study (pp. 113-144):

“Presence on the State Cortese List precludes use of a Categorical Exemption under CEQA and would trigger the preparation of a project level Initial Study which could lead to the preparation of either a Mitigated Negative Declaration or an Environmental Impact Report. Presence on the Cortese list does not preclude development on the site; it just requires adequate CEQA review to determine whether development of the site would result in a significant hazard to the public or the environment. SCA-61 through 66 would ensure that presence on the Cortese list and associated impacts are identified on a project-by-project basis, therefore impacts would be less than significant.”

The project site is included on a list of hazardous material sites compiled pursuant to §65962.5. Therefore, pursuant to CEQA and consistent with the discussion in the Housing Element Initial Study, a Draft EIR was prepared to evaluate the project’s potential hazard impacts. Since the Draft EIR does present analysis of the project’s potential hazard impacts, analysis of the project was not deferred.

The findings in the Draft EIR are based on an understanding of the types of hazards that exist on the project site and that are common for sites that were previously developed with automobile uses, and there is nothing unusual or peculiar about the type and level of contamination at the project site. No secondary impacts are anticipated from implementation of these activities as the City requires the utilization of BMPs during cleanup activities (i.e., routine maintenance of equipment, proper disposal of fuels and other chemicals, and secure and safe stockpiling of soil during construction activities).

Pages 154 to 161 of the Draft EIR provide a detailed characterization of the prior uses at the project site. This discussion includes citations to over 20 reports that have been reviewed by the EIR preparers, including associated Phase I and II studies. While prior Phase I and II studies have been prepared, SCA HAZ-3, cited below, requires updated Phase I/II studies to be prepared. The SCAs on pages 151 through 154 of the Draft EIR are appropriate and protective of human health for this project. SCA HAZ-3 requires completion of Phase I and Phase II investigation reports with sufficient investigation to support development of recommendations for remedial action consistent with established performance standards, as stated in the Draft EIR:

SCA HAZ-3: Phase I and/or Phase II Reports. *Prior to issuance of a demolition, grading, or building permit.*

Prior to issuance of demolition, grading, or building permits, the project applicant shall submit to the Fire Prevention Bureau, Hazardous Materials Unit, a Phase I Environmental Site Assessment (ESA) report, and a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.

As stated in the Draft EIR, implementation of SCA HAZ-4 would result in the site being adequately cleaned up to standards appropriate for the proposed site use, as agency oversight and approval for remediation plans would be required, and the agency would ensure sufficient minimization of risk to human health and the environment.

SCA HAZ-4: Environmental Site Assessment Reports Remediation. *Prior to issuance of a demolition, grading, or building permit.*

- a) Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.
- b) Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.
- c) Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.

Barbara Sieminski of the Water Board has confirmed that specific mitigation measures addressing performance of additional subsurface investigation and cleanup would not be required for this site, as the SCAs would ensure appropriate cleanup of the site for the proposed future site use. Ms. Sieminski also stated that the Water Board plans to oversee all site investigation and cleanup activities including approval of remediation prior to supporting issuance of demolition, grading, or building permits for the site.⁴

The City's SCAs include General Conditions that are attached to each and every planning approval regardless of project type, location, size, context, or other considerations. General Condition 4, Conformance with other Requirements, states that prior to issuance of a demolition, grading, P-job, or other construction related permit, the project applicant

⁴ Personal communication between Barbara Sieminski, who is the lead caseworker overseeing the cleanup of Roberts Tires (part of the Project site) from the San Francisco Bay Region, Regional Water Quality Control Board, and Patrick Sutton of BASELINE Environmental Consulting, 23 January 2013.

shall comply with all other applicable federal, State, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshall and the City's Public Works Agency. According to the *Sundstrom v. County of Mendocino* case cited by the commenter, "a condition requiring compliance with environmental regulations is a common and reasonable mitigating measure." As the SCAs require compliance with the federal, State, and local regulations regarding hazardous materials, they can be considered common and reasonable mitigating measures.

As stated above, prior Phase I and II studies have been prepared for the project site, consistent with the commenter's request for obtaining Phase II results for the project and the example EIRs that included Phase II site assessments referenced in Comment B-20, though there is no legal mandate to provide a Phase II site assessment as part of an EIR. While prior Phase I and II studies have been prepared for the project, as a conservative measure, the SCAs are requiring new, more updated Phase I and II studies, which are necessary before remediation can occur. Therefore, as the SCAs require compliance with environmental regulations in regards to hazardous materials and updated Phase I and II studies, mitigation is not being deferred.

The SCAs are required performance standards for the assessment, remediation, and management of subsurface hazardous materials under regulatory oversight. (See Response B1-3 in regards to the use of SCAs to mitigate potential environmental impacts.) These standards must be satisfied prior to the issuance of building permits, so the project applicant is required to comply with the SCAs before construction of the project can begin. Therefore it is reasonable to expect compliance with the SCAs.

As stated on pages 168 to 169 of the Draft EIR, implementation of SCAs HAZ-1 to HAZ-6 would meet the directives of Alameda County Environmental Health (ACEH) for the property owner to characterize and/or cleanup the project site to protect human health and environment. Cleanup activities at the project site could include, but are not limited to, removal of the potential UST located beneath MacArthur Boulevard, source removal of contaminated soils, in-situ treatment of soil and groundwater, and/or installation of engineering controls (e.g. vapor barriers). These potential cleanup activities are common, and therefore feasible, for sites that were previously developed with automobile uses.

Moreover, as discussed in Chapter 1, Introduction, and acknowledged by the commenter, impacts of the environment on a project are not legally required to be analyzed under CEQA.

Response B1-9: As the letter acknowledges and as discussed in Chapter I, Introduction, of this RTC Document, potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (*Ballona Wetlands Land Trust et al. v. City of Los Angeles*). Additionally, as the comment letter and the High & MacArthur Draft

EIR states, the Housing Element EIR concluded that air quality impacts would be significant and unavoidable and that no further CEQA review would be required. As discussed in Chapter I, Introduction., of the High & MacArthur Draft EIR and this RTC Document , the proposed project is within the scope of the Housing Element EIR and pursuant to CEQA Guidelines §15183 and §15183.3, no further CEQA review would be required for the proposed project. However, the High & MacArthur Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers.

Detailed responses to specific air quality analysis issues cited in the letter prepared by Pless Environmental, Inc. are provided in Responses B1-18 and B1-19.

The High & MacArthur Draft EIR analyzes the air quality impacts on the proposed project in Section IV.B, Air Quality and Greenhouse Gases. The High & MacArthur Draft EIR acknowledges that the California Air Resources Board (CARB) has promulgated an advisory recommendation to avoid siting sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles per day or rural roads with 50,000 vehicles per day.⁵ CARB acknowledges and recognizes that their advisory recommendations are general and do not apply in all instances and states “[to] determine the actual risk near a particular facility, a site-specific analysis would be required”⁶ Therefore, a Health Risk Assessment (HRA) was prepared to assess the potential impact of mobile source emissions utilizing available resources such as emission inventory and dispersion models as well as current risk factors and related ambient air quality standards to assess exposure. This technique is often utilized by regulatory authorities as well as BAAQMD for both permitting applications as well as projects evaluated under the auspices of CEQA. The Pollutant Exposure Assessment conducted for this project is detailed and conservative (i.e., health protective) in its assumptions. As described in Section IV.B, Air Quality and Greenhouse Gases of the High & MacArthur Draft EIR, the HRA’s findings and effectiveness of identified SCAs are viable and will reduce pollutant exposures such that air quality impacts related to proximity to the I-580 Freeway would be less than significant.

As the analysis does quantify the amount of emissions, discusses whether these emissions will result in any significant health impacts, and discusses measures that would mitigate the potential impact, the *Berkeley KeepJets Over the Bay Comm. V. Board of Port Comrs.* is not directly applicable.

In regards to Dr. Ankunding’s letter cited in this comment, Dr. Ankunding’s letter states, “I am not an expert on particulate matter and therefore, have no opinion regarding whether auto exhaust on major freeways would negatively impact elderly residents or how

⁵ California Air Resources Board, 2005. Air Quality and Land Use Handbook: A Community Health Perspective.

⁶ Ibid.

much pollution it would take to create an unhealthy risk” and therefore does not provide comment on air quality impacts.

Response B1-10: The Draft EIR evaluates project-specific traffic impacts in Section IV.D, Transportation and Circulation, and does consider the traffic safety significance thresholds cited in the comment. The analysis regarding safety begins on page 203 of the Draft EIR. The traffic study cited in the comment was a traffic study conducted for a previous project, not the current proposed project. The traffic analysis contained in the Draft EIR evaluates the impact of the current proposed project, not the previous project. The letter from Traffic Engineer Brohard, cited in the comment and in comment B1-15, cites four concerns: signal timing for elderly pedestrians, shuttle service, planned improvements, and baseline conditions. The four concerns cited in Mr. Brohard’s letters are no longer relevant issues or have been addressed in the Draft EIR. The Draft EIR, beginning on page 204, reviews the pedestrian crossing intervals at the traffic signal on MacArthur Boulevard at High Street and concludes that the current pedestrian crossing times have been properly set so that there would be no issue with use by seniors in this area, as requested in Mr. Brohard’s letter for the previous project. See Response A2-2 in regards to shuttle service. The cost and maintenance of a shuttle is not required for the evaluation of environmental impacts under CEQA and would not change the evaluation and conclusions in the Draft EIR. The Draft EIR, on page 180, states that there were no significant planned roadway improvements in the project study area at the time the analysis was prepared, and while a Citywide resurfacing project is planned, it does not impact the number of traffic lanes. The improvements questioned in Mr. Brohard’s letter are no longer relevant to the proposed project. Baseline traffic conditions in the Draft EIR were derived from AM and PM peak hour turning movement counts that were conducted at the High and MacArthur intersection in May of 2010, and the methodology questioned in Mr. Brohard’s letter is no longer relevant to the proposed project.

In regards to entry into and exiting from the garage, Page 204 of the Draft EIR is revised to include the following recommendation to be imposed as a condition of project approval:

Recommendation TRANS-3: Limit entry into the garage to a right turn in only and limit exits from the garage to a right turn out only.

The signage at the garage exit could consist of either a "Right Turn Only" or a "No Left Turn" sign. There is no through street opposite the driveway where the project driveway is proposed to be located, so in this case a "No Left Turn" sign would also be sufficient. Signage is commonly used to provide additional information to motorists such as proposed turn restrictions. Additionally, the Draft EIR analyzes queuing on page 210 and concludes that the proposed project would cause an increase of less than 10 feet to the existing queue lengths. While existing queues are often exacerbated by motorists diverting onto nearby surface streets while attempting to bypass congestion on MacArthur

Freeway, these existing queues would continue to occur without the project, and under cumulative conditions, it was verified that the project would not increase the queues of any of the approaches to the intersection of High and MacArthur Boulevard by more than 15 feet.

Response B1-11: According to CEQA Guidelines §15124, the description of the project does not need to supply detail beyond that needed for evaluation and review of the environmental impact. The total number of housing units evaluated is consistent between the project description in the 2011 High & MacArthur Mixed Use Project Initial Study (2011 Initial Study) contained in Appendix A of the Draft EIR, and the project description contained in the Draft EIR. The number of affordable and market-rate housing units is not required for the evaluation of environmental impacts under CEQA, and a variation would not change the evaluation and conclusions in the Draft EIR. Table 1 in the 2011 Initial Study compares the applicable zoning standards with the project characteristics and identifies the discretionary permits/approvals the project will require. Because some of the project characteristics exceed the applicable standards, the project requires additional approvals from the City. The fact that the project may require exceptions or variances from zoning requirements or development standards does not change the findings of the impact analysis, which considered the physical limits (i.e., maximum height, setbacks) of the project. The applicant is not seeking any density bonuses or waivers for affordable housing.

Response B1-12: As stated in Response B1-11, Table 1 in the 2011 Initial Study compares the applicable zoning standards with the project characteristics and identifies the discretionary permits/approvals the project will require. The City of Oakland Planning Code (Title 17) establishes the procedure and requirements for obtaining these discretionary permits/approvals, which are required regardless of whether the residential units are affordable or market-rate. The Draft EIR considered these discretionary actions, which are required for project approval, as part of the project. Additionally, as discussed in Chapter I, Introduction, policy conflicts in and of themselves, in the absence of adverse physical impacts, are not considered to have significant effects on the environment.

Additionally, as the comment states “the Initial Study cited several policies encouraging increased housing development generally,” this shows that the project does not conflict with housing policies.

See Response B1-11 in regards to project description.

Response B1-13: As stated in Chapter I, Introduction, none of the corrections or clarifications to the Draft EIR identified in this document constitutes significant new information pursuant to §15088.5 of the CEQA Guidelines. As a result, a recirculation of the Draft EIR is not required.

Response B1-14: See Response B1-3 for response to SCAs comment. See Response B1-18 and B1-19 for response to Air Quality comment. See Response B1-7 for response to scenic highway comment. See Response B1-11 and B1-12 for response to project description comment.

Response B1-15: The documents listed are not considered comments on the Draft EIR for the following reasons:

- (A) This is already referenced in the Draft EIR;
- (B) This is dated prior to the public review period for the Draft EIR (October 26, 2012 through December 10, 2012) and/or provides comments on a previous project;
- (C) This is a technical evaluation of a previous project and/or has been superseded by a more recent evaluation;
- (D) This is information regarding the project and does not relate to the adequacy of the Draft EIR;
- (E) A copy of this could not be found in the materials submitted by Ms. Moncharsh; (Currently one letter is outstanding).
- (F) This has no relevance to the project or its environmental review. (Examples include matters related to project costs, investments, etc.)

The list of documents has been keyed with the letters of applicable reasons why the document is not considered a comment on the Draft EIR. These documents are available for review at the City of Oakland, Department of Planning, Building, and Neighborhood Preservation, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612.

Petra Pless, Pless Environmental, Inc. Attachment to Leila H. Moncharsh Letter

Response B1-16: This introductory and background comment does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.

Response B1-17: See Response B1-11 in regards to project description. As discussed in the 2011 Initial Study, the proposed project meets General Plan Objective N3: Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community. The proposed project is consistent with the Housing Element and will further the City in meeting its objective to increase housing.

Response B1-18: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers.

Analysis in the Draft EIR shows project construction impacts with implementation of SCA AIR-1 would be less than significant.

Section IV.B, Air Quality and Greenhouse Gases, and Appendix B in the Draft EIR include an explanation of how the construction-related particulate matter emissions were evaluated. While the text that summarizes the emission totals and dispersion calculations in Appendix B of the Draft EIR is correct (and should be referenced for purposes of the commenter's evaluation), the supporting model output files included in the Draft EIR were incorrect. The supporting model output files included on pages 154, 155, 156, and 157 of the Draft EIR Appendix (dated December 2011) were older model output files, rather than the correct model files referenced in the text. The correct and most current model output files (dated June 2012) are presented in Chapter IV of this RTC Document. It should be noted that the inclusion of these pages does not change any of the text in the Draft EIR including the impact conclusions, nor the detailed write-up provided in Appendix B.

Response B1-19: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers.

As discussed in Response B1-9, the Draft EIR acknowledges that CARB has promulgated an advisory recommendation regarding siting sensitive land uses relative to freeways and high volume roadways, but it states that a site-specific analysis would be required to determine the actual risk near a particular facility, which the Draft EIR provides. The comment specifically acknowledges that the relative risk from site to site can vary greatly, and that to determine actual risk near a particular source a site-specific analysis is necessary. The Draft EIR contains the requisite analysis and satisfies the request for a site-specific analysis.

Emission Sources

I-580 Off-Ramp

As discussed in Response A2-2, because the project is proposed to be an age-restricted senior housing project, the majority of trips would occur outside the peak hours resulting in no more than 5 peak hour trips being added to either ramp at I-580 at High Street. Emissions related to travel on the off-ramps would be negligible at best in comparison to the overall emissions of vehicles traveling along the I-580.

Bus Stop

Emissions associated with the adjacent bus stop, which may include diesel-powered buses (it is important to note that AC Transit has been ahead of State regulations requiring cleaner burning fleets and alternative fuels⁷) are not anticipated to be significant. AC Transit has been using cleaner burning engines for several years and has installed exhaust-after-treatment traps in all of its older buses. These traps not only cut particulate pollution by 85 percent; they also reduce nitrogen oxide emissions by an additional 25 to 30 percent and hydrocarbons and carbon monoxide by up to 90 percent. This program has helped AC Transit achieve a 95 percent reduction in particulate matter over the last ten years.⁸

In 2002, AC Transit switched to an ultra-low sulfur fuel (15 ppm). According to CARB, this shift, along with improved exhaust after-treatment, results in a 76 percent average reduction in hydrocarbon emissions, a 29 percent average reduction in carbon monoxide emissions, and a 29 percent average reduction in particulate matter emissions. In October 2007, AC Transit launched a new program to test two potentially even cleaner fuels: biodiesel and GTL (gas-to-liquids) diesel.⁹

The following two figures illustrate AC Transit's commitment to reducing emissions from their fleet. The figure Particulate Matter (PM) Emissions: Actual and Forecast through 2007 illustrates that AC Transit goes above and beyond requirements from CARB in limiting PM emissions for their fleet. As shown, AC Transit buses are cleaner than State requirements. Thus, diesel exhaust emissions from transit buses are not in this case substantially higher than that from diesel trucks. Any emissions resulting from AC Transit buses would be negligible at best and no further analysis is necessary or required.

The comment letter references a study titled Measurement of Aerosol Black Carbon Concentrations *Inside the City Buses of Ljubljana* (1998) in regards to cancer risk. However, the study does not appear to be applicable to cancer risk from vehicle traffic from diesel exhaust and other emissions related to the I-580 Freeway.

