

Stephan C. Volker
Alexis E. Krieg
Stephanie L. Clarke
Daniel P. Garrett-Steinman
Jamey M.B. Volker (Of Counsel)
M. Benjamin Eichenberg

Law Offices of
Stephan C. Volker
436 – 14th Street, Suite 1300
Oakland, California 94612
Tel: (510) 496-0600 ❖ Fax: (510) 496-1366
svolker@volkerlaw.com

10.594.01

September 2, 2016

VIA EMAIL AND U.S. MAIL

Ann Clevenger
City of Oakland, Bureau of Planning
250 Frank H. Ogawa Plaza
Suite 2114
Oakland, California 94612
aclevenger@oaklandnet.com

Re: Scoping comments of John Lee and other concerned neighborhood residents on the Claremont Hotel Club Expansion and Residential Project, SCH No. 2016072023

Dear Ms. Clevenger:

Pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code (“PRC”) section 21000 *et seq.*, the City of Oakland’s (“City’s”) May 31, 2016 Notice of Preparation of a Draft Environmental Impact Report (“NOP”) and the City’s August 5, 2016 letter to Berkeley Residents and Agencies extending the scoping comment period to September 6, 2016, John Lee and other concerned neighborhood residents (collectively, “Concerned Residents”) submit the following scoping comments for the Draft Environmental Impact Report (“DEIR”) being prepared for the Claremont Hotel Club Expansion and Residential Project (“Project”).

I. PROJECT BACKGROUND

The Claremont Hotel Club Expansion and Residential Project is a joint project proposed by the current Claremont Hotel owner, Claremont Hotel Properties, LP, and Signature Development Group, Inc.. The Project would be located on the existing 19.2-acre site of the Claremont Hotel, at the base of the Claremont Hills. The majority of the site is in Oakland, but 0.24 acres are located in Berkeley. The Oakland General Plan designates most of the property as Community Commercial, with some also designated as Hillside Residential. The property is zoned primarily as RU-3 (Urban Residential Zone-3), with a smaller portion on the north, northwest, south and southeast periphery zoned as RH-4 (Hillside Residential Zone-4).

The Claremont Hotel building itself is a designated Oakland Landmark (LM01-404, Ordinance No. 12438) and is “eligible for listing on the California Register of Historic Resources” and “National Register of Historic Places, but is not currently listed on either.” City of Oakland, July 6, 2016, Staff Report on Case File Number PLN16053; ER16-010 (“Staff Report”), pp. 3-4.

The Landmark Ordinance excluded the “outdoor recreational facilities, the parking lots, and ancillary buildings from historic designation.” *Id.*, p. 4. However, development on those lands is still subject to design review in order to “protect the sight lines of the hotel building from immediate downhill streets and from distant public views from San Francisco and Oakland and to provide an appropriate sense of open space around the hotel building.” *Id.*

The Developers propose to do three things as part of the Project:

1. Make site and circulation “improvements,” including “realign[ing] site access, modify[ing] on-site circulation and parking, replac[ing] the existing porte-cochere, and landscape improvements;”
2. Expand and “improve” the hotel’s club facilities, including adding 6,000 square-feet of new facilities and increasing “membership by 15 percent (up to 250 new memberships), from 1,600 to a maximum of 1,850 memberships; and
3. Add 45 new residential units totaling 70,000 square-feet on the southeast portion of the site - a 43-unit condominium building and 2 single-family homes, both on existing surface parking lots.

Staff Report, p. 1.

II. THE CITY MUST PROVIDE A FULL, STABLE AND ACCURATE PROJECT DESCRIPTION

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (“*County of Inyo*”) (1977) 71 Cal.App.3d 185, 193. “The data in [the] EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.” *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (“*Vineyard*”) (2007) 40 Cal.4th 412, 431.

Among other things, the project description “shall contain the following information:”

- (a) The precise location and boundaries of the proposed project . . . shown on a detailed map.
- (b) A statement of objectives sought by the proposed project[, which] will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR The statement of objectives should include the underlying purpose of the project.
- (c) A general description of the project’s technical, economic, and environmental characteristics

14 Cal. Code Regs. [“CEQA Guidelines”] § 15124.

Here, the City must provide in the DEIR the precise location boundaries of each portion of the Project, including the assessor's parcel numbers ("APNs") for the parcels that the Claremont Hotel Project will impact. In doing so, the Concerned Residents request that the City confirm Tom Quaglia's (the Signature Development Group manager for the Project) assurance in a July 5, 2016 email to Mr. Lee that the "[n]othing [will] happen[]" with the unpaved alley on the APN 64-4226-24 parcel as part of the Project. Specifically, please confirm that the Project will not involve any construction, tree removal, or soil mounding or removal on the approximately 20-foot-wide alley.