Gas Station

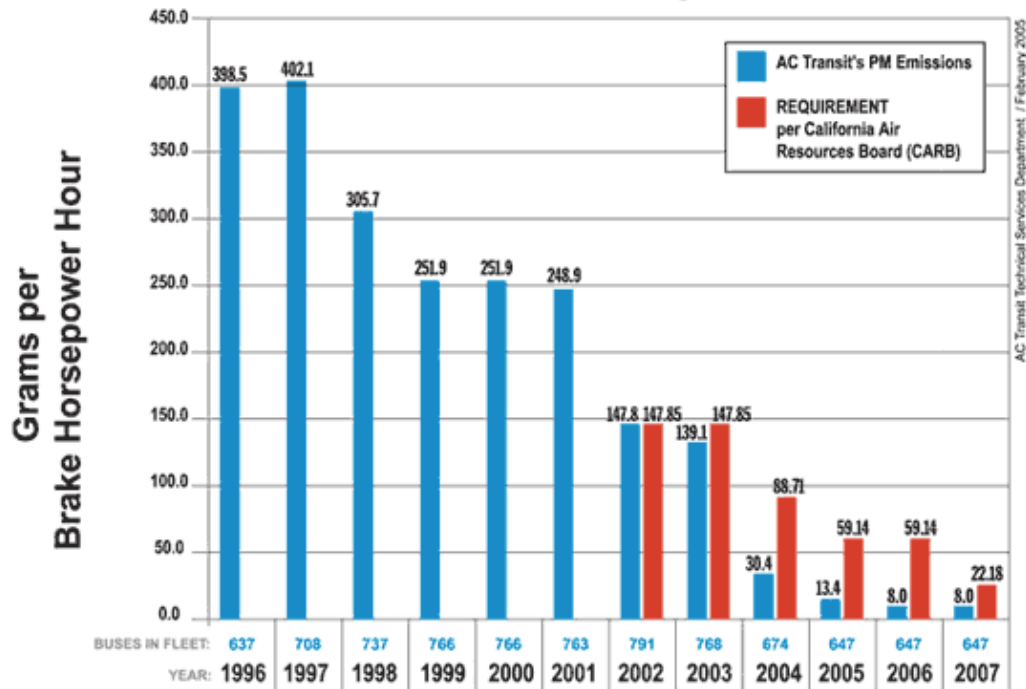
Inclusion of the gas station for air quality modeling purposes is likely be speculative since information on gasoline usage data is not available for public review. BAAQMD has informal screening-criteria guidance for projects located near a gasoline dispensing facility. BAAQMD provides a method to determine the potential impacts to a project from

⁷ AC Transit. <http://www.actransit.org/environment/the-hyroad/>. Accessed February 2013.

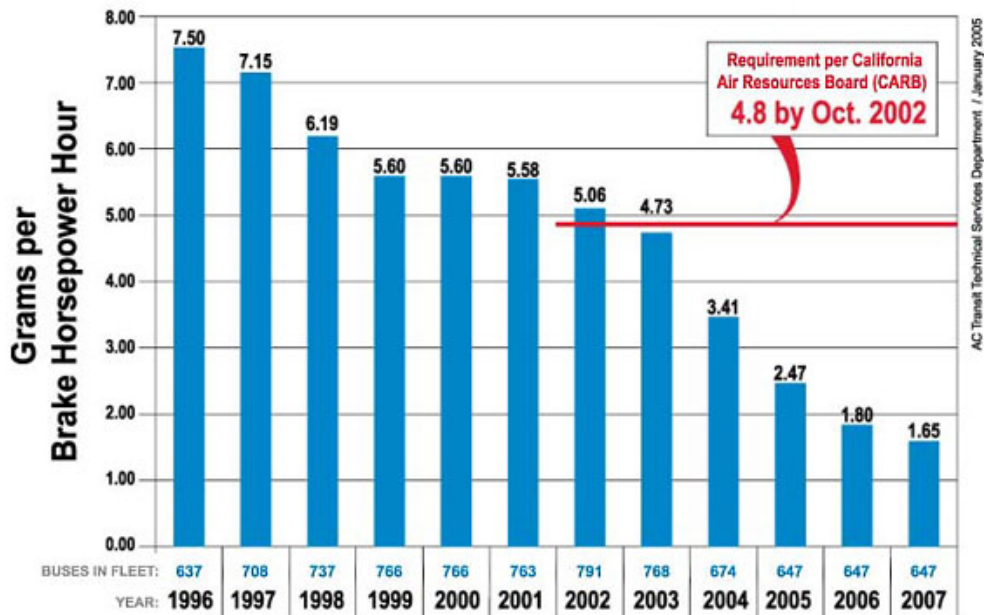
⁸ AC Transit. <http://www.actransit.org/environment/reducing-emissions/>. Accessed February 2013.

⁹ Ibid.

Particulate Matter (PM) Emissions: Actual and Forecast through 2007 (Total for fleet)



NOx Emissions: Actual and Forecast through 2007 (Average per Bus)



being located near a gasoline dispensing facility. Using BAAQMD's screening-criteria likely overstates the impact since the screening tool is designed to overstate impacts and since information to conduct site specific modeling is not available. Based on BAAQMD's screening process, there may be an additional risk of 5.4 in one million from the gas station adjacent to the proposed project. It should be noted that even if this risk value were added to the values presented in the High & MacArthur Draft EIR to determine the risk to future residents, the proposed project would not exceed BAAQMD's cumulative threshold of 100 per million. In fact the total risk would be approximately 8.95 per million which is below the cumulative threshold of 100 per million as well as the project-level threshold of 10 per million.

Dry Cleaner

A tenant for the commercial space has not yet been identified. Therefore it would be speculative to consider a dry cleaner or other use at this space for analysis purposes. Notwithstanding, any future use would be subject to permit requirements promulgated by the City and BAAQMD and would also be required to comply with applicable rules and regulations with the purpose of reducing emissions.

Ultrafine Particles (UFPs)

As stated in the comment letter, the risks posed by UFPs cannot be quantified at this time. The reason the risk cannot be quantified is due to the fact that: (1) there are no recognized emission factors for UFPs, (2) no methodology or tools exist for the quantification of UFPs, (3) UFPs have not been declared a toxic air contaminant by the CARB or US EPA, and (4) no significance thresholds exist. Furthermore, it is important to note that the study of UFPs is relatively new and while substantial effort has been made to characterize the health risks associated with exposure to diesel PM, information about the health impacts of UFPs is just now emerging and UFPs are not currently regulated.¹⁰ Therefore including discussion on an un-regulated pollutant that has not been declared a TAC would be speculative and provide little information to decision makers to make an informed decision.

Methodology

A detailed discussion on the ISCST3 Pollutant Concentration Modeling, including modeled emission rates, emission factors, etc. is provided in Appendix B of the High & MacArthur Draft EIR.

A flagpole height of 1.5 meters was not used; instead, as a conservative measure (i.e., in an effort to overstate rather than understate the impact), the emission source (I-580 Freeway) and the receptor are assumed to be ground level. Therefore, the impacts identified in the High & MacArthur Draft EIR actually overstate the impact since the concentration would actually be much less if grade separation were considered.

The High & MacArthur Draft EIR does not attempt to underscore the impacts from the I-580 freeway. The analysis contains several “conservative” (i.e., health protective) assumptions, including but not limited to, individual inhalation of 100 percent outdoor air at a given location for 70 years, while residing outside the residence 350 days every year for 24-hours each day. Additionally, as noted in the High & MacArthur Draft EIR, the HRA

¹⁰ South Coast Air Quality Management District. Draft 2012 Air Quality Management Plan. Chapter 9 Near Roadway Exposure and Ultrafine Particles
<http://www.aqmd.gov/aqmp/2012aqmp/draft/Chapters/Draft2012AQMP-Full.pdf>. Accessed February 2012.

was conducted without the consideration of the proposed central ventilation/filtration system. This system, which is included as part of the project, would have a minimum efficiency reporting value (MERV) of 13, an efficiency consistent with the ASHRAE 52.2 standards. Because individuals spend most of their time indoors, the addition of such an upgraded HVAC system (as required under SCA AIR-2 and AIR-3) would significantly improve indoor air quality in the dwelling units on the project site and further reduce the potential for any increased health risk.

Mitigation

SCA AIR-2.A does provide adequate mitigation to ensure the effects of the environment on the proposed project would not be significant, notwithstanding that such an assessment is no longer required by CEQA. (See Response B1-9) It should be noted that the included HRA does satisfy option 1 under SCA AIR-2.A. However, in recognition of the complex nature and sensitivity of placing residences near the freeway, the proposed project would also comply with option 2 under SCA AIR-2.A and would also include a MERV 13 filtration system as part of the project.

Response B1-20: The San Francisco Bay Regional Water Quality Control Board (RWQCB) is the lead agency overseeing site cleanup activities and did not require or recommend remediation prior to preparation of a Draft EIR. The Department of Toxic Substances Control (DTSC) is not currently overseeing any of the cleanup response actions at the project site. Therefore, a recommendation from the DTSC regarding site cleanup activities is not a regulatory mandate. See Response B1-8 in regards to the San Francisco Bay RWQCB's position on the project and the use of SCAs and discussion regarding deferral

Response B1-21: Installation of a permanent monitoring station, if required, will be incorporated into the proposed site layout and design, and would not result in additional significant CEQA impacts. Therefore, it would not require revision to the Draft EIR.

Response B1-22: As discussed in the Draft EIR (pages 159-161), petroleum concentrations in groundwater in October 2006 did not exceed the current ESLs for potential vapor intrusion concerns at residential properties. However, depending on the findings of the Phase I and Phase II investigation reports (see Response B1-8), recommendations for remedial action may include mitigations for vapor intrusion, and those recommendations will be implemented to ensure established performance standards will be met as required by SCA HAZ-6:

SCA HAZ-6: Radon or Vapor Intrusion from Soil or Groundwater Sources. *Ongoing.*

The project applicant shall submit documentation to determine whether radon or vapor intrusion from the groundwater and soil is located on-site as part of the Phase I documents. The Phase I analysis shall be submitted to the Fire Prevention Bureau, Hazardous Materials Unit, for review and approval, along with a Phase II report if warranted by the Phase I report for the

project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer. The applicant shall implement the approved recommendations.

Response B1-23: In November 2000, soil with lead was excavated at Robert's Tires to concentrations below the DTSC's approved cleanup goal of 350 mg/kg (Draft EIR, page 158). In April 2005, the DTSC issued a letter for no further action related to soil contamination with lead at Robert's Tires (Draft EIR, page 159). Remaining residual concentrations of lead will be discussed in the Phase I and II site investigation reports as required by SCA HAZ-3, and appropriate remediation will be conducted under agency oversight as required by SCA HAZ-4. See Response B1-8 in regards to use of SCAs.

Response B1-24: As stated in Chapter I, Introduction, none of the corrections or clarifications to the Draft EIR identified in this document constitutes significant new information pursuant to §15088.5 of the CEQA Guidelines. As a result, recirculation of the Draft EIR is not required.

Response B1-25: The attached resume of Dr. Pless does not relate to the adequacy of the Draft EIR; no further response to this comment is necessary.

Warner, Lynn

From: benson3644@comcast.net
Sent: Monday, December 10, 2012 5:09 PM
To: Warner, Lynn
Cc: Maureen Dorsey CommunityAction; Barbara; Ralls, Christine; scarranza@mills.edu
Subject: Re: Senior Housing Project at the corner of High Street and MackArthur Boulevard

Case Number: CMDV10-312;ER 10-0001

Please do not approve the project listed above.

| B2-1

* The lot used to have on it a tire repair shop. The soil is very contaminated and has not been cleaned up. It has not been cleared by Alameda County for any development.

| B2-2

* The site is right next to the 580 Freeway, a major commuter route with extremely high levels of pollutants. This is an inappropriate place to house elderly citizens with more than the average number of health issues to begin with. People need to be outside and exercising with out damaging their lungs.

| B2-3

* High Street and MacArthur Boulevard have heavy traffic always. Crossing the four lanes on foot is a challenge. But that is what the seniors will have to do anytime they want to go anywhere.

| B2-4

* The property is zoned for commercial. The EIR says that commercial use of the property will still have some negative traffic impacts that a residential use will have, but it ignores that the air quality issue would be less; commercial use in the past had used more that one driveway-reducing traffic issues, and that the Laurel needs larger properties developed for commercial use. Beverages and More has been looking for a site to expand another store and is being fought from opening on Piedmont Avenue by those residents and businesses because the site they want (previously a video store) has limited parking.

* This project was proposed in 2008 and turned down.

| B2-5

Sincerely,

Jeanette Benson
510-914-5862
3644 Loma Vista Avenue
Oakland, 94619

Letter B2

Jeanette Benson

December 10, 2012

Response B2-1: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Response B2-2: Permits for site development, including demolition, grading, or building permits, will not be issued until the site has been remediated under the oversight and approval of the appropriate regulatory agencies, in accordance with SCA HAZ-4. Please see Response B1-8 for a discussion of the SCAs and the San Francisco Bay Region RWQCB's position on the project.

Response B2-3: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers and concludes that impacts would be less than significant with implementation of SCAs. See Response B1-19.

Response B2-4:

Traffic and Pedestrian Circulation. The Draft EIR analyzed the pedestrian crosswalks in the vicinity of the project and based on existing data and review of the existing traffic signal timing the crossing, it concluded that the existing crossing times are properly set for seniors (see Draft EIR pages 204-205). In addition, the Draft EIR noted that seniors were observed crossing at the intersection without any problems during surveys completed for the Draft EIR. In regards to traffic impacts resulting from the one vehicle entrance on MacArthur Boulevard, the Draft EIR concluded that in general, the proposed site plan should function well from a circulation standpoint and would not cause any safety or operational problems.

Air Quality. The analysis in the EIR does not ignore that the air quality issue would be less for commercial use of the property. The analysis states in Chapter V. Alternatives that the Commercial Alternative would potentially have fewer air quality impacts than the proposed project because the alternative involves less building material, less construction time and equipment, and less overall building area.

Use. The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits. The applicable zoning of the project site is split between C-30 District

Thoroughfare Commercial Zone and C-31 Special Retail Commercial Zone¹¹ and both zoning districts allow permanent residential uses. No further response is required.

Response B2-5: This comment does not relate to the adequacy of the Draft EIR. The proposed project evaluated by the Draft EIR has been modified slightly since it was approved in 2008.

¹¹ The City recently updated its Zoning Ordinance. The C-30 zoning changed to CN-3 Neighborhood Commercial Zone 3. The C-31 zoning changed to CN-2 Neighborhood Commercial Zone 2. The new zoning regulations took effect on April 14, 2011. They will not apply to project applications which have been deemed complete prior to that date, which include the proposed project. (Oakland City Council Ordinance No. 13064 C.M.S. Adopted March 15, 2011)

Warner, Lynn

From: Amy Dawson [dawson.amy@sbcglobal.net]
Sent: Monday, December 10, 2012 3:59 PM
To: Warner, Lynn
Subject: Re: case # CMDV10-312; ER10-0001

One more thing: how will Caltrans trees be protected? The draft only addresses City trees.

B3-1

From: Amy Dawson <dawson.amy@sbcglobal.net>
To: lwarner@oaklandnet.com
Sent: Mon, December 10, 2012 3:56:24 PM
Subject: case # CMDV10-312; ER10-0001

Lynn Warner, Planner III

City of Oakland, Department of Planning, Building, and Neighborhood
Preservation,

250 Frank Hl Ogawa Plaza, Suite 3315,

Oakland, CA 94612

Re: case # CMDV10-312; ER10-0001

Dear Ms. Warner

I'm writing to express my grave concerns about the proposed project at
Macarthur and High.

I have two major objections about this project. I initially reacted against this
project due to the great height, size and proximity of the project to the freeway
- and while this is still a major objection of mine - as I further investigated
the project, I realized I would **never** want my mother to live there or for that
matter anyone, but especially not seniors! I will discuss each of these matters
next.

B3-2

**I strongly believe building senior housing in this location shows a gross
disregard for seniors because:**

B3-3

1. Seniors without transportation will be confined and isolated

- a. **Seniors cannot even walk around a block for exercise - let alone fresh air!** Because of the location - there is no block to walk around!
- b. **Seniors who are afraid of crossing the street will not go out alone** – all streets in the area are dangerous to cross even for able people.
- c. **The location will discourage visitors.** The lack of parking in the area will make it more difficult to visit the residents.
- d. **Even the courtyard will not afford them a nice place to be – it will have fumes, noise, and it will likely be in shadow and cold for most if not all of the day.**

B3-3
cont.**2. It is an unhealthy, hazardous place for anyone to live.**

- a. Whenever these seniors open their windows, go out on their balconies, use the building's courtyard, and come and go from the site, they **will be exposed to:**
- b. **Freeway pollutants (particulate and gaseous)**
- c. **Freeway noise**
- d. **Probable hazardous materials from the site (unless mitigated)**
- e. **High traffic streets increase the possibility of accidents**
- f. **There are no open spaces/parks within walking distance.**
- g. **Access for fire trucks is only available from two sides of the building.**
- h. **Emergency egress is not sufficient.**

B3-4

3. Since there will not be any food service in the building, they will need to go out to purchase their food or they will need to rely on food delivery. If they go out on their own, they will need to go to Food Maxx or to Walgreens for groceries – which are not easy to get to.

B3-5

My second major concern is placing a building of that size and height next to the freeway.

The pictures in the draft EIR do not show the true effect this building would have on the view of the East Bay hills. The picture from 580 going east in the draft EIR is taken farther away and from the slow lane, farthest from the site. I think it should be taken closer to the site and from the fast lane to get the true impact. In addition, the draft EIR states that people will only see it for a few seconds because they are driving... well, while that may be for a driver, that is not the case for passengers.

In addition, I drove from Kaiser downtown to San Leandro and there are NO buildings over two stories that close to the freeway. The draft EIR also references a personal communication from Caltrans, stating that this section (it doesn't define what it is!) would no longer fit the designation. I spoke to someone at Caltrans today about this, and they said it is already designated as a scenic highway, so putting that building in doesn't remove the designation – BUT by the same token, if more buildings like it are constructed, it could definitely endanger that designation.

B3-6

In addition if the building is to be constructed, it should be painted with more natural colors so that it does not stand out as much. There is a larger apartment building that can be seen from the freeway (just after the 14th St and Park St. exit going W on 580) that is also an eyesore even though it is much farther away from the freeway. It was recently repainted, and it definitely is an improvement.

I'm running out of time to get this to you, so I will close now, but I urge you not to allow any residential use of this site and to lower the height of the building.

B3-7

Thank you,

Amy Dawson

510-436-3357

Letter B3

Amy Dawson

December 10, 2012

Response B3-1: The proposed project does not include any removal of or alterations to trees located in Caltrans property or right-of-way.

Response B3-2: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Response B3-3: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits. The following responses serve to clarify details regarding the proposed project.

Pedestrian Facilities and Transit Service. The project site is adjacent to existing pedestrian facilities and transit service as described in the Draft EIR on page 179. The existing pedestrian facilities in the vicinity of the proposed project are sidewalks on all of the nearby streets with crosswalks at all signalized intersections. There are also crosswalks near the MacArthur Freeway Eastbound On-Ramp just east of the proposed project that provide access to a pedestrian bridge over the freeway to Redding Street. AC Transit Service provides bus service on High Street and MacArthur Boulevard. The bus stops adjacent to the project site serve eight transit routes, which would be very convenient for residents of this project, as well as for the employees.

Pedestrian Safety. See Response B2-4 related to traffic and pedestrian circulation.

Parking. The Draft EIR provides a discussion and analysis of parking on pages 207-208. The proposed project includes commercial and visitor parking and well as resident parking. No on-street parking spaces would be removed as part of the project. The proposed parking plan would also include the required number of accessible handicap parking spaces and bicycle parking spaces. The parking demand estimated for the proposed project (63 spaces) would be accommodated by the project's proposed parking supply (65 spaces). A qualitative review of on-street parking occupancy in the area was conducted in March of 2012. On-street parking occupancy within two blocks of the project site was surveyed. The on-street parking surveys indicated that the on-street parking within a two-block radius of the project is never more than about 60 percent occupied overall. Although some individual blocks near the post office (located at 3630 High Street) were observed to be 100 percent occupied the overall occupancy level for the entire two-block area never approached capacity during the surveys.

Courtyard. As the proposed courtyard is located in the middle of the project site, the courtyard will not have direct exposure to traffic noise and fumes. The courtyard will not

be in the shadow and cold for most of the day. As the location of the sun varies throughout the day and throughout the year, sun exposure will vary as well.

Response B3-4: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits. The following responses serve to clarify details regarding the proposed project.

Air Quality. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19).

Hazards. Permits for site development, including demolition, grading, or building permits, will not be issued until the site has been remediated under the oversight and approval of the appropriate regulatory agencies, in accordance with SCA HAZ-4. Please see Response B1-8 for a discussion of the SCAs.

Freeway Noise. As required by SCA NOISE-4, noise reduction measures will be incorporated into project building design, based upon recommendations of a qualified acoustical engineer prior to the issuance of a building permit.

Traffic. See Response B2-4, Traffic and Pedestrian Circulation, and Response B3-3, Pedestrian Facilities and Transit Service.

Open Space/Parks. The project site is located approximately 0.6 miles east of Brookdale Park and Maxwell Park. Additionally, the project includes an interior courtyard that would provide easily accessible, private open space for residents.

Emergency Access. The project site is located approximately 700 feet from Fire Station 17/Battalion #4. The project is required to adhere to the California Fire Code which will ensure adequate fire access for the project. The City of Oakland, as a general condition of approval for all projects, requires, prior to issuance of a demolition, grading, P-job, or other construction related permits, compliance with all other applicable federal, State, regional and/or local laws/codes, requirements, regulations, and guidelines, including those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency.

As stated in the Draft EIR, the proposed project does not include any new streets that exceed 600 feet in length and as a result will not result in less than two emergency access routes for streets exceeding 600 feet in length. The proposed project would not be expected to interfere with the Standard Emergency Management System (SEMS) emergency plan for the City of Oakland, because development would not restrict access to nearby evacuation routes along High and Macarthur Boulevard.

Response B3-5: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits. See Response B2-4, Traffic and Pedestrian Circulation, and Response B3-3, Pedestrian Facilities and Transit Service, for more information regarding mobility.

Response B3-6: See Response B1-7 in regards to aesthetic resources. As a result of multiple community meetings, the project analyzed in the Draft EIR does include a color scheme to soften the appearance of its massing.

Response B3-7: This closing comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Warner, Lynn

From: thomas wong [laureldistrictassociation@gmail.com]
Sent: Monday, December 10, 2012 2:31 PM
To: Warner, Lynn
Subject: Re: Development on High St and MacArthur Blvd

Lynn Warner
City of Oakland Planning Dept.
250 Frank Ogawa Plaza
Oakland, CA 94612

Dear Ms. Warner –

The Laurel District Association did not receive notification regarding the comment period for the Draft EIR of the High and MacArthur Street Project. Needless to say this is an important project in our Business Improvement District and we have a vested interest in the success of the project. Please accept our comments:

B4-1

1. The project is not significantly different from the 2006-2008 application and we would like to encourage staff to review comments in the the previous application (from the same developer) be included in consideration. The community was very active and put a lot of effort into the first round of comments. The extended process is not only hard on the developer, it is unreasonable to expect neighborhood volunteers and concerned citizens to continue to follow and comment on the project when the city that has received fees, and has paid staff than can, at a minimum, review and include previous comments.

B4-2

2. We also encourage the city not release the final EIR until after the property is tested and the mitigations are clearly set forth as to how the property will be cleaned. This intersection has a plume the source of which has not been identified. Two sites test regularly, and it is important for future development that all sites are cleaned, so that continued the impact on adjacent sites or sites downhill will not occur.

B4-3

3. We strongly encourage that there be inclusion of meaningful ground floor commercial in the development (vs. community rooms, parking and lobby for a residential building). As a business improvement district – on a site that is zoned for ground floor commercial, we would like to see more significant ground floor commercial space. As the first new development in a district that is zoned cn-2 we would like staff to enforce the intent of the zoning, which is ground floor commercial retail uses.

B4-4

Thank you in advance for your consideration in this matter.

Sincerely,

Tommy Wong
Executive Director, Laurel District Association
Laurel District - Best of the East Bay
"Best Completely Re-Imagined Neighborhood"
Facebook: Laurel Street Fair, and Laurel District Association
www.laureldistrictassociation.org
laureldistrictassociation@gmail.com

Letter B4

Thomas Wong

December 10, 2012

Response B4-1: The City mailed a Combined Notice of Release and Availability of the Draft Environmental Impact Report and Notice of Public Hearings on the High & MacArthur Mixed-Use Project to neighborhood groups, as well as regional and local agencies. Copies of the Draft EIR were available for review or distribution to interested parties at no charge at the City of Oakland, Department of Planning, Building and Neighborhood Preservation, 250 Frank. H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m. between October 26, 2012 through December 10, 2012. Additionally, the Draft EIR was also available for review online on the City of Oakland website at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>

Response B4-2: According to CEQA Guidelines §15088, the lead agency shall respond to comments received during the noticed comment period (October 26, 2012 to December 10, 2012). Comments submitted on a previous project, and outside of the noticed comment period do not necessitate a response.

Response B4-3: Permits for site development, including demolition, grading, or building permits, will not be issued until the site has been remediated under the oversight and approval of the appropriate regulatory agencies, in accordance with SCA HAZ-4. Please see Response B1-8 for a discussion of the SCAs.

Response B4-4: This comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Warner, Lynn

From: Charlie [chpine2@sbcglobal.net]
Sent: Sunday, December 09, 2012 7:57 PM
To: Warner, Lynn
Subject: Opposed to approval for Case Nos. CMDV10-312; ER10-0001

To Planner Lynn Warner and the Planning Commission:

Re: Case Nos. CMDV10-312; ER10-0001

B5-1

I live a bit below I-580 near this parcel. I oppose the project on environmental grounds including:

1. The project is a threat to the scenic highway designation of I-580, as attorney Leila Moncharsh demonstrated to you when AMG first proposed the project. Not only is it a threat in itself; it opens the way for further building to unsuitable height next to the freeway, which at some point would cumulatively guarantee loss of scenic designation.

B5-2

2. The project would house seniors with fragile respiratory systems next to a busy freeway and two busy arterial streets, High St. and MacArthur Blvd. Extremely fine particulate pollution is a problem at such a location. National attention to the impairment of health from breathing fine particulates is rising. Oakland brags about being a leader in green development; this project would subject hundreds of seniors to harmful pollution.

B5-3

3. The decades of ground pollution on this parcel have not been addressed properly.

B5-4

Commissioners, please answer this question: would you urge a loved one in their own family to live in this project? (When this project was originally submitted, a commissioner volunteered that she would not want her mother there.) Why should other people be pushed into it by economic circumstances? In the richest country in the world, is there no minimum quality of life that should be required for every citizen?

B5-5

Please include this email of my opposition to the project in the case record - and reject the project.

Charles Pine

Letter B5

Charles Pine

December 9, 2012

Response B5-1: This comment introduces more detailed comments in the letter which are addressed in the subsequent responses; no further response to this comment is necessary.

Response B5-2: See Response B1-7 in regards to scenic highway designation.

Response B5-3: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers. See Response B1-19.

Response B5-4: See Response B1-8 related to hazardous materials.

Response B5-5: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Warner, Lynn

From: luans@aol.com
Sent: Sunday, December 09, 2012 7:30 PM
To: Warner, Lynn
Cc: comact@oaklandvet.com
Subject: CMDV10-312; ER10-0001

I would like to register my objection to the proposed senior housing project at MacArthur and High St. Since the inception of the project there has not been adequate information to indicate that the site has been cleaned up properly for residential use. The history of the site shows there having been not only a tire store but also a gas station there and I've never seen any information indicating that the tanks have been safely removed.

B6-1

The proposal is outside the current scope of zoning as I understand it for that parcel and the most consistent answer I heard from AMG as to why they couldn't put parking underground, or have retail on the first floor, or keep to the height restriction was that "it wouldn't pencil out." Meaning they would make little money on the deal presumably.

I don't believe it's the neighborhood's duty to make them money.

It is our duty however to help create a viable neighborhood and I don't believe a senior housing project with many allowances will do that.

B6-2

A recent project that didn't live up to promise is the MaxxValue store across the street from my business that was a Lucky's until this year. We were assured that it would bring in many new customers and vibrancy to the boulevard. My experience it actually that the customers who once shopped there no longer do, and those who do shop there do not shop at nearby businesses.

I have no faith that this project would bring additional shoppers to our district and add to the livability or vibrancy any more than I did with the Savemart corporation, and were this project to go forward, we would be saddled with it.

I was at the planning commission meeting where more than one commissioner admitted that they would not personally put an elderly parent in that location. The commission, and we, have a duty to create developments that benefit our neighborhoods and residents. While senior housing may be needed, there are many other parcels in the city, even in our own area, that could be used in the proper manner for this purpose.

B6-3

My hope is that the owner of the property will abandon this project that has been controversial not only for the use planned but also for the information and safety issues that have been brushed aside and pursue a development or tenant that will provide much needed retail or sensible mixed use to the Laurel.

Luan Stauss
Roberts Ave. Maxwell Park
also owner of
Laurel Book Store
4100 MacArthur

Letter B6

Luan Stauss

December 9, 2012

Response B6-1: See Response B1-8 in regards to site remediation and the use of SCAs.

Response B6-2: See Response B2-4, Use, in regards to zoning. The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Response B6-3: This comment regarding the project does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Warner, Lynn

From: CommunityAction [comact@oaklandvet.com]
Sent: Saturday, December 08, 2012 6:33 PM
To: Warner, Lynn
Subject: Fwd: dEIR CMDV10-312; ER10-0001



reuters report.pdf
(74 KB)

Sorry, I forgot to sign this email

Maureen Dorsey, DVM
4258 MacArthur Blvd
Oakland, CA 94619
510-530-1353

----- Original Message -----

From: - Sat Dec 08 06:43:49 2012
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00800000
X-Mozilla-Keys:
Message-ID: <50C35223.3060902@oaklandvet.com>
Date: Sat, 08 Dec 2012 06:43:47 -0800
From: CommunityAction <comact@oaklandvet.com>
Organization: Community Action
User-Agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 10.6; rv:7.0.1)
Gecko/20110929 Thunderbird/7.0.1
MIME-Version: 1.0
To: lwarner@oaklandnet.com
Subject: dEIR CMDV10-312; ER10-0001
References: <50C26DDC.5090600@oaklandvet.com>
In-Reply-To: <50C26DDC.5090600@oaklandvet.com>
X-Forwarded-Message-Id: <50C26DDC.5090600@oaklandvet.com>
Content-Type: multipart/mixed;
boundary="-----080804010505020607040201"

Dear Ms Warner,

Please review the comments I made to the previous application of this project in 2006-2008.

The dEIR for this project is deficient in the following ways:

1. All issues regarding permits cannot be fully established without the mitigation of the known pollution of the property. The dEIR makes some comment about maybe the underground toxins are associated with other properties which denies the facts of the intersection of High and MacArthur. The surrounding properties at the intersection have all had their USTs removed. AMG property (former Roberts Tires) has not, nor has the UST below the actual pavement of MacArthur Blvd been removed by the city and/or CalTrans. Since these USTs can hold a considerable amount of fluid, and since the property owner has continuously ignored the requests for further test wells, to surmise in an EIR that "Groundwater contamination from the Unocal Sation and former Shell Service Station could potentially have migrated beneath the proposed project site." (page 163) is irresponsible fiction. The plume that continues to be monitored by both the former Shell station property owner and the current Unocal property owner could indeed be contaminated by the USTs from the former Roberts Tires site.

2. It is imperative that the City of Oakland follow best practices when it considers land use and especially when it is considering major conditional use permits and variances. This should put a larger burden on the applicant and the dEIR to explain why CARB

guidelines would not be more important rather than being not only ignored but flagrantly disregarded. The project is not being considered for individuals who could chose to live within 60 feet of a freeway. The project is specifically for those who are relegated to living wherever the government designates them to live, if they are to get housing for a reduced rent. The dEIR discusses the nearest sensitive receptor and it is 165 feet northeast of the site. This area, however, existed PRIOR to the freeway construction. What CARB charges our government with is to be extremely mindful of health risks to people with regard to purposely locating residential living next to freeways. I have attached a report from Reuters of a American Heart Association report that details the risks to the elderly in particular when they move closer to freeways. Their health deterioration is likened to that of smokers who quit smoking: move away from high traffic roads and incidence of heart disease decreased, move closer to high traffic roads and the incidence of heart disease increased. Thus, the CARB advisory recommendation, while "not regulatory", is substantial support for the City to require vulnerable populations be housed away from freeways.

B7-3
cont.

3. Scenic Highway impact is not considered by the dEIR to be a negative impact because cars will be traveling fast. ALL highways, since the institution of the "scenic highway" designation, have cars traveling fast! In fact, speed limits used to be much higher. The designation of a scenic highway is used specifically with highway speeds in mind--- otherwise one could surmise that the State would have relegated scenic vistas to just bikepaths. Nowhere on 580 from the San Leandro border to Grand Avenue does Oakland have a 5 story building abutting the scenic highway. For the dEIR to indicate that since there are no more projects contemplated in the same realm as this one along 580 does not serve as a mitigation nor should it! One does not use the uniqueness of one's project as a free pass. That the City has continued to allow this property to keep a billboard is also not a rational excuse for replacing it with a massive building. Instead, it points to Oakland's continued disregard for the scenic highway designation and its responsibility to remove "ugly billboards". Mayor Quan had that opportunity a few years ago and yet she chose to have the city remove a different billboard from a different section of MacArthur Blvd. further removed from the scenic highway.

B7-4

4. The dEIR contradicts itself when it denies that the environmentally favorable alternative, second to "no project", is the commercial alternative. Page 86 quotes the LUTE "Policy I/C3.1: Enhancing Business Districts. Retain and enhance clusters of similar types of commercial enterprises...." This near acre of undeveloped land is an anchoring segment of the Laurel Business District. Building a primarily residential development contradicts the LUTE and removes from future retail commercial use a significant property with close freeway access.

B7-5

It has poor pedestrian access for any actual residents relegated to this triangle. To claim that a 4 or 5 story building with minimal (less than 9%) commercial use has the same environmental impact equivalent to 100% commercial use is irresponsible. Traffic trips will not be equivalent because commercial development of such a property will not result in a single auto entrance but would be constructed with multiple entrances which would differ traffic flow. There will be no scenic highway impact with commercial use. There will not be the air quality concerns as no residents would need to be accommodated. The billboard can be removed. Given the underground contamination that is KNOWN to exist on this site, let alone how bad it may actually be, it may be determined that the site cannot qualify for any residential use. Thus, the dEIR is faulty in its conclusion that the less dense alternative is environmentally better than commercial use.

B7-6

Finally, as has been stated in the past, the number of variances, CUP's and zoning maneuvers being sought and supported by the planning department for this site is unbelievable. Yes, the site has an unusual configuration, but that doesn't mean you should elaborate on it by trying to make a square peg fit in a round hole. It is a commercial piece of property, always has been, and should remain so. The requirement that variances and CUP's should increase the benefit to the community has not been met by the dEIR's contention that the project will remove a billboard and a fence. Mere blight abatement could do the same. Placing seniors in a risky environment does not benefit the community. There are dozens of other sites in Oakland that are more suitable for subsidized senior housing.