The City must also provide in the DEIR the specific size of the proposed residential units, how many bedrooms they will have and how many total occupants will be expected. The DEIR should also state whether e-vehicle charging stations will be available to the residents.

III. THE CITY MUST CONSIDER A REASONABLE RANGE OF ALTERNATIVES

To comply with CEQA, the agency must consider and describe in its EIR "a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566 (EIRs "must consider a reasonable range of alternatives to the project . . . which (1) offer substantial environmental advantages over the project proposal" and (2) may be feasibly accomplished). An alternative may "not be eliminated from consideration solely because it would impede to some extent the attainment of the project's objectives." *Habitat and Watershed Caretakers v. City of Santa Cruz ("HAWC")* (2013) 213 Cal.App.4th 1277, 1304. "The EIR is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." *Id.* at 1303 (emphasis and quotation omitted).

To satisfy CEQA's alternatives requirement here, the City must analyze an alternate Project location, among other alternatives, to reduce the Project's significant environmental impacts. For example, the City should consider locating at least the residential portion of the Project somewhere else in the City that is closer to mass transit, as well as retail and commercial land uses, which could significantly reduce the Project's aesthetic, viewshed, noise, greenhouse gas, traffic, air quality and other environmental impacts.

CEQA and other state, regional and local policies encourage locating residential projects in "transit priority areas," i.e. areas "within one-half mile of a major transit stop that is existing or proposed." PRC § 21099(a)(7). As the City's own General Plan Housing Element explains, the

Bay Area's sustainable growth framework known as Plan Bay Area [and adopted by the Association of Bay Area Governments] is built around the concept of

“Priority Development Areas” (PDAs). Priority Development Areas are existing neighborhoods near transit, nominated by jurisdictions as appropriate locations for future growth. In 2010, the Oakland City Council adopted Resolution No. 82526 designating six established transit-oriented development centers in Oakland as PDAs. Oakland designated PDAs in the area surrounding the Eastmont Transit Center (73rd Avenue and MacArthur Blvd), and the areas around the following BART stations: 12th/19th Streets (downtown), MacArthur, West Oakland, Fruitvale, and Airport/Coliseum.

City of Oakland, Housing Element 2015-2023 (December 9, 2014), p. 29.

The Project, however, would not be located in a PDA or otherwise within one-half mile of a “major transit stop,” i.e. a “site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.” PRC § 21064.3. There is only one bus line with stops within one-half mile of the Project that has service intervals of 15 minutes or less during the morning and afternoon peak, the 51B AC Transit line.

IV. CONSISTENCY WITH THE COUNTY GENERAL PLAN AND OTHER APPLICABLE PLANS

CEQA requires that an EIR include a complete and accurate discussion of “any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans.” CEQA Guidelines § 15125(d). As the Staff Report admits, it “is anticipated that the project may have significant environmental impacts related to . . . Land Use and Planning.” Staff Report, p. 7 (emphasis omitted).

V. WATER SUPPLY, WATER QUALITY AND OTHER HYDROLOGIC IMPACTS

CEQA requires the City to identify in its DEIR the likely water sources for the Project, for both the construction and operational/use phases, and analyze the “environmental impacts of exploiting those sources” and “how those impacts are to be mitigated.” *Vineyard*, 40 Cal.4th at 421 (quote), 434, 440-441. “An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an environmental alarm bell.” *Id.* at 441 (internal quotations and citation omitted). The Staff Report omits any information on the Project’s water supplies and their impacts.

The DEIR must also analyze the potential for the Project to increase runoff and reduce groundwater infiltration on the Project site. The Project would likely require substantial grading, which would cause erosion. In addition, any increase in the amount of impervious surfaces on the Project site would reduce the groundwater infiltration and increase the amount and speed of the runoff, causing potentially significant impacts to the municipal stormwater collection system.

The DEIR must also examine the Project's impacts on local groundwater beyond reduced infiltration and recharge. Located near the base of a canyon, the groundwater table in the Project area can be very high. For example, during a site inspection on August 10, 2016, we observed pooled water less than a foot below the ground surface in the small sink hole in the Claremont Hotel parking lot located on parcel APN 48H-7670-28-3 (where the Project's two single-family residences would be located), which may have been the top of the water table. The sink hole is shown in the photograph taken that day that is attached as Exhibit 1 hereto. This high groundwater level poses multiple potentially significant problems. Because Project construction would require excavation to depths of at least 30 feet below the surface (see Staff Report, Residential - Building Section AR004 figure), it may hit groundwater, exposing the groundwater to all manner of construction-related pollutants. And to the extent that part of the subsurface parking for the residences would be below the water table, it may require pumping to protect the structure, which would require additional energy and also potentially create additional surface water runoff. High groundwater coupled with the site's proximity to the Hayward Fault also raises the specter of liquefaction during seismic events. Liquefaction caused widespread structural failure in San Francisco's Marina District during the 1989 Loma Prieta earthquake. The DEIR must analyze these issues.