B7-7

Warner, Lynn

From: CommunityAction [comact@oaklandvet.com]
Sent: Saturday, December 08, 2012 6:44 AM
To: Warner, Lynn
Subject: dEIR CMDV10-312; ER10-0001



reuters report.pdf
(74 KB)

Dear Ms Warner,

Please review the comments I made to the previous application of this project in 2006-2008.

The dEIR for this project is deficient in the following ways:

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B7-8

Oakland's continued disregard for the scenic highway designation and its responsibility to remove "ugly billboards". Mayor Quan had that opportunity a few years ago and yet she chose to have the city remove a different billboard from a different section of MacArthur Blvd. further removed from the scenic highway.

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B7-8
cont.

NEW YORK | Thu Jul 15, 2010 1:19pm EDT

(Reuters Health) - Middle-aged and older adults who live near high-traffic roads may have a heightened risk of dying from heart disease -- but the odds seem to go down if they move to a less-traveled neighborhood, a new study finds.

The findings do not prove that traffic pollution is the reason for the excess heart disease deaths, researchers say. But they do add to evidence tying vehicle-produced pollutants to the risk of dying from heart problems.

In May, the American Heart Association (AHA) released a report stating that recent studies have "substantially strengthened" the evidence that air pollution from traffic, industry and power generation is a risk factor for heart attack, stroke and deaths from cardiovascular causes.

The evidence most strongly points to particles known as fine particulate matter, which is produced from burning gasoline and other fossil fuels.

The AHA recommends that people with established heart disease and other at-risk individuals -- including the elderly and people with risk factors for heart disease, like diabetes and high blood pressure -- try to limit their exposure to congested roadways and spend less time outside on days when air quality is poorer.

For this latest study, Wen Qi Gan and colleagues at the University of British Columbia in Vancouver, Canada, analyzed data on more than 450,000 Vancouver-area residents between the ages of 45 and 85.

They found that over nine years, residents who consistently lived within roughly 500 feet of a highway or within 165 feet of a major road were more likely to die of heart disease than those who lived farther from high-traffic roadways.

But the researchers also found "two new twists" to what's been known about the relationship between traffic and heart disease deaths, explained senior researcher Dr. Michael Brauer, a professor

B7-9

of environmental health at the university.

That is, the risk of heart disease death declined among residents who moved away from high-traffic roads during the study period, while it increased among those who moved closer to congested roads.

"It's sort of like what we see with smoking cessation," Brauer said in an interview. "The associated disease risks are lower in former smokers," compared with persistent smokers.

The findings are based on 450,283 middle-aged and older adults with no known heart disease at the outset. Nearly 53,000 persistently lived within 500 feet of a highway or 165 feet of a major road over the nine-year study.

Of those residents, 607 -- or just over 1 percent -- died of heart disease during that period; that compared with 0.7 percent of the more than 328,000 people who persistently lived farther from traffic.

The researchers were able to account for a number of other factors that could explain any connection between living near major roads and having a higher risk of dying from heart disease -- including residents' age, neighborhood income levels and any diagnoses of diabetes or major lung disease.

They found that living near a highway or major road was still linked to a 29 percent higher risk of heart disease death, versus living farther away. Among people who either moved away from or closer to a major road, the risk of heart disease death was also somewhat elevated -- but lower when compared with residents who persistently lived near busy roads.

In addition, the researchers used air pollution data to show that people living close to highways and major roads would have been exposed to higher levels of particulate matter, nitrogen dioxide and other traffic-related pollutants.

The findings do not prove that air pollution was the reason for the higher risks. Brauer said that traffic noise, for example, might be involved. In addition, the researchers had no information on certain key factors in heart disease risk, including people's smoking habits and weight.

B7-9
cont.

However, a body of research has now linked air pollution exposure to the risk of heart disease death, Brauer pointed out. And, he said, the evidence suggests that traffic pollution may be a particular risk.

A "big question," Brauer said, is whether exposure to air pollution is linked to the initial development of heart disease -- or whether its association with heart disease death reflects an effect mainly on people with existing heart problems.

Researchers believe that air pollutants may trigger heart attacks, strokes or other cardiovascular "events" in vulnerable people by causing inflammation in the blood vessels and irritating the nerves of the lungs.

Brauer suggested that people view traffic pollution as one of the range of factors that may influence their heart disease risk -- which includes exercise and diet habits, smoking and the presence of any health conditions that contribute to heart disease, like diabetes, high blood pressure and high cholesterol.

Living near major roads does not mean a person is destined for heart disease. And, Brauer noted, living in a low-traffic area does not mean a person can slack on following a healthy lifestyle.

SOURCE: link.reuters.com/jek77m Epidemiology, online June 25, 2010.

B7-9
cont.

Letter B7

Maureen Dorsey

December 8, 2012

Response B7-1: This comment does not relate to the adequacy of the Draft EIR. See Response B4-2 in regards to comments made on previous projects.

Response B7-2: A co-mingled plume of petroleum hydrocarbons extends from the former Shell and Unocal service stations to the southwest, the general direction of groundwater flow, as discussed in the Draft EIR (pages 162 and 163). The lateral extent of the plume has not yet been defined, and could extend under the western portion of the project site. Residual groundwater contamination from the former Chevron service station, if any, would also likely migrate in the general direction of groundwater flow to the southwest and could therefore have migrated beneath the western portion of the project site as well. Any groundwater contamination from Roberts Tires would likely migrate beneath the central and/or eastern portion of the project site and the plume would likely migrate in the general direction of groundwater flow to the southwest, away from the adjacent service station properties.

Response B7-3: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers. See Response B1-19.

Response B7-4: See Response B1-7 in regards to scenic highway designation.

Response B7-5:

Alternatives. The CEQA Guidelines require the analysis of a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the projects basic objectives and avoid or substantially lessen any of the project's basic objectives and avoid or substantially lessen any of the significant effects of the project. Comparison of the environmental impacts associated with each alternative in the Draft EIR indicates that Reduced Development/Mitigated Alternative would represent the next-best alternative in terms of the fewest significant environmental impacts.

General Plan Policy. As stated in Chapter I, Introduction, policy conflicts in and of themselves, in the absence of adverse physical impacts, are not considered to have significant effects on the environment.

Use. The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits.

Response B7-6: See Response B2-4 Traffic and Pedestrian Circulation and Response B3-3 Pedestrian Facilities and Transit Service in regards to pedestrian access and traffic.

Response B7-7: This comment does not relate to the adequacy of the Draft EIR; but the City may consider this comment during the review of the project merits. See Response B2-4, Use, for clarification regarding zoning.

Response B7-8: This is a duplicate of the first email (responded to above) which was not signed. No further response is required.

Response B7-9: This is an informational article attached to the email and referenced in comment B7-3. The article itself does not relate to the adequacy of the Draft EIR. No further response is required.

Warner, Lynn

From: Malone, Ruth [Ruth.Malone@ucsf.edu]
Sent: Friday, December 07, 2012 8:22 AM
To: Warner, Lynn
Subject: CMDV10-312;ER10-0001

Dear City Planners,

I am writing to express my concern and dismay over the proposed 5 story senior residence being proposed for the corner of High Street and MacArthur. Having spent almost twenty years living in the Laurel District and working on neighborhood improvement as a neighborhood activist, I know that this parcel is zoned commercial, not residential, and my understanding is that it remains contaminated from the previous use.

B8-1

As a nurse, I am well aware of the literature showing that those living within a mile or less of major freeways have worse health outcomes than those living farther away. To place vulnerable seniors in such a place is the height of environmental irresponsibility. Air filters do not remove those fine particles that are a major problem, and not all seniors stay indoors at all times even if that were the --which it is not. To place seniors on a corner virtually on the freeway where to go anywhere they must cross four lanes of traffic is really to show no concern for their health whatsoever.

B8-2

B8-3

As a former Laurel neighbor, I know that the community has long sought more commercial development along this corridor. This runs counter to that community goal. Everyone supports more housing for vulnerable seniors. But not in such a dreadful location! Infill housing is great--housing close to public transport and stores is important. Housing above commercial buildings farther up in the district would be much more appropriate. This site is completely inappropriate for the planned use and should not be permitted, no matter how well-connected the developers.

B8-4

Best,

Ruth Malone

Co-Founder, Laurel Community Action Project 10700 Lochard St Oakland, CA 94605

Letter B8

Ruth Malone

December 7, 2012

Response B8-1: This comment does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits. See Response B2-4 Use in regards to zoning. See Response B1-8 in regards to hazards.

Response B8-2: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19).

Response B8-3: This comment does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits. See Response B2-4 Traffic and Pedestrian Circulation regarding crossing times.

Response B8-4: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Warner, Lynn

From: Alecto Caldwell [alectocaldwell@yahoo.com]
Sent: Wednesday, December 05, 2012 11:12 AM
To: Warner, Lynn
Subject: CMDV10-312;ER10-0001 High and MacArthur Senior Housing

Planner Warner,

It is so distressing to see this come back again. I do not understand why this is being resurrected/reconsidered when there seems to be little or no change in the plans to address the objections and problems raised and discussed four years ago which resulted in the project being shelved until those issues were addressed.

B9-1

Am I wrong? Has the toxic waste cleanup issue with Alameda County been adequately addressed?

B9-2

Importantly, how can the City show such a callous lack of concern for the merchants and consumers in this area who have worked so hard to make a viable and attractive commercial area for our community? I see no advantage brought to the area by this project that would justify a variance from the existing zoning.

B9-3

Not only does this proposal show a marked lack of concern for the projected site, it is stunning in it's lack of concern for the proposed tenants! I am a senior, a good many of my friends and relatives are as well. In talking with them about this project, I hear all the same questions again that were raised when this was originally proposed.. What about the pollution, air quality, noise, safety and traffic issues? Where is one to go to get away from the noise and pollution? Will the residents end up staying inside all the time? Does not sound very appealing.

B9-4

This is a poorly designed project and I can only think that the standards and applicable rules are being compromised in order to provide profits to the land owner, the developer, and perhaps the City at a cost to the residents and merchants. I also seem to remember that this project is a lot about a tax plan to fund it. Is this going to help us? I just see greed and schemes!

B9-5

I see virtually no differences in this proposal and the previous proposal. I strongly object! We do not need this kind of machination that profits some while creating long term problems and disadvantages for so many.

The draft EIR does not address that commercial use of this space would be superior and would not require a variance. The impacts of this project on the area are too great to let it proceed as proposed!

B9-6

Alecto Caldwell
3435 Simmons Street
Oakland, CA 94619

Letter B9

Alecto Caldwell

December 5, 2012

Response B9-1: This comment does not relate to the adequacy of the Draft EIR. The project evaluated by the Draft EIR has been modified slightly since it was approved in 2008.

Response B9-2: See Response B1-8 in regards to site remediation.

Response B9-3: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits

Response B9-4:

Air Quality. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19).

Noise. See Response B9-4, Freeway Noise.

Traffic: See Response B2-4, Traffic and Pedestrian Circulation, and B3-3, Pedestrian Facilities and Transit Service.

Response B9-5: The comment regarding the design of the project does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits

Response B9-6: The Draft EIR evaluated the environmental impacts of the Commercial Alternative for the site. The Draft EIR concluded that implementation of the Commercial Alternative would result in impacts similar to the proposed project for all of the environmental topics found to be less than significant and focused out of the EIR in the Initial Study, although incrementally less. The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Warner, Lynn

From: Beatriz Perez-Stable [bperezstable@yahoo.com]
Sent: Wednesday, December 05, 2012 3:03 PM
To: Warner, Lynn
Subject: CMDV10-312; ER10-0001

L. Warner, Planner,

I am writing to enter my objections to this project in the record.

I attended many community meetings, two Planning Commission Meetings, and a City Council Meeting regarding this project when it was originally proposed. The objections that were raised at that time were numerous and serious.

This project is extremely out-sized for the location. There is nothing remotely like it in the Laurel Business District. It is proposed to be placed exactly at the entrance - and it in no way relates to what is there.

This land is zoned for commercial use and should stay that way. This project is not an improvement. I argue that this project would negatively impact a viable shopping district for our neighborhood and community.

This land has toxic waste and it has not been cleared by Alameda County for developing - as I understand it.

Placing 115 (+?) seniors so near such a busy freeway makes no sense. Noise and air pollution is very high in such locations. What are these people to do? Additional concerns about traffic and safety were raised and I do not see that the resubmitted plan does anything new about dealing with these issues.

I thought this was a very poor plan when it was previously proposed. I do not see significant changes. I still want to protest that this is a bad idea with long term, negative consequences that can only be avoided by rejecting this project now. I do not think that a special consideration (variance) should be granted to such a troubled proposition.

Thank you for your consideration.

B. Perez-Stable
3435 Simmons St.
Oakland, CA 94619

B10-1

B10-2

B10-3

B10-4

Letter B10

Beatriz Perez-Stable

December 5, 2012

Response B10-1: The proposed project evaluated by the Draft EIR has been modified slightly since it was approved in 2008. See Response B4-2 in regards to previously submitted comments. This comment regarding the best use for the site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Response B10-2: See Response B1-8 in regards to site remediation.

Response B10-3:

Noise. See Response B3-4, Freeway Noise.

Air Quality. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (See Response B1-9). However, the Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers. See Response B1-19.

Traffic. See Response B2-4, Traffic and Pedestrian Circulation and B3-3, Pedestrian Facilities and Transit Service.

Response B10-4: The proposed project evaluated by the Draft EIR has been modified slightly since it was approved in 2008. This comment does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Laurel Optometry
3714 Mac Arthur Blvd
Oakland, CA 94619
Phone: 510 530 2330

RE: Project CMDV10-312 ER10-0001

Dec. 4, 2012

Dear Ms Warner,

I would like to make a few comments on the possible projects for High at MacArthur. I understand there are three different scenarios that are being considered. I would like the commercial option implemented for that site. Historically the area has been commercial and it could be developed as a landmark entry to the Laurel District.

B11-1

I cannot see a housing project, most of all a senior facility at that location as it is very close to the freeway and it is a very congested four corners. Senior drivers will have to contend with perhaps difficult entries and exits as well as many family members needing to find parking while visiting. My mom lives in a senior facility and she likes to take walks near the facility, and the area at High and Mac are not really great areas for senior walkers.

B11-2

So I know the area has been in limbo for many years and I would hate to see it developed in a way that will be regretted later just to get it filled.

B11-3

Respectfully,

Dorothy Okamoto

Letter B11

Dorothy Okamoto

December 4, 2012

Response B11-1: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Response B11-2: See Response B2-4, Traffic and Pedestrian Circulation; Response B3-3, Pedestrian Facilities and Transit Service; and Response B3-3, Parking.

Response B11-3: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Warner, Lynn

From: Rafael Landea [rafael.landea@gmail.com]
Sent: Monday, December 03, 2012 9:46 PM
To: Warner, Lynn
Subject: High and MacArthur Mixed Used Project Draft EIR; Case Nos: CMDV10-312, ER10-001

December 3, 2012
To: Lynn Warner, City of Oakland
Re: High and MacArthur Mixed Used Project Draft EIR; Case Nos: CMDV10-312, ER10-001

Dear Ms. Warner: I **support** the Mixed Use Project as providing the highest and best use of the project site at High Street and MacArthur Blvd in Oakland, CA. I agree with the findings of the Draft EIR and I hope the project can proceed to construction very soon. We in the Laurel really want this project. We have suffered with the blight and crime brought by the current empty lot at High and MacArthur. Please approve this EIR and build the project ASAP.

Here are the reason that I support this project:

1. **The Project is Environmentally Sensitive.** The Project consists of a well-balanced development with high density residential in a current blighted, vacant property. Residents will live in safe place and be near public transit and walking distance to retails stores of the Laurel District.
2. **The Project will increase the customers at Laurel businesses.** The residents of the new Project will increase pedestrian traffic which will reduce petty crimes at High/Mac and increase customers at Laurel restaurants, hair salons, and markets.
3. **Oakland Needs Senior Housing.** Oakland has a shortage of senior housing and fulfills a real need. This will allow Oakland seniors to live in an environmentally clean and safe place.
4. **The Project will provide an attractive building at the entrance to the Laurel neighborhood.** The current vacant lot is an ugly; full of weeds and garbage. The Laurel-themed design/art will provide an excellent entrance to the Laurel. This development should spur more community-based attractive business to the Laurel.
5. **The Project has broad support amongst Laurel area residents.**

Please approve the EIR as soon as possible !!! Please email me back to confirm that you received this email.

Sincerely,
Rafael Landea
Laurel Resident
Huntington Street, Oakland

B12-1

Letter B12

Rafael Landea

December 3, 2012

Response B12-1: This comment expresses support for the project and does not relate to the adequacy of the Draft EIR.

Warner, Lynn

From: cieloha [cieloha@aol.com]
Sent: Thursday, November 29, 2012 11:15 AM
To: Warner, Lynn
Cc: davenport.neighborhood@groups.facebook.com; davenport-neighborhood-watch@googlegroups.com; Nosakhare, Shereda; Schaaf, Libby; bpbond@aol.com; Sykes, Renee
Subject: High & MacArthur "Mixed Use" Housing Project Comment

TO: Lynn Warner, Case Planner, Oakland Planning Department

First, I wanted to let you know that the link we were given regarding this project (<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD0091>) comes up with this message:

System Message:
Failed to locate document information for document with content ID 'DOWD0091'. The document is no longer in the system.
(Error # -257)

When I googled the project number to try to find another way to access the Draft Environmental Impact Report, five PDFs came up, but none of the links for this property were operational.

Nevertheless, I wish to express my personal opposition to this project.

This is the wrong building for the wrong population in the wrong place for the following reasons:

1) Interrupted Traffic Flow/Potential for Additional Traffic Accidents: Employee & resident/customer cars (65 parking spaces) and delivery trucks will be going out of and coming into the property from an intersection that is one of the busiest and most lawless in the area. In addition, the MacArthur side of the property is also a freeway entrance where cars are already accelerating to 40-50 mph as they pass by.

As you and the Commissioners should already be aware, we have no OPD traffic enforcement officers to enforce traffic laws at this intersection (or anywhere else in the city) for existing traffic. The potential for residents/employees/delivery drivers at this property being in or causing traffic accidents is high. Introducing additional traffic congestion and risk to and from this building will only exacerbate current problems and create new ones because traffic to and from this property will be stopping to turn into it and exiting into or across oncoming traffic.

2) Pedestrian/Occupant Safety: Elders walking to and from the Laurel shopping district would have to cross at least four lanes of traffic to reach the sidewalk on the other side of the MacArthur/High Street intersection. If they wished to reach the "hill side" of MacArthur, they would have to cross a total of eight lanes. This would be formidable enough for many seniors with any mobility impairment. However, what makes the situation incredibly dangerous and life-threatening is the totally uncontrolled right turn traffic heading up High Street to turn onto MacArthur and enter 580 heading west. Few cars stop for the red signal before turning. This would be a senior death trap.

3) Air Quality Next to 580: I have heard that Highway 580 carries in excess of 350,00 cars past this property on a daily basis. I live four blocks away and some 200 vertical feet above 580. Nevertheless, in the course of a week, we collect a black tire residue on our porch and in our home (when we have the windows open). Surely the air quality right next to 580 is even more polluted and poses even more of a potential danger to elders—especially those with impaired breathing and other related physical challenges.

4) Uses Other than for Senior Housing Objections 1-3 have focused on the 115 senior housing unit aspect of the project. The plan for commercial units on the ground floor would only further exacerbate an already untenable traffic situation and only further underscores the total inappropriateness of this project, on this land, at this time.

B13-1

B13-2

B13-3

B13-4

Please keep me apprised of all meetings and findings regarding this project.

B13-5

ps I am cc'ing this message as information pertinent to neighborhood safety. It will be received by the listserv of 200 members of Davenport Neighborhood Watch many of whom regularly find themselves in this highly problematical intersection.



C. Danford Cieloha
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www.culturestrengthen.com
www.vpil.com
danny cieloha skype

It's possible!

Letter B13

C. Danford Cieloha

November 29, 012

Response B13-1: See Response B4-1 related to the availability of the Draft EIR.

Response B13-2: See Response B2-4, Traffic and Pedestrian Circulation and B3-3, Pedestrian Facilities and Transit Service. See Response A2-3 in regards to loading.

Response B13-3: Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, Draft EIR nevertheless looked at project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19). Based on Caltrans data utilized in the analysis, approximately 274,000 vehicles travel along the I-580 adjacent to the proposed project with only 1,122 trucks.

Response B13-4: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

Response B13-5: This closing comment does not relate to the adequacy of the Draft EIR, no further response is required.

Warner, Lynn

From: Craig Cooper [craig8727@gmail.com]
Sent: Tuesday, November 20, 2012 10:07 PM
To: Warner, Lynn
Subject: High and MacArthur Mixed Use Project = YES

November 20, 2012

To: Lynn Warner, City of Oakland

Re: High and MacArthur Mixed Used Project Draft EIR; Case Nos: CMDV10-312, ER10-001

I have read the subject Draft EIR. I **support** the Mixed Use Project ("Project") as providing the highest and best use the project site at High Street and MacArthur Blvd in Oakland, CA. I agree with the findings of the Draft EIR that this project presents no significant impacts that are not mitigated to less than significant levels. The mitigation measures are reasonable and easily implemented. The project does not create significant cumulative impacts. The EIR complies with CEQA and I support immediate approval of the EIR and this project. I hope the project can proceed to construction very soon. We in the Laurel have wait too long for this important project. Please build it!

B14-1

The reasons that I support this project are as follows:

1. **Project is a perfect example of "Smart Growth".** EPA defines Smart Growth as "Smart growth" covers a range of development and conservation strategies that help protect our natural environment and make our communities more attractive, economically stronger, and more socially diverse. [<http://www.epa.gov/dced/index.htm>]. The Project consists of a well-balanced development with high density residential in a current blighted, vacant property. Residents will be near public transit and walking distance to retails stores of the Laurel District.
2. **The Project will reduce crime and increase the customer base for the Laurel business community.** The vacant, blighted project site is currently an attractive nuisance for trash, weeds, homeless encampments, an ugly freeway sign and safe haven for criminal activity. The Project will transform all these negatives into a positive, attractive resource for the future residents, the Laurel District, and Oakland. The residents of the new Project will increase pedestrian traffic which will reduce petty crimes that occur at and near the project site on a regular basis.
3. **Increasing Senior Housing is a moral imperative for the City of Oakland.** This project actually fulfills a true need for more capacity for market and affordable housing for

11/21/2012

seniors. The amount of retail provided by the project is well balanced. We do not need more big retail projects in the Laurel. The Laurel businesses seem to be struggling enough without any more competition. The Laurel business community does need more customers and this project will provide those customers.

4. 4. The Project will provide a model, attractive gateway to the Laurel neighborhood.

The current vacant lot is an ugly embarrassment to our neighborhood. The size, color, and Laurel-themed design/art will provide an excellent entrance to the Laurel and hopefully stimulate addition positive additions to this intersection (especially at the vacant lot across the street from the Project site.

5. 5. The Project with all its mitigation measures provides the least impacts for a good community asset. Other ideas for this project site (deli, restaurant, library, etc) will all create much more significant impacts (traffic, poor aesthetics, increased crime) with providing the long list of positive attributes and assest the subject project will bring.

6. 6. The Project has broad support amongst Laurel area residents. Ever since the project was raised back in 2008, I have quizzed over 50 Laurel area residents about their reaction to this project. Without exception, all Laurel residents that I discussed this project with, supported the project and find the current condition of the project unacceptable.

For all these reasons and more, I support approval the Draft EIR and construction of the subject project as proposed.

Sincerely,

Craig Cooper

Laurel Resident

3858 Huntington Street, Oakland

p.s. Please email be back to acknowledge your receipt of this comment letter.

B14-1
cont.

Letter B14

Craig Cooper

November 20, 2012

Response B14-1: This comment expresses support for the project and does not relate to the adequacy of the Draft EIR.

Warner, Lynn

From: Ilene Wagner [ilene.wagner@aol.com]
Sent: Tuesday, November 06, 2012 10:33 PM
To: Warner, Lynn
Subject: High Nd mCArthur development

Dear Ms Warner,

As residents of upper High Street, we are concerned that a high density, large development at High and MacArthur will create traffic problems of huge dimension, especially with the 580 onramp. A 5 story structure with a large population is not consistent with the neighborhood and its buildings.

I hope you find answers to these two issues.

Sincerely, Ilene Wagner
4600 Reinhardt Drive, Oakland

6 November 12

Sent from my iPhone

B15-1

Letter B15

Ilene Wagner

November 6, 2012

Response B15-1:

Traffic. As discussed in the Draft EIR, the primary reason there are no significant impacts on traffic operations is due to the very low trip generation associated with senior housing. The proposed project would not significantly contribute to increased traffic in the area. See Response A2-2 related to the I-580 on-ramp.

Neighborhood Compatibility. As discussed in the Draft EIR, while the project would change the look of the area due to the height and mass of the structure, the overall character of the area would not be degraded because the project has been revised to address issues raised in previous Design Review meetings related to bulk, height, materials, and textures in order to ensure that it enhances the visual character of the area.

Warner, Lynn

From: Michael P McDonough [m_mcdonough@sbcglobal.net]
Sent: Friday, November 02, 2012 9:50 AM
To: Warner, Lynn
Cc: DNW
Subject: High Street/MacArthur Mixed Use Project

Good morning,

As a homeowner in the Loral District, my primary objection to a development of this size is the the increased traffic congestion and subsequent safety concerns. The intersection of High and MacArthur is already dense with traffic, particularly with the adjacent 580 west on ramp. The addition of a mixed housing unit of this size would make the current traffic congestion at High and MacArthur unmanageable, posing a serious imposition to the residents who live there.

Michael McDonough

B16-1

Letter B16

Michael P. McDonough

November 2, 2012

Response B16-1: See Response B15-1 in regards to traffic and see Response A2-2 in regards to the I-580 on-ramp.

Warner, Lynn

From: Jean Komatsu [jeankomatsu@hotmail.com]
Sent: Thursday, November 01, 2012 8:52 AM
To: Warner, Lynn
Subject: case # CMDV10-312; ER10-0001

We are strong supporters of the proposed senior development at the corner of High & MacArthur. We have lived in the Laurel for 23 yrs and feel it is a good fit for the Laurel, with its increasing number of seniors and aging Boomers.

Our only two concerns for it are parking - there does need to be some for visiting family - and a safe exit/entrance design for both cars and pedestrians, since H&McA is a very busy corner.

Thank you for helping us remove this vacant blight from our neighborhood,
Sincerely,

Jean Komatsu and Carlos de Luz
4612 Tulip Ave., 94619

Link. parcel list

B17-1

Letter B17

Jean Komatsu

November 1, 2012

Response B17-1: This comment expresses support for the project. See Response B3-3, Parking, for clarification regarding project parking, and B2-4, Traffic and Pedestrian Circulation, for clarification regarding pedestrian safety.

Warner, Lynn

From: Teresa Miller [tm2amax@gmail.com]
Sent: Wednesday, October 31, 2012 4:24 PM
To: Warner, Lynn
Subject: Proposed Senior Development High/MacArthur

Hi Lynn:

I am a long time resident of the Laurel District. I am writing in disagreement to the proposed Senior Facility at MacArthur and High Streets.

I spent many years as a housing administrator. During my career I witnessed some of the disadvantages that come with large housing sites and off site management. It would seem that a plan for a Senior Housing Facility would be an advantageous pursuit and an asset to any community. However, in my experience that has not typically been the case. The Seniors themselves are not necessarily the issue. It is what comes with a senior community.

What I have experienced is transient family members taking up resident with grandma or granddad. Usually when the parents or other family can no longer handle them. They somehow end up with grandma bringing their drama, illegal activities, and unacceptable social behavior with them. Unfortunately the senior finds themselves in a powerless role and is forced to accept and ignore what's happening. The community is left to suffer the consequences of the poor choice of the senior and the poor management of the housing administration.

Location, commitment, and strong and enforceable tenant and management agreements are necessary to create a successful housing community in any area. Without serious consideration and a plan for all the aforementioned characteristics any planned housing community has the potential to become a nuisance.

I strongly encourage that you rethink this kind of facility at a location that already has had numerous complaints regarding criminal behavior even in the absence of residential buildings.

In relationship to the proposal of commercial space I see it as absolutely appropriate. It's working in the area now lets do more of that.

Respectfully,

Teresa Miller

B18-1

Letter B18

Teresa Miller

October 31, 2012

Response B18-1: The comment regarding the best use for the project site does not relate to the adequacy of the Draft EIR; the City may consider this comment during the review of the project merits.

C. PUBLIC HEARING COMMENTS

Public Hearing Comment C-1

Donald Hamilton

I am Donald Hamilton. I am a 55 year resident of Oakland. I have been in the Laurel District for 47 years.

They keep talking about the non-environmental impact of the pollution from the highway but the intersection of Macarthur and high street is an extremely busy intersection. I don't care what time of the day that you go there, you have traffic coming in all directions. You have a freeway on ramp, a freeway off ramp, a gas station on one corner, you have a subway restaurant on the other corner, you have a post office up the street off MacArthur on high street. You have the traffic that is going down to the Walgreens and the other stores that are down below there.

They make no mention in their Environmental Impact Report about how you would get a Fire Engine into the place. You have only one entrance and that entrance right now is currently occupied by an AC Transit bus stop. Now there are bus stops on one, two, three corners there, and two of the bus stops parallel the property. One on High street and one on MacArthur. I spent hours upon hours upon hours ticking the traffic going in all directions. In some instances I've seen where at three or four o'clock in the afternoon it takes four traffic lights for a car to clear the high street light.

And when you are talking about air pollution, you mentioned coming off the freeway, when you have a busy street like that, at that intersection with that amount of traffic, you have pollution on both sides of the building. And are they going to put up a brick wall between the freeway and the project? And are they going to put a similar wall up on the other side? And there's only one way into that project, only one, and that's off of MacArthur. And you can't make a right [left] turn into it off of MacArthur. You can only make a right turn off of Macarthur. That's the only way in and the only way out. When you come out of the property you got to go about three blocks to Mills College entrance and make a u-turn and come back if you're going to the other direction.

Response C-1:

Air Quality. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, the Draft EIR nevertheless analyzed project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19).

Traffic. See Response B15-1.

Emergency Access. See Response B3-4, Emergency Access.

Public Hearing Comment C-2

Tina Garcia Zito

Hello, I am Tina Garcia Zito and I brought Donald Hamilton....We've been following this for some time. My question is, to piggy back off of Don's comments regarding the emergency as far as the fire department. If, not if, when we have an earthquake, that is a coronary ready to happen because there's just one way to go on the freeway there and it does, when the buses are there, it actually you may only have one lane most of the time and I travel, I go to Mills College to walk and so when I think about emergency response, I work for a fire district, and I was thinking, well okay how would a fire truck get to that building or any of that area with roundabouts and what have you above Walgreens. That isn't listed here in this environmental list of things and I don't know why and I think that should be included. So my concern is emergency response and they did talk about possibly opening up the...I have a document from 2008, where they had talked about actually opening it up, but they can't actually make that a larger wider streetway but anyway, so that's my concern.

I think we can certainly...High Street we have a lot of bad stuff going on there...we have a lot of stuff that isn't going well there at High and Macarthur, we had a couple of murders not long ago so we can really use something nice. However, I think this will cause a lot of conflict and I don't think this will work out for senior citizens because they are the ones that will need the emergency response. And we have the fire department around the corner, but if they go in their regular vehicles which they do when they're called 911, they would not be able to get around.

Response C-2:

Emergency Response. See Response B3-4, Emergency Access.

Public Hearing Comment C-3

Leila Moncharsch

Good Evening. I'm Leila Moncharsh and I represent a group of residents and commercial interests in the Laurel District and was involved with this project from the beginning.

As far as using SCAs, I'm not going to bore you with all the legal reasons why that doesn't work. I'll handle it in a letter with legal citations.

It's called CRADL, that's the acronym for it. And it's a loosely organized group of neighbors and commercial owners. Same people I had back in 2006, 2007, and 2008. Basically though I think what I can discuss with you and Dr. Dorsey gave me her time so I hope you will give me some time here. [In response to question from a Planning Commissioner regarding who she represents]

But basically there are three problems I see with the staff report. First of all, the plan A2 which is apparently the current plan doesn't appear to jive with the staff report description of the project. For example, the project description says that the shuttle service area would be removed yet the most recent plan submitted in 2011 shows that that it is still in there. Now there is further confusion about the shuttle which you will see the relevancy in a few minutes. The question is, the shuttle was apparently taken out, if I read the project description now. Yet the planner is saying the shuttle service is being provided. And that's a problem. It's an inconsistency that needs to be fixed.

The second thing is that the description of the project. Originally this was affordable housing with some small amount of commercial on the ground floor. Now it is listed as mixed use with affordable and market rate but no where can I find where it describes what that breakdown is. And that is important because cities are required to provide affordable housing. They are not required to provide market rate. So we need to know how much of this, I mean do we got two units that are affordable housing and the rest is market rate? That impacts the analysis and we need to know that and it is nowhere to be found.

But I think most importantly, this project, I think that what happened is that staff lost control over what was going on with this project with what was going with this property. Basically after 2007, the people who owned the property and Mr. Gevorqian who is AMG, that's Alexis Mateo Gevorqian. Basically the ownership imploded and it ended up in a lawsuit and it ended up with a lis pendens [suite pending] on the deeds. And none of that's ended up in the staff report and that's really important because you can draft all the conditions of approval you want but the problem is that there is appending lawsuit and basically what the investors are asking for is for the court to delete the current deeds that Mr. Gevorqian allegedly got through a foreclosure process in which he allegedly loaned money but the money can't be traced anywhere. The sellers, excuse me, the owners never

received it so they are asking to have those deeds set aside. Well that can impact who is responsible for enforcing or abiding any of these conditions of approval.

Then on the Draft EIR, the deficiencies there as I can figure it out, is that apparently the preparer never reviewed the former file that went on and was very voluminous and also never started to work with the regional quality water board so as a result of that, a couple of things happened. And the reason I say that is that because when you go down the list of references, the prior files are not listed there and the file from the regional quality board is not listed there. And I ask this planner and she said no, the former file was reviewed but I'm sure it wasn't. And the reason is because I go through the Draft EIR, it's supposed to describe the controversies and tell us and tell you as the decision makers a recommendation. So for example, on the hazardous materials that are there, there's no information there that in fact what is going there is that the controversy is that there is a gas tank under MacArthur and there are gas tanks under this property and there is an issue of what is all of that is creating the plume of hazardous materials under the property. And so this Draft EIR doesn't tell you that and so we've had to go get that information for you and that's not what's supposed to happen. You are supposed to know that. And what the regional quality board is saying is look, we have to get the testing done. Mr. Gevorgian and these investors, they've been totally uncooperative for years which is well documented in the file. We need to go have them go out and do testing. So Mr. Govaorkian on November 27 goes and gets a permit all of the sudden to do some testing. Well, but you won't know before you certify this Draft EIR what those testing results are. And that's not the idea. The idea is that you're supposed to know. Can it be cleaned to residential standards or not? And if not, why not? And that's part of your decision making.