VI. GEOLOGIC IMPACTS AND SEISMIC RISKS

At least a portion of the Project lies within the Hayward Fault zone. Staff Report, p. 10; California Department of Conservation, January 1, 1982, Revised Official Map for the Oakland East Zone (attached hereto as Exhibit 2). As a result, the City "shall require, prior to the approval of [the Project], a geologic report defining and delineating any hazard of surface fault rupture." Public Resources Code § 2623(a) (quote). The City must also analyze in the DEIR the Project's potential to increase local seismicity. As the Staff Report admits, it "is anticipated that the project may have significant environmental impacts related to . . . Geology and Soils." Staff Report, p. 7 (emphasis omitted).

VII. HARM TO PLANTS AND WILDLIFE

The Staff Report states that it "is anticipated that the project will have no environmental impacts or not have significant environmental impacts on Agriculture and Forest Resources [and] Biological Resources." Staff Report, pp. 7-8 (emphasis omitted). "Nevertheless," as it should, the City confirms that "these environmental factors will be analyzed in the Draft EIR." Staff Report, p. 8. Among the impacts the DEIR must consider are the potential for habitat loss and the

destruction of trees, and resulting increase in ambient temperature and noise, and decrease in air quality and aesthetic resources.

VIII. PUBLIC HEALTH AND SAFETY IMPACTS – FIRE

The Project area has high fuel loads¹ and many surrounding residences, making it imperative that the DEIR analyze the increased fire risk the Project would cause by replacing a low fire risk use (parking) with the high fire risk created by 70,000 square feet of buildings with electricity and gas connections, hundreds of additional users and flammable materials.

IX. PUBLIC HEALTH AND SAFETY IMPACTS – NOISE

The Staff Report correctly “anticipate[s] that the project may have significant environmental impacts related to . . . Noise and Vibration.” Staff Report, p. 7 (emphasis omitted). As the Staff Report promises, the DEIR must “evaluate the potential noise and vibration impacts associated with construction and operation of the proposed project.” Staff Report, p. 10. However, the City should collect and analyze data from more than just “two to three locations off-site.” *Id.* There are hundreds of affected homes spanning both sides of Tunnel Road, on Claremont Avenue and elsewhere, requiring more than two to three measurement locations to obtain an accurate and complete picture of existing noise conditions.

X. PUBLIC HEALTH AND SAFETY IMPACTS – AIR QUALITY

The Staff Report correctly “anticipate[s] that the project may have significant environmental impacts related to . . . Air Quality.” Staff Report, p. 7 (emphasis omitted). As the Staff Report promises, the DEIR must “evaluate the potential air quality impacts associated with construction and operation of the proposed project.” Staff Report, p. 9. In addition to analyzing the emissions from on-road construction equipment and the automobiles used by Project residents and new club members, the DEIR must also analyze the increased emissions caused by traffic delays due to Project construction and operational auto use.² The DEIR must also account for the

¹ See East Bay Regional Park District Hills Wildfire Working Group, “Background Report: The East Bay Hills Wildfire Problem Statement,” originally prepared in 2001, but since updated, available here: http://www.ebparks.org/about/stewardship/fuelsplan/bg_report#top

² See Dennis Perkinson, May 1998, “Air Quality Impacts of Highway Construction and Scheduling,” Texas Department of Transportation Report No. FHWA/TX-98/1745-S, available here: <http://d2dt15nnlpfr0r.cloudfront.net/tti.tamu.edu/documents/1745-S.pdf>; Thomas Van Dam, John Harvey, Stephen Muench, Kurt Smith, Mark Snyder, Imad Al-Qadi, Hasan Ozer, Joep Meijer, Prashant Ram, Jeffery Roesler and Alissa Kendall, January 2015, “Towards Sustainable Pavement Systems: A Reference Document,” Federal Highway Administration Report No.

fact that the San Francisco Bay Area region is currently in nonattainment for 8-hour ozone and PM-2.5.³

XI. GLOBAL WARMING

The Staff Report correctly “anticipate[s] that the project may have significant environmental impacts related to . . . Greenhouse Gas Emissions.” Staff Report, p. 7 (emphasis omitted). The DEIR must analyze all the Project’s potential greenhouse gas emission sources, including on-road construction traffic (including increased emissions due to delays), off-road construction equipment, the lifecycle emissions of the Project building materials, and increased auto use from Project operation (including increased emissions due to traffic delays). The DEIR must also analyze alternative Project locations nearer mass transit and commercial and retail opportunities as a way to mitigate the Project’s greenhouse gas emission impacts.