Couple of last points. On the traffic...I have two last points...I will just write to you. Thank you.

Response C-3:

Shuttle. Recommendation TRANS-1 of this RTC Document recommends the provision of shuttle service to be included in the Transportation Management Plan. See Response A2-2.

Project Description. See Response B1-11 in regards to the type of residential units in the project description.

Hazardous Materials. The Draft EIR in Section IV.C, Hazards and Hazardous Materials, includes citations to several background reports Ms. Moncharsh submitted as part of her comment letter (Letter B1). See Response B1-15 for more information regarding specific documents Ms. Moncharsh references.

Purpose of an EIR. The purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to

have on the environment. to list ways in which the significant effects of such a project might be minimized, and to indicate alternatives to such a project. The Draft EIR does not make a recommendation in regards to project approval.

Public Hearing Comment C-4

Amy Dawson

Hi my name is Amy Dawson and I'm a resident in Maxwell Park.

I have two main concerns about the building. And first is placing the senior housing at that location. In addition to the obvious exposure the residents will have to freeway noise and fumes, the location is essentially an island. And it will confine and isolate seniors, especially those with the fear of crossing the street. My grandmother used to be able to walk around the block when she got scared of that. Right now, you can go under the freeway which they are not going to do most likely. And then they run up onto the freeway on-ramp. It's just a really bad place. When they do get out, it's only up to the hills. It's not a 360 where you might have at Altenheim. And also especially if they can't even open their windows for some fresh air, they're really going to be isolated and confined. So put yourself in that position or that of a loved one.

As to the size and location of the building, placing a building of that size so close to the freeway cuts off the view corridor from the freeway and from the street. It's a huge building. I mean if you really, I haven't seen any views from the freeway and from down on the corner. I want to actually see what that looks like. I drove from Kaiser building on Broadway all the way down to San Leandro and there is nothing of that size that abuts the freeway like that and it blocks things off. It's a really nice freeway, and it's not as good as 13 but it's a nice freeway and putting something of that size close up is just you know, it doesn't seem right to me at all. And I don't know why something so big would be put at that location. I think that's it. Thank you.

Response C-4:

Noise. See Response B3-4 in regards to noise.

Air Quality. Potential effects of the environment on the project are legally not required to be analyzed or mitigated under CEQA (see Response B1-9). However, the Draft EIR nevertheless analyzed project-level air quality impacts in order to provide information to the public and decision-makers (see Response B1-19).

Circulation. See Response B2-4, Traffic and Pedestrian Circulation and Response B3-3, Pedestrian Facilities and Transit Service.

Scenic Highway. See Response B1-7 in regards to scenic highway impacts.

IV. TEXT REVISIONS

This chapter presents specific revisions to the text of the Draft EIR that are being made in response to comments, or to amplify and clarify material in the Draft EIR. Where revisions to the main text are called for, the page and paragraph are set forth, followed by the appropriate revision. Added text is indicated with double underlined text. Deletions to text in the Draft EIR are shown with strikeout. Page numbers correspond to the page numbers of the Draft EIR. The revisions to the Draft EIR derive from two sources: (1) comments raised in one or more of the comment letters received by the City of Oakland on the Draft EIR; and (2) staff-initiated changes that correct minor inaccuracies, typographical errors or clarify material found in the Draft EIR subsequent to its publication and circulation. None of the changes or clarifications presented in this chapter significantly alters the conclusions or findings of the Draft EIR.

DOCUMENT WIDE

The following paragraph has been added to the following locations to reference CEQA Guidelines §15183.3 Streamlining for Infill Projects and which does not alter the analysis or conclusions of the Draft EIR:

- **Page 4:** end of Section I.C., EIR Scope, on page 4;
- **Page 60:** bottom of page 60 in Section III.B, Project Background;
- **Page 76:** before the last paragraph in Section IV.A Aesthetic Resources;
- **Page 110:** after the last full paragraph on page 110 in Section IV.B Air Quality and Greenhouse Gases, before 1. Setting;
- **Page 148:** end of Section IV.C Hazards and Hazardous Materials, directly before 1. Setting;
- **Page 173:** end of Section IV.D Transportation and Circulation, directly before 1. Setting; and
- **Page 214:** end of Section IV.E Noise and Vibration, directly before 1. Setting.

In February 2013, the CEQA Guidelines was amended to include §15183.3 Streamlining for Infill Projects, implementing Public Resources Code §21094.5 and §21094.5.5 (SB 226—Infill Streamlining). The proposed project meets the criteria to qualify as an infill project and as such, is eligible to be exempt from CEQA as the proposed project generally would not cause any new specific effects or more significant effects than those discussed in the Housing Element EIR, and in instances

where new specific effects occur, Standard Conditions of Approval would mitigate the potential impacts to less than significant.

II. SUMMARY

Page 10: The last bullet in Subsection II.B.3 Alternatives to the Proposed Project at the bottom of page 10 has been revised to include the correct square footage of commercial space that was evaluated in the commercial alternative, which does not alter the analysis or conclusions of the Draft EIR:

- **The Commercial Alternative**, which assumes development of a ~~20,000~~ 6,000 square foot commercial retail building.

Page 11: The heading of Section II.C Summary Table on page 11 has been revised, which does not alter the analysis or conclusions of the Draft EIR:

C. SUMMARY TABLES

Page 11: The following paragraph has been added to the end of Section II.C, Summary Tables, on page 11 to introduce the improvement measures in this RTC Document, which does not alter the analysis or conclusions of the Draft EIR:

Table II-2 lists recommended improvements identified throughout the document to address project issues not considered significant environmental impacts under CEQA. The recommendations should be considered by the City to be implemented as conditions of approval during the review of the project's merits, independent of the CEQA impacts. The failure to adopt such recommendations, however, would not result in any new significant impacts or the increase in severity of previously identified impacts.

Page 12 through 54: Table II-1 in Section II.C Summary Tables on pages 12 through 15 has been revised to include the Level of Significance with Implementation of SCA for each Standard Condition of Approval. The Initial Study's SCA's have been updated as explained in Appendix A: Initial Study and IS SCA GEO-2 in this table has been updated to be consistent with the language currently in the Initial Study. EIR SCA NOISE-4 and EIR SCA TRANS-2 have been updated to ensure consistency with the current City of Oakland Conditions of Approval. These changes do not alter the analysis or conclusions of the Draft EIR:

Note to Reader: The entirety of Table II-1 is provided at the end of this chapter.

Page 54: Table II-2 has been added after Table II-1 in Section II.C, Summary Tables, on page 54 to present a summary of the recommended improvement measures in this RTC document, which does not alter the analysis or conclusions of the Draft EIR. These recommendations will be imposed as a condition of project approval:

TABLE II-2 RECOMMENDATIONS

Recommendation TRANS-1: In consultation with City of Oakland staff, consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management (TDM) plan required by SCA TRANS-1. If considered feasible, implement the City-approved shuttle service.

Recommendation TRANS-2: Limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and prohibit deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone.

Recommendation TRANS-3: Limit entry into the garage to a right turn in only and limit exits from the garage to a right turn out only.

III. PROJECT DESCRIPTION

Page 60: The ninth line on page 60 has been revised to include a citation to CEQA Guidelines §15183.3, which does not alter the analysis or conclusions of the Draft EIR:

Pursuant to the CEQA Statutes §21093, §21094, and §21083.3 and CEQA Guidelines §15152, §15385, ~~and §15183~~ and §15183.3 this EIR tiers off the analysis included in the Housing Element EIR. It is noted that the Housing Element EIR provided CEQA clearance for new residential projects that are consistent with the Housing Element and EIR, such as the proposed project.

D. TRANSPORTATION AND CIRCULATION

Page 185: EIR SCA TRANS-2 has been updated to ensure consistency with the current City of Oakland Conditions of Approval. These changes do not alter the analysis or conclusions of the Draft EIR:

EIR SCA TRANS-2: Construction Traffic and Parking. Prior to the issuance of a demolition, grading or building permit.

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project ~~sponsor~~ applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. ~~Traffic analysis will be necessary to determine~~

~~the hours of operation for construction traffic control as part of the construction management plan.~~

- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur...

Page 203: The following paragraph has been added to Subsection IV.D.2(1) Traffic Load Capacity (Criteria 1-8 and 18), after Roadway Segments on page 203 to include a recommended improvement addressing trip reductions, which does not alter the analysis or conclusions of the Draft EIR:

Trip Reductions

While the proposed project would not result in a significant impact on traffic operations, the following should be considered during review of the project's merits to further reduce vehicle trips:

Recommendation TRANS-1: In consultation with City of Oakland staff, consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management (TDM) plan required by SCA TRANS-1. If considered feasible, implement the City-approved shuttle service.

Page 204: The following paragraph has been added to the end of Subsection IV.D.2(1) Safety (Criteria 9-4 and 17), Site Access and Circulation Analysis (Criterion 10), before Pedestrian Analysis (Criteria 9,11, and 12), on page 204 to include a recommended improvement addressing safety, which does not alter the analysis or conclusions of the Draft EIR:

The following should be considered during review of the project's merits to further enhance safety:

Recommendation TRANS-2: Limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and prohibit deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone.

Recommendation TRANS-3: Limit entry into the garage to a right turn in only and limit exits from the garage to a right turn out only.

E. NOISE

Page 223-224: EIR SCA NOISE-4 has been updated to ensure consistency with the current City of Oakland Conditions of Approval. These changes do not alter the analysis or conclusions of the Draft EIR:

EIR SCA NOISE-4: Interior Noise. Prior to issuance of a building permit and Certificate of Occupancy.

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:

- a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and
- b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.
- c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following:
 - i. Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.
 - ii. Prohibition of Z-duct construction.

V. ALTERNATIVES

Page 246: The third line under Subsection V.B.3 Reduced Development/Mitigated Alternative has been corrected to include the correct building height that was evaluated in the commercial alternative, which does not alter the analysis or conclusions of the Draft EIR:

The Reduced Development/Mitigated Alternative assumes that the project site would be developed with 29 less residential units and one less building floor, for a total of 86 senior housing units with a ~~34~~-story building.

VII. REFERENCES

Page 257: An additional reference is included after the fourth reference on page 257, which does not later the analysis or conclusions of the Draft EIR:

Caltrans, 2002. *Guide for the Preparation of Traffic Impact Studies*.

APPENDIX A: INITIAL STUDY

Page 3: The third bullet under Item 10 on page 3 of the Initial Study in Appendix A of the Draft EIR has been revised to show action/permit that is required, which does not alter the analysis or conclusions of the Draft EIR:

- ~~Major~~ Variance for building height

Page 13 through 42: The titles of the SCAs listed in the Initial Study have been added to enhance the ease of cross referencing between the SCAs listed in this document and the SCAs listed in the current City of Oakland Conditions of Approval. Changes to these IS SCAs are summarized below, but shown in full in Table II-1 at the end of this chapter. These changes do not alter the analysis or conclusions of the Draft EIR:

SCA	Page #
IS SCA AES-1: <u>Lighting Plan</u> . Prior to issuance of an electrical or building permit.	Page 13
IS SCA CULT-1: <u>Archeological Resources</u> . Ongoing throughout demolition, grading and/or construction.	Page 22-23
IS SCA CULT-2: <u>Paleontological Resources</u> . Ongoing throughout demolition, grading and/or construction.	Page 24-25
IS SCA CULT-3: <u>Human Remains</u> . Ongoing throughout demolition, grading and/or construction.	Page 25
IS SCA GEO-1: <u>Soils Report</u> . Required as part of the submittal of a tentative tract or tentative parcel map.	Page 28-29
A preliminary soils report for the project site shall be required as part of this project	

and submitted for review and approval by the Building Services Division. The applicant shall implement the approved report. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include...	
<u>IS SCA GEO-2: Erosion and Sedimentation Control Plan.</u> <i>Prior to any grading activities.</i>	Page 30-31
<u>IS SCA GEO-3: Geotechnical Report.</u> <i>Required as part of the submittal of a tentative tract or tentative parcel map.</i>	Page 31-32
<u>IS SCA HAZ-1: Hazardous Materials Business Plan.</u> <i>Prior to issuance of a business license.</i>	Page 35
<u>IS SCA HWQ-1: Erosion, Sedimentation, and Debris Control Measures.</u> <i>Prior to issuance of a demolition, grading, or construction-related permit.</i>	Page 39-40
<u>IS SCA HWQ-2: Post-Construction Stormwater Management Plan.</u> <i>Prior to the issuance of building permit (or other construction related permit).</i> vi. <u>Hydromodification management measures so that post-construction stormwater runoff does not exceed the flow and duration of pre-project runoff, if required under the NPDES permit.</u> ii. Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when not used in combination with a landscape based treatment measure, is capable of removing the range of pollutants typically removed by landscape-based treatment measures <u>and/or the range of pollutants typically removed by landscape-based treatment measures and/or the range of pollutants expected to be generated by the project.</u>	Page 40-41
<u>IS SCA HWQ-3: Maintenance Agreement for Stormwater Treatment Measures.</u> <i>Prior to final zoning inspection.</i>	Page 42
<u>IS SCA UTIL-1: Stormwater and Sewer.</u> <i>Prior to completing the final design for the project's sewer service.</i>	Page 64
<u>IS SCA UTIL-2: Waste Reduction and Recycling.</u>	Page 68

Page 49: Table 1 Zoning Regulation Comparison Table on page 49 of the Initial Study in Appendix A of the Draft EIR has been revised to show the action/permit that is required, which does not alter the analysis or conclusions of the Draft EIR:

Height - General	40' (C-30) 35' (C-31)	45' (CN-3) 45' (CN-2)	Varies between 47' & 60'. 54' average.	Does not meet the applicable or current requirements. Major Variance is required.
Height - Adjacent to R-50 Zone	30' with allowed increase of 1' height for every additional 1' of setback	N/A	Varies between 47' & 60'. 54' average.	Does not meet the current requirements. Major Variance is required. In new Zoning, the adjacent R-50 zone becomes CN-3 and this will not apply.

a The City recently updated its Zoning Ordinance. The current zoning column is included in Table 1 to shown how the project would/would not comply with the newly adopted zoning. The proposed project would not be subject to the newly adopted zoning regulations; therefore the previous zoning regulations would be applicable for the project.

b A ~~Major~~-Variance and a Major Conditional Use Permit are required because the project entails preparation of an Environmental Impact Report.

Page 50: The first sentence of the last paragraph of the page has been revised to include the correct number of required parking spaces:

The proposed project includes a CUP for a reduction in the number of parking spaces to be provided. Under Section 17.116 (the parking regulations) 1210 spaces are required; 115 for the residential units at a ratio of 1:1 and six for the commercial (3,446 sq. ft. requires parking at 1 space per 600 sq. ft. which works out to 5.7 spaces, rounded up to 6).

APPENDIX B: AIR QUALITY AND GREENHOUSE GAS EMISSIONS

CONSTRUCTION SCREEN3 DPM Output Section, starting on Page 154 of pdf: The Construction Screen2 DPM Output Section in Appendix B of the Draft EIR, on pages 154, 155, 156 and 157 have been revised to reflect the most current data runs used in the Draft EIR analysis, which does not alter the analysis or conclusions of the Draft EIR:

12/21/11

10:03:19

*** SCREEN3 MODEL RUN ***
*** VERSION DATED 96043 ***

C:\Documents and Settings\hqureshi\Desktop\07195 Screen3PM25.scr

SIMPLE TERRAIN INPUTS:

SOURCE TYPE = AREA
EMISSION RATE (G/(S-M**2)) = 0.226676E-05
SOURCE HEIGHT (M) = 5.0000
LENGTH OF LARGER SIDE (M) = 61.3480
LENGTH OF SMALLER SIDE (M) = 61.3480
RECEPTOR HEIGHT (M) = 1.8000
URBAN/RURAL OPTION = URBAN

THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION

BUOY. FLUX = 0.000 M**4/S**3; MOM. FLUX = 0.000 M**4/S**2.

*** STABILITY CLASS 1 ONLY ***
*** ANEMOMETER HEIGHT WIND SPEED OF 2.33 M/S ONLY ***

*** SCREEN DISCRETE DISTANCES ***

*** TERRAIN HEIGHT OF 0. M ABOVE STACK BASE USED FOR FOLLOWING
DISTANCES ***

DIST (M)	CONC (UG/M**3)	STAB	U10M (M/S)	USTK (M/S)	MIX HT (M)	PLUME HT (M)	MAX DIR (DEG)
50.	4.322	1	2.3	2.3	745.6	5.00	45.

*** SUMMARY OF SCREEN MODEL RESULTS ***

CALCULATION PROCEDURE	MAX CONC (UG/M**3)	DIST TO MAX (M)	TERRAIN HT (M)
SIMPLE TERRAIN	4.322	50.	0.

** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **

06/07/12

11:52:31

*** SCREEN3 MODEL RUN ***

*** VERSION DATED 96043 ***

C:\Documents and Settings\hqureshi\Desktop\07195 Screen3PM25.scr

SIMPLE TERRAIN INPUTS:

SOURCE TYPE	=	AREA
EMISSION RATE (G/(S-M**2))	=	0.365916E-06
SOURCE HEIGHT (M)	=	5.0000
LENGTH OF LARGER SIDE (M)	=	61.3480
LENGTH OF SMALLER SIDE (M)	=	61.3480
RECEPTOR HEIGHT (M)	=	1.8000
URBAN/RURAL OPTION	=	URBAN

THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.

THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION

BUOY. FLUX = 0.000 M**4/S**3; MOM. FLUX = 0.000 M**4/S**2.

*** FULL METEOROLOGY ***

*** SCREEN AUTOMATED DISTANCES ***

*** TERRAIN HEIGHT OF 0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

DIST	CONC		U10M	USTK	MIX HT	PLUME	MAX DIR
(M)	(UG/M**3)	STAB	(M/S)	(M/S)	(M)	HT (M)	(DEG)
20.	1.442	4	1.0	1.0	320.0	5.00	45.
100.	2.179	5	1.0	1.0	10000.0	5.00	45.
200.	1.055	5	1.0	1.0	10000.0	5.00	45.
300.	0.5935	5	1.0	1.0	10000.0	5.00	44.
400.	0.3814	5	1.0	1.0	10000.0	5.00	43.
500.	0.2684	5	1.0	1.0	10000.0	5.00	39.
600.	0.2013	5	1.0	1.0	10000.0	5.00	36.
700.	0.1580	5	1.0	1.0	10000.0	5.00	43.
800.	0.1284	5	1.0	1.0	10000.0	5.00	2.
900.	0.1070	5	1.0	1.0	10000.0	5.00	27.
1000.	0.9106E-01	5	1.0	1.0	10000.0	5.00	41.

MAXIMUM 1-HR CONCENTRATION AT OR BEYOND 20. M:

70.	2.481	5	1.0	1.0	10000.0	5.00	45.
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*** SUMMARY OF SCREEN MODEL RESULTS ***

CALCULATION	MAX CONC	DIST TO	TERRAIN
PROCEDURE	(UG/M**3)	MAX (M)	HT (M)
-----	-----	-----	-----
SIMPLE TERRAIN	2.481	70.	0.

** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **

12/15/11

14:34:49

*** SCREEN3 MODEL RUN ***
*** VERSION DATED 96043 ***

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SIMPLE TERRAIN INPUTS:

SOURCE TYPE = AREA
EMISSION RATE (G/(S-M**2)) = 0.244112E-05
SOURCE HEIGHT (M) = 5.0000
LENGTH OF LARGER SIDE (M) = 61.3480
LENGTH OF SMALLER SIDE (M) = 61.3480
RECEPTOR HEIGHT (M) = 1.8000
URBAN/RURAL OPTION = URBAN

THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.
THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION

BUOY. FLUX = 0.000 M**4/S**3; MOM. FLUX = 0.000 M**4/S**2.

*** FULL METEOROLOGY ***

*** SCREEN DISCRETE DISTANCES ***

*** TERRAIN HEIGHT OF 0. M ABOVE STACK BASE USED FOR FOLLOWING
DISTANCES ***

DIST (M)	CONC (UG/M**3)	STAB	U10M (M/S)	USTK (M/S)	MIX HT (M)	PLUME HT (M)	MAX DIR (DEG)
50.	14.31	4	1.0	1.0	320.0	5.00	45.

*** SUMMARY OF SCREEN MODEL RESULTS ***

CALCULATION PROCEDURE	MAX CONC (UG/M**3)	DIST TO MAX (M)	TERRAIN HT (M)
SIMPLE TERRAIN	14.31	50.	0.

** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **

06/07/12

11:57:57

*** SCREEN3 MODEL RUN ***

*** VERSION DATED 96043 ***

C:\Documents and Settings\hqureshi\Desktop\07195 Screen3\DPM.scr

SIMPLE TERRAIN INPUTS:

SOURCE TYPE	=	AREA
EMISSION RATE (G/(S-M**2))	=	0.394063E-06
SOURCE HEIGHT (M)	=	5.0000
LENGTH OF LARGER SIDE (M)	=	61.3480
LENGTH OF SMALLER SIDE (M)	=	61.3480
RECEPTOR HEIGHT (M)	=	1.8000
URBAN/RURAL OPTION	=	URBAN

THE REGULATORY (DEFAULT) MIXING HEIGHT OPTION WAS SELECTED.

THE REGULATORY (DEFAULT) ANEMOMETER HEIGHT OF 10.0 METERS WAS ENTERED.

MODEL ESTIMATES DIRECTION TO MAX CONCENTRATION

BUOY. FLUX = 0.000 M**4/S**3; MOM. FLUX = 0.000 M**4/S**2.

*** FULL METEOROLOGY ***

*** SCREEN AUTOMATED DISTANCES ***

*** TERRAIN HEIGHT OF 0. M ABOVE STACK BASE USED FOR FOLLOWING DISTANCES ***

DIST	CONC		U10M	USTK	MIX HT	PLUME	MAX DIR
(M)	(UG/M**3)	STAB	(M/S)	(M/S)	(M)	HT (M)	(DEG)
20.	1.553	4	1.0	1.0	320.0	5.00	45.
100.	2.347	5	1.0	1.0	10000.0	5.00	45.
200.	1.137	5	1.0	1.0	10000.0	5.00	45.
300.	0.6391	5	1.0	1.0	10000.0	5.00	44.
400.	0.4107	5	1.0	1.0	10000.0	5.00	43.
500.	0.2891	5	1.0	1.0	10000.0	5.00	39.
600.	0.2168	5	1.0	1.0	10000.0	5.00	36.
700.	0.1701	5	1.0	1.0	10000.0	5.00	43.
800.	0.1382	5	1.0	1.0	10000.0	5.00	2.
900.	0.1152	5	1.0	1.0	10000.0	5.00	27.
1000.	0.9806E-01	5	1.0	1.0	10000.0	5.00	41.

MAXIMUM 1-HR CONCENTRATION AT OR BEYOND 20. M:

70.	2.672	5	1.0	1.0	10000.0	5.00	45.
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*** SUMMARY OF SCREEN MODEL RESULTS ***

CALCULATION	MAX CONC	DIST TO	TERRAIN
PROCEDURE	(UG/M**3)	MAX (M)	HT (M)
-----	-----	-----	-----
SIMPLE TERRAIN	2.672	70.	0.

** REMEMBER TO INCLUDE BACKGROUND CONCENTRATIONS **

PM10	
0.08	tons per year
0.009187345	Grams per second
2.44112E-06	g/sec/m2

Area Conversion	
0.93	Area (acres)
3,763.58	Square Meters
61.34799484	Dimensions (m)

Cons DPM

PM10	
0.052	tons per year ¹
0.001483087	Grams per second
3.94063E-07	g/sec/m2

Area Conversion	
0.93	Area (acres)
3.763.58	Square Meters
61.34799484	Dimensions (m)

¹ Includes reductions associated with SCA AIR-1 and reductions based on CARB revisions to load factors.

PM2.5	
0.07	tons per year
0.008531106	Grams per second
2.26676E-06	g/sec/m2

Area Conversion	
0.93	Area (acres)
3,763.58	Square Meters
61.34799484	Dimensions (m)

PM2.5

PM2.5	
0.048	tons per year ¹
0.001377152	Grams per second
3.65916E-07	g/sec/m2

Area Conversion	
0.93	Area (acres)
3.763.58	Square Meters
61.34799484	Dimensions (m)

¹ Includes reductions associated with SCA AIR-1 and reductions based on CARB revisions to load factors.

PAGE 12 THROUGH 54/TABLE II-1

Note to Reader: Table II-1 in its entirety starts on the following page.

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
AESTHETIC RESOURCES		
The Initial Study found that all aesthetic resource impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA AES-1: Lighting Plan.</u> <i>Prior to issuance of an electrical or building permit.</i></p> <p>The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.</p>	LTS
	<p><u>EIR SCA AES-1: Required Landscape Plan for New Construction and Certain Additions to Residential Facilities.</u> <i>Prior to issuance of a building permit.</i></p> <p>Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:</p> <ul style="list-style-type: none"> a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species. b) Landscape plans for projects involving grading, rear walls on down slope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management 	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>prescriptions.</p> <p>c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Planning and Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.</p> <p>d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.</p>	
	<p><u>EIR SCA AES-2: Landscape Requirements for Street Frontages. Prior to issuance of a final inspection of the building permit.</u></p> <p>a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.</p> <p>b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of Parks and Recreation.	
	<p><u>EIR SCA AES-3: Assurance of Landscaping Completion.</u> <i>Prior to issuance of a final inspection of the building permit.</i></p> <p>The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, cash, deposit, or letter of credit, acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such or a bond, cash, deposit, or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.</p>	<u>LTS</u>
	<p><u>EIR SCA AES-4: Landscape Requirements for Street Frontages.</u> <i>Prior to issuance of a final inspection of the building permit.</i></p> <p>On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6½) feet and does not interfere with access requirements, a minimum of one (1) twenty-four (24) inch box tree shall be provided for every twenty-five (25) feet of street frontage, unless a smaller size is recommended by the City arborist. The trees to be provided shall include species acceptable to the Tree Services Division.</p>	<u>LTS</u>
	<p><u>EIR SCA AES-5: Landscape Maintenance.</u> <i>Ongoing.</i></p> <p>All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required irrigation systems shall be permanently maintained in good</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure condition and, whenever necessary, repaired or replaced.	Level of Significance With Implementation of SCA
	<p><u>EIR SCA AES-6: Improvements in the Public Right-of-Way (General).</u> <i>Approved prior to the issuance of a P-job or building permit.</i></p> <p>a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.</p> <p>b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.</p> <p>c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.</p> <p>d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.</p>	<u>LTS</u>
	<p><u>EIR SCA AES-7: Underground Utilities.</u> <i>Prior to issuance of a building permit.</i></p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.</p>	
	<p><u>EIR SCA AES-8: Tree Protection During Construction.</u> <i>Prior to issuance of a demolition, grading, or building permit.</i></p> <p>Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:</p> <ul style="list-style-type: none"> a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree. b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be 	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.</p> <p>c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.</p> <p>d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.</p> <p>e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.	
AIR QUALITY AND GREENHOUSE GAS EMISSIONS		
All air quality and greenhouse gas emissions impacts would be reduced to LTS level with implementation of SCAs.	<p><u>EIR SCA AIR-1. Construction-Related Air Pollution Controls (Dust and Equipment Emissions):</u> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):</p> <p>BASIC: (Applies to all construction sites)</p> <p>a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.</p> <p>b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).</p> <p>c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>day. The use of dry power sweeping is prohibited.</p> <p>d) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.</p> <p>e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).</p> <p>f) Limit vehicle speeds on unpaved roads to 15 miles per hour.</p> <p>g) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.</p> <p>h) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</p> <p>i) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.</p> <p>ENHANCED: All "Basic" controls listed above plus the following controls if the project involves:</p> <p>i) 114 or more single-family dwelling units;</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<ul style="list-style-type: none"> ii) 240 or more multi-family units; iii) Nonresidential uses that exceed the applicable screening size listed in the Bay Area Air Quality Management District's CEQA Guidelines; iv) Demolition permit; v) Simultaneous occurrence of more than two construction phases (e.g., grading and building construction occurring simultaneously); vi) Extensive site preparation (i.e., the construction site is four acres or more in size); or vii) Extensive soil transport (i.e., 10,000 or more cubic yards of soil import/export). j) All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. k) All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph. l) Install sandbags or other erosion control measures to prevent silt runoff to public roadways. m) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more). n) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust off-site. Their duties shall include holidays and weekend 	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>periods when work may not be in progress.</p> <ul style="list-style-type: none"> o) Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind-blown dust. Wind breaks must have a maximum 50 percent air porosity. p) Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. q) The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. r) All trucks and equipment, including tires, shall be washed off prior to leaving the site. s) Site accesses to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. t) Minimize the idling time of diesel-powered construction equipment to two minutes. u) The project applicant shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction and 45 percent particulate matter (PM) reduction compared to the most recent California Air Resources Board (CARB) fleet average. Acceptable options for reducing emissions include the use of late 	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as they become available.</p> <p>v) Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).</p> <p>w) All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NOx and PM.</p> <p>x) Off-road heavy diesel engines shall meet the CARB's most recent certification standard.</p>	
	<p><u>EIR SCA AIR-2 – Exposure of Air Pollution (Toxic Air Contaminants: Particulate Matter).</u> <i>Prior to issuance of a demolition, grading, or building permit.</i></p> <p>A. Indoor Air Quality: In accordance with the recommendations of the California Air Resources Board (CARB) and the Bay Area Air Quality Management District, appropriate measures shall be incorporated into the project design in order to reduce the potential health risk due to exposure to diesel particulate matter to achieve an acceptable interior air quality level for sensitive receptors. The appropriate measures shall include one of the following methods:</p> <p>1) The project applicant shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>shall be submitted to the Planning and Zoning Division for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</p> <p>2) The applicant shall implement all of the following features that have been found to reduce the air quality risk to sensitive receptors and shall be included in the project construction plans. These features shall be submitted to the Planning and Zoning Division and the Building Services Division for review and approval prior to the issuance of a demolition, grading, or building permit and shall be maintained on an ongoing basis during operation of the project.</p> <p>a) Redesign the site layout to locate sensitive receptors as far as possible from any freeways, major roadways, or other sources of air pollution (e.g., loading docks, parking lots).</p> <p>b) Do not locate sensitive receptors near distribution center's entry and exit points.</p> <p>c) Incorporate tiered plantings of trees (redwood, deodar cedar, live oak, and/or oleander) to the maximum extent feasible between the sources of pollution and the sensitive receptors.</p> <p>d) Install, operate and maintain in good working order a central heating and ventilation (HV) system or other air take system in the building, or in each individual residential unit, that meets or exceeds an efficiency standard of MERV 13. The HV system shall include the following features: Installation of a high efficiency filter and/or carbon filter to filter particulates</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>and other chemical matter from entering the building. Either HEPA filters or ASHRAE 85% supply filters shall be used.</p> <p>e) Retain a qualified HV consultant or HERS rater during the design phase of the project to locate the HV system based on exposure modeling from the pollutant sources.</p> <p>f) Install indoor air quality monitoring units in buildings.</p> <p>g) Project applicant shall maintain, repair and/or replace HV system on an ongoing and as needed basis or shall prepare an operation and maintenance manual for the HV system and the filter. The manual shall include the operating instructions and the maintenance and replacement schedule. This manual shall be included in the CC&Rs for residential projects and distributed to the building maintenance staff. In addition, the applicant shall prepare a separate homeowners manual. The manual shall contain the operating instructions and the maintenance and replacement schedule for the HV system and the filters.</p> <p>B. Outdoor Air Quality: To the maximum extent practicable, individual and common exterior open space, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<u>EIR SCA AIR-3 – Exposure to Air Pollution (Toxic Air Contaminants: Gaseous Emissions). Prior to issuance of a demolition, grading, or building permit.</u>	<u>LTS</u>
	<p>A. Indoor Air Quality: In accordance with the recommendations of the California Air Resources Board (CARB) and the Bay Area Air Quality Management District, appropriate measures shall be incorporated into the project design in order to reduce the potential risk due to exposure to toxic air contaminants to achieve an acceptable interior air quality level for sensitive receptors. The project applicant shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Planning and Zoning Division for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</p> <p>B. Exterior Air Quality: To the maximum extent practicable, individual and common exterior open space, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
AGRICULTURE AND FOREST RESOURCES		
<i>No significant impacts related to agriculture and forest resources were identified in the Initial Study or EIR.</i>		
BIOLOGICAL RESOURCES		
<i>No significant impacts related to biological resources were identified in the Initial Study or EIR.</i>		
CULTURAL RESOURCES		
The Initial Study found that all cultural resource impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA CULT-1: Archeological Resources.</u> Ongoing throughout demolition, grading and/or construction.</p> <p>a) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historical subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.</p> <p>b) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.</p> <p>c) Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist shall recommend appropriate analysis and treatment, and shall prepare a report on the findings for submittal to the Northwest Information Center.</p>	
	<p><u>IS SCA CULT-2: Paleontological Resources.</u> <i>Ongoing throughout demolition, grading and/or construction.</i></p> <p>In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	(SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.	
	<p><u>IS SCA CULT-3: Human Remains</u> <i>Ongoing throughout demolition, grading and/or construction.</i></p> <p>In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.</p>	LTS
GEOLOGY AND SOILS		