XII. DESTRUCTION OF UNIQUE AND HISTORICAL SCENERY

The Staff Report correctly “anticipate[s] that the project may have significant environmental impacts related to . . . Aesthetics.” Staff Report, p. 7 (emphasis omitted). And as the Staff Report promises, the DEIR must “comprehensively consider[]” aesthetics “due to the sensitive visual nature of the site and the requirements for the protection of sight lines of the hotel building.” Staff Report, p. 8. To wit, the Claremont Hotel building is a designated Oakland Landmark (LM01-404, Ordinance No. 12438) and is “eligible for listing on the California Register of Historic Resources” and “National Register of Historic Places,” though it “is not currently listed on either.” Staff Report, pp. 3-4. The Landmark Ordinance excluded the “outdoor recreational facilities, the parking lots, and ancillary buildings from historic designation.” *Id.*, p. 4. However, development on those lands is still subject to design review in order to “protect the sight lines of the hotel building from immediate downhill streets and from distant public views from San Francisco and Oakland and to provide an appropriate sense of open space around the hotel building.” *Id.* The DEIR must thoroughly analyze the Project’s degradation of views of the Claremont Hotel.

FHWA-HIF-15-002, pp. 5-7 to 5-8, available here:
<http://www.fhwa.dot.gov/pavement/sustainability/hif15002/hif15002.pdf>.

³ See U.S. Environmental Protection Agency, “Current Nonattainment Counties for All Criteria Pollutants,” website last updated June 17, 2016,
<https://www3.epa.gov/airquality/greenbook/ancl.html>.

In addition, the DEIR must analyze the Project's impacts including any planned tree removal on the viewsheds of surrounding residents, passing pedestrians and motorists, distant viewing locations such as adjacent urban areas and San Francisco, and also from the proposed residential buildings themselves.

XIII. TRANSPORTATION AND ROADWAY IMPACTS

The Staff Report correctly "anticipate[s] that the project may have significant environmental impacts related to . . . Traffic and Transportation." Staff Report, p. 7 (emphasis omitted). And as the Staff Report promises, the DEIR must "evaluate the potential traffic and transportation impacts associated with construction and operation of the proposed project." Staff Report, p. 11.

In its transportation impacts analysis, the City should not shy away from analyzing transit impacts. The City's October 28, 2013 CEQA Thresholds of Significance Guidelines (attached hereto as Exhibit 3) clearly include thresholds related to transit impacts from non-transit projects, including causing "substantially increased travel times for AC Transit buses" or creating "[f]undamental[] conflict[s] with adopted City policies, plans, or programs regarding . . . transit . . . facilities adopted for the purpose of avoiding or mitigating an environmental effect [that] actually result in a physical change in the environment." Exhibit 3 at 25 (first quote), 27 (second quote). Transit service impacts are especially important to analyze because worse service is likely to reduce ridership and increase greenhouse gas emissions as some riders switch to driving personal autos.

The DEIR must also include as an appendix the transportation demand management program required by the City. Not including it with the DEIR, as contemplated in footnote 2 on page 14 of the Staff Report, would render the DEIR inadequate as an informational document because it would deprive decisionmakers and the public of the opportunity to review the components and basis of what would likely be the primary transportation-related mitigation measures.

The City must also be sure to analyze parking supply and demand in the DEIR. The Staff Report wrongly asserts that parking is "not a CEQA impact criteria." Staff Report, p. 14. While SB 743 amended CEQA to prohibit considering as significant environmental impacts "[a]esthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area," as discussed above, the Project is not located in a transit priority area. PRC § 21099(d)(1); *see* CEQA Guidelines Appendix G section XVI(a) (threshold based on a "[c]onflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account *all* . . . relevant components of the circulation system, including *but not limited to* intersections, streets, highways and freeways," emphasis added). If the Project creates more parking demand than it supplies, it may cause significant parking-related impacts requiring mitigation under CEQA, including air

pollutant and greenhouse gas emissions, as well as increased safety hazards, from additional driving in search of parking. *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1053.

In addition, as part of its planned traffic impact study for the Project, the City should analyze traffic at peak usage periods during major events in the area, including events at the Claremont Hotel like weddings and graduations, and events at Memorial Stadium.

The DEIR must also analyze the pavement degradation that heavy Project construction vehicles are likely to cause on local roads.

XIV. GROWTH-INDUCING IMPACTS

The DEIR must study the growth-inducing impacts of approving the Project. CEQA Guidelines § 15378(a),(c). By increasing residential population in the area, the Project could spur the development of additional commercial, retail or other service businesses in the area. The DEIR must analyze this potential growth