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
The Initial Study found that all geology and soils impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA GEO-1: Soils Report.</u> <i>Required as part of the submittal of a tentative tract or tentative parcel map.</i></p> <p>A preliminary soils report for the project site shall be required as part of this project and submitted for review and approval by the Building Services Division. The applicant shall implement the approved report. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include:</p> <p>A. Logs of borings and/or profiles of test pits and trenches:</p> <ul style="list-style-type: none"> a) The minimum number of borings acceptable, when not used in combination with test pits or trenches, shall be two (2), when in the opinion of the Soils Engineer such borings shall be sufficient to establish a soils profile suitable for the design of all the footings, foundations, and retaining structures. b) The depth of each boring shall be sufficient to provide adequate design criteria for all proposed structures. c) All boring logs shall be included in the soils report. <p>B. Test pits and trenches:</p> <ul style="list-style-type: none"> a) Test pits and trenches shall be of sufficient length and depth to establish a suitable soils profile for the design of all proposed structures. b) Soils profiles of all test pits and trenches shall be included in the soils report. <p>C. A plat shall be included which shows the relationship of all the borings, test pits, and trenches to the exterior boundary of the site. The plat shall also show the location of all proposed site</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>improvements. All proposed improvements shall be labeled.</p> <p>D. Copies of all data generated by the field and/or laboratory testing to determine allowable soil bearing pressures, sheer strength, active and passive pressures, maximum allowable slopes where applicable and any other information which may be required for the proper design of foundations, retaining walls, and other structures to be erected subsequent to or concurrent with work done under the grading permit.</p> <p>E. Soils Report. A written report shall be submitted which shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> a) Site description; b) Local and site geology; c) Review of previous field and laboratory investigations for the site; d) Review of information on or in the vicinity of the site on file at the Information Counter, City of Oakland, Office of Planning and Building; e) Site stability shall be addressed with particular attention to existing conditions and proposed corrective attention to existing conditions and proposed corrective actions at locations where land stability problems exist; f) Conclusions and recommendations for foundations and retaining structures, resistance to lateral loading, slopes, and specifications, for fills, and pavement design as required; g) Conclusions and recommendations for temporary and permanent erosion control and drainage. If not provided in a separate report 	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>they shall be appended to the required soils report;</p> <p>h) All other items which a Soils Engineer deems necessary;</p> <p>i) The signature and registration number of the Civil Engineer preparing the report.</p> <p>F. The Director of Planning and Building may reject a report that she/he believes is not sufficient. The Director of Planning and Building may refuse to accept a soils report if the certification date of the responsible soils engineer on said document is more than three years old. In this instance, the Director may be require that the old soils report be recertified, that an addendum to the soils report be submitted, or that a new soils report be provided.</p>	
	<p><u>IS SCA GEO-2: Erosion and Sedimentation Control Plan. Prior to any grading activities.</u></p> <p>a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee.</p> <p><u>Ongoing.</u></p> <p>b) <u>The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.</u></p>	
	<p><u>IS SCA GEO-3: Geotechnical Report. Required as part of the submittal of a tentative tract or tentative parcel map.</u></p> <p>a) A site-specific, design level, Landslide or Liquefaction geotechnical investigation for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. Specifically:</p> <p>i. Each investigation shall include an analysis of expected ground motions at the site from identified faults. The analyses shall be accordance with applicable City ordinances and policies, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from identified faults.</p> <p>ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, surrounding related improvements, and infrastructure (utilities, roadways, parking lots, and sidewalks).</p>	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, shall be included in the final design, as approved by the City of Oakland.</p> <p>iv. The geotechnical report shall include a map prepared by a land surveyor or civil engineer that shows all field work and location of the "No Build" zone. The map shall include a statement that the locations and limitations of the geologic features are accurate representations of said features as they exist on the ground, were placed on this map by the surveyor, the civil engineer or under their supervision, and are accurate to the best of their knowledge.</p> <p>v. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project's design phase, shall be incorporated in the project.</p> <p>vi. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project.</p> <p>vii. A peer review is required for the Geotechnical Report. Personnel reviewing the geologic report shall approve the report, reject it, or withhold approval pending the submission by the applicant or subdivider of further geologic and engineering studies to more adequately define active fault traces.</p> <p>b) Tentative Tract or Parcel Map approvals shall require, but not be limited to, approval of the Geotechnical Report.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
HAZARDS AND HAZARDOUS MATERIALS		
The Initial Study found that all hazards and hazardous materials impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA HAZ-1: Hazardous Materials Business Plan.</u> <i>Prior to issuance of a business license.</i></p> <p>The project applicant shall submit a Hazardous Materials Business Plan for review and approval by Fire Prevention Bureau, Hazardous Materials Unit. Once approved this plan shall be kept on file with the City and will be updated as applicable. The purpose of the Hazardous Materials Business Plan is to ensure that employees are adequately trained to handle the materials and provides information to the Fire Services Division should emergency response be required. The Hazardous Materials Business Plan shall include the following:</p> <ul style="list-style-type: none"> a) The types of hazardous materials or chemicals stored and/or used on site, such as petroleum fuel products, lubricants, solvents, and cleaning fluids. b) The location of such hazardous materials. c) An emergency response plan including employee training information. d) A plan that describes the manner in which these materials are handled, transported and disposed. 	LTS
	<p><u>EIR SCA HAZ-1: Hazards Best Management Practices.</u> <i>Prior to commencement of demolition, grading, or construction.</i></p> <p>The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:</p> <ul style="list-style-type: none"> a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction; 	<u>LTS</u>

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<ul style="list-style-type: none"> b) Avoid overtopping construction equipment fuel gas tanks; c) During routine maintenance of construction equipment, properly contain and remove grease and oils; d) Properly dispose of discarded containers of fuels and other chemicals. e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate. 	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p><u>EIR SCA HAZ-2: Site Review by the Fire Services Division. Prior to the issuance of demolition, grading or building permit.</u></p> <p>The project applicant shall submit plans for site review and approval to the Fire Prevention Bureau, Hazardous Materials Unit. Property owner may be required to obtain or perform a Phase II hazard assessment.</p>	<u>LTS</u>
	<p><u>EIR SCA HAZ-3: Phase I and/or Phase II Reports. Prior to issuance of a demolition, grading, or building permit.</u></p> <p>Prior to issuance of demolition, grading, or building permits the project applicant shall submit to the Fire Prevention Bureau, Hazardous Materials Unit, a Phase I environmental site assessment report, and a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.</p>	<u>LTS</u>
	<p><u>EIR SCA HAZ-4: Environmental Site Assessment Reports Remediation. Prior to issuance of a demolition, grading, or building permit.</u></p> <p>If the environmental site assessment reports recommend remedial action, the project applicant shall:</p> <ul style="list-style-type: none"> a) Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps. b) Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental 	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>regulatory agency.</p> <p>c) Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.</p>	
	<p><u>EIR SCA HAZ-5: Best Management Practices for Soil and Groundwater Hazards. Ongoing throughout demolition, grading, and construction activities.</u></p> <p>The project applicant shall implement all of the following Best Management Practices (BMPs) regarding potential soil and groundwater hazards.</p> <p>a) Soil generated by construction activities shall be stockpiled onsite in a secure and safe manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state and federal agencies laws, in particular, the Regional Water Quality Control Board (RWQCB) and/or the Alameda County Department of Environmental Health (ACDEH) and policies of the City of Oakland.</p> <p>b) Groundwater pumped from the subsurface shall be contained onsite in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies of the City of Oakland, the RWQCB</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>and/or the ACDEH. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building (pursuant to the Standard Condition of Approval regarding Radon or Vapor Intrusion from Soil and Groundwater Sources.</p> <p>c) Prior to issuance of any demolition, grading, or building permit, the applicant shall submit for review and approval by the City of Oakland, written verification that the appropriate federal, state or county oversight authorities, including but not limited to the RWQCB and/or the ACDEH, have granted all required clearances and confirmed that the all applicable standards, regulations and conditions for all previous contamination at the site. The applicant also shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the Standard Condition of Approval requiring a Site Review by the Fire Services Division pursuant to City Ordinance No. 12323, and compliance with the Standard Condition of Approval requiring a Phase I and/or Phase II Reports.</p>	
	<p><u>EIR SCA HAZ-6: Radon or Vapor Intrusion from Soil or Groundwater Sources. Ongoing.</u></p> <p>The project applicant shall submit documentation to determine whether radon or vapor intrusion from the groundwater and soil is located on-site as part of the Phase I documents. The Phase I analysis shall be submitted to the Fire Prevention Bureau, Hazardous Materials Unit, for review and approval, along with a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
Applicant shall implement the approved recommendations.		
HYDROLOGY AND WATER QUALITY		
The Initial Study found that all hydrology and water quality impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA HWQ-1: Erosion, Sedimentation, and Debris Control Measures. Prior to issuance of a demolition, grading, or construction-related permit.</u></p> <p>The project applicant shall submit an erosion and sedimentation control plan for review and approval by the Building Services Division. All work shall incorporate all applicable "Best Management Practices (BMPs) for the construction industry, and as outlined in the Alameda Countywide Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:</p> <ul style="list-style-type: none"> a) On sloped properties, the downhill end of the construction area must be protected with silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the street, gutters, storm drains. b) In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation, including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is 	LTS

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>expected.</p> <p>c) Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.</p> <p>d) Install filter materials acceptable to the Engineering Division at the storm drain inlets nearest to the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary ensure effectiveness and prevent street flooding.</p> <p>e) Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.</p> <p>f) Direct and locate tool and equipment cleaning so that wash water does not discharge into the street, gutters, or storm drains.</p> <p>g) Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on-site.</p> <p>h) Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<ul style="list-style-type: none"> i) Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work. j) Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the street, gutter, storm drains. k) All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB). l) All erosion and sedimentation control measures shall be monitored regularly by the project applicant. The City may require erosion and sedimentation control measures to be inspected by a qualified environmental consultant (paid for by the project applicant) during or after rain events. If measures are insufficient to control sedimentation and erosion then the project applicant shall develop and implement additional and more effective measures immediately. 	
	<p><u>IS SCA HWQ-2: Post-Construction Stormwater Management Plan. Prior to the issuance of building permit (or other construction related permit).</u></p> <p>The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related</p>	LTS

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>permit) a completed Stormwater Supplemental Form for the Building Services Division.</p> <p>The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater pollution management plan, for review and approval by the City, to limit the discharge of pollutants in stormwater after construction of the project to the maximum extent practicable.</p> <p>a) The post-construction stormwater pollution management plan shall include and identify the following:</p> <ul style="list-style-type: none"> i. All proposed impervious surface on the site; ii. Anticipated directional flows of on-site stormwater runoff; and iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces; and iv. Source control measures to limit the potential for stormwater pollution; and v. Stormwater treatment measures to remove pollutants from stormwater runoff; <u>and</u> vi. <u>Hydromodification management measures so that post-construction stormwater runoff does not exceed the flow and duration of pre-project runoff, if required under the NPDES permit.</u> <p>b) The following additional information shall be submitted with the post-construction stormwater pollution management plan.</p> <ul style="list-style-type: none"> i. Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and. ii. Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater 	

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>treatment measure, when not used in combination with a landscape based treatment measure, is capable or removing the range of pollutants typically removed by landscape-based treatment measures <u>and/or the range of pollutants typically removed by landscape-based treatment measures and/or the range of pollutants expected to be generated by the project.</u></p> <p>All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include onsite stormwater treatment measures in the post-construction stormwater pollution management plan if he or she secures approval from Planning and Zoning of a proposal that demonstrates compliance with the requirements of the City's Alternative Compliance Program.</p> <p><i>Prior to final permit inspection.</i></p> <p>The applicant shall implement the approved stormwater pollution management plan.</p>	
	<p><u>IS SCA HWQ-3: Maintenance Agreement for Stormwater Treatment Measures. Prior to final zoning inspection.</u></p> <p>For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following.</p> <p>a) The applicant accepting responsibility for the adequate</p>	LTS

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and</p> <p>b) Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.</p>	
LAND USE AND PLANNING		
<i>No significant impacts related to land use and planning were identified in the Initial Study or EIR.</i>		
MINERAL RESOURCES		
<i>No significant impacts related to mineral resources were identified in the Initial Study or EIR.</i>		
NOISE		
All noise impacts would be reduced to LTS level with implementation of SCAs.	<p><u>EIR SCA NOISE-1: Days/Hours of Construction Operation.</u> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>The project applicant shall require construction contractors to limit standard construction activities as follows:</p> <p>a) Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.</p> <p>b) Any construction activity proposed to occur outside of the standard hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for special</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.</p> <p>c) Construction activity shall not occur on Saturdays, with the following possible exceptions:</p> <ul style="list-style-type: none"> i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case-by-case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division. ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed. <p>d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.</p> <p>e) No construction activity shall take place on Sundays or Federal holidays.</p>	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.</p> <p>g) Applicant shall use temporary power poles instead of generators where feasible.</p>	
	<p><u>EIR SCA NOISE-2: Noise Control.</u> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:</p> <p>a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).</p> <p>b) Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>consistent with construction procedures.</p> <p>c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.</p> <p>d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.</p>	
	<p><u>EIR SCA NOISE-3: Noise Complaint Procedures. Ongoing throughout demolition, grading, and/or construction.</u></p> <p>Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:</p> <p>a) A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);</p> <p>b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);</p> <p>c) The designation of an on-site construction complaint and enforcement manager for the project;</p>	<u>LTS</u>

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and</p> <p>e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.</p>	
	<p><u>EIR SCA NOISE-4: Interior Noise. Prior to issuance of a building permit and Certificate of Occupancy.</u></p> <p>If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), <u>and/or other appropriate features/measures,</u> shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer <u>and submitted to the Building Services Division for review and approval prior to issuance of building permit.</u> Final recommendations for sound-rated assemblies, <u>and/or other appropriate features/measures,</u> will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. <u>Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:</u></p> <p><u>a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and</u></p> <p><u>b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.</u></p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p><u>c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following:</u></p> <p><u>i. Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.</u></p> <p><u>ii. Prohibition of Z-duct construction.</u></p>	
	<p><u>EIR SCA NOISE-5: Pile Driving and Other Extreme Noise Generators. Ongoing throughout demolition, grading, and/or construction.</u></p> <p>To further reduce potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90 dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, may be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. The criterion for approving the plan shall be a determination that maximum feasible noise attenuation will be achieved. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit</p>	<u>LTS</u>

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of implementing the following measures. These attenuation measures shall include as many of the following control strategies as applicable to the site and construction activity:</p> <ul style="list-style-type: none"> a) Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings; b) Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; c) Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site; d) Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example, and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and e) Monitor the effectiveness of noise attenuation measures by taking noise measurements. 	
	<p><u>EIR SCA NOISE-6: Operational Noise-General. <i>Ongoing.</i></u></p> <p>Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed</p>	<u>LTS</u>

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	and compliance verified by the Planning and Zoning Division and Building Services.	
POPULATION AND HOUSING		
<i>No significant impacts related to population and housing were identified in the Initial Study or EIR.</i>		
PUBLIC SERVICES		
<i>No significant impacts related to public services were identified in the Initial Study or EIR.</i>		
RECREATION		
<i>No significant impacts related to recreation were identified in the Initial Study or EIR.</i>		
TRANSPORTATION AND CIRCULATION		
All transportation and circulation impacts would be reduced to LTS level with implementation of SCAs.	<p><u>EIR SCA TRANS-1: Parking and Transportation Demand Management.</u> <i>Prior to issuance of a final inspection of the building permit.</i></p> <p>The applicant shall submit for review and approval by the Planning and Zoning Division a Transportation Demand Management (TDM) plan containing strategies to reduce on-site parking demand and single occupancy vehicle travel. The applicant shall implement the approved TDM plan. The TDM shall include strategies to increase bicycle, pedestrian, transit, and carpools/vanpool use. All four modes of travel shall be considered. Strategies to consider include the following:</p> <ul style="list-style-type: none"> a) Inclusion of additional bicycle parking, shower, and locker facilities that exceed the requirement. b) Construction of bike lanes per the Bicycle Master Plan; Priority Bikeway Projects. c) Signage and striping onsite to encourage bike safety. d) Installation of safety elements per the Pedestrian Master Plan (such as cross walk striping, curb ramps, count down signals, bulb outs, etc.) to 	<u>LTS</u>

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>encourage convenient crossing at arterials.</p> <p>e) Installation of amenities such as lighting, street trees, trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan.</p> <p>f) Direct transit sales or subsidized transit passes.</p> <p>g) Guaranteed ride home program.</p> <p>h) Pre-tax commuter benefits (checks).</p> <p>i) On-site car-sharing program (such as City Car Share, Zip Car, etc.).</p> <p>j) On-site carpooling program.</p> <p>k) Distribution of information concerning alternative transportation options.</p> <p>l) Parking spaces sold/leased separately.</p> <p>m) Parking management strategies; including attendant/valet parking and shared parking spaces.</p>	
	<p><u>EIR SCA TRANS-2: Construction Traffic and Parking. Prior to the issuance of a demolition, grading or building permit.</u></p> <p>The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project sponsor <u>applicant</u> shall develop a construction management plan for review and approval by the <u>Planning and Zoning Division, the Building Services Division, and the Transportation Services Division</u>. The plan shall include at least the</p>	<u>LTS</u>

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>following items and requirements:</p> <ul style="list-style-type: none"> a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. Traffic analysis will be necessary to determine the hours of operation for construction traffic control as part of the construction management plan. b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur. c) Location of construction staging areas for materials, equipment, and vehicles at an approved location. d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services. e) Provision for accommodation of pedestrian flow. f) Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces. g) Any damage to the street caused by heavy equipment, or as a result of this construction, shall be repaired, at the applicant's expense, within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair 	

TABLE II-1 SUMMARY OF FINDINGS, STANDARD CONDITIONS OF APPROVAL (SCA) INCLUDING FINDINGS FROM INITIAL STUDY AND EIR

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	<p>shall occur prior to issuance of a final inspection of the building permit. All damage that is a threat to public health or safety shall be repaired immediately. The street shall be restored to its condition prior to the new construction as established by the City Building Inspector and/or photo documentation, at the applicant's expense, before the issuance of a Certificate of Occupancy.</p> <p>h) Any heavy equipment brought to the construction site shall be transported by truck, where feasible.</p> <p>i) No materials or equipment shall be stored on the traveled roadway at any time.</p> <p>j) Prior to construction, a portable toilet facility and a debris box shall be installed on the site, and properly maintained through project completion.</p> <p>k) All equipment shall be equipped with mufflers.</p> <p>l) Prior to the end of each work day during construction, the contractor or contractors shall pick up and properly dispose of all litter resulting from or related to the project, whether located on the property, within the public rights-of-way, or properties of adjacent or nearby neighbors.</p>	
UTILITIES AND SERVICE SYSTEMS		
The Initial Study found that all utilities and service systems impacts would be reduced to LTS level with implementation of SCAs.	<p><u>IS SCA UTIL-1: Stormwater and Sewer</u>. <i>Prior to completing the final design for the project's sewer service.</i></p> <p>Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project.</p>	LTS

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p>In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.</p>	
	<p><u>IS SCA UTIL-2: Waste Reduction and Recycling.</u></p> <p>The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.</p> <p><i>Prior to issuance of demolition, grading, or building permit.</i></p> <p>Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/ modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo).The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.</p>	LTS

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Finding	Standard Condition of Approval and/or Mitigation Measure	Level of Significance With Implementation of SCA
	<p><i>Ongoing.</i></p> <p>The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be resubmitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.</p>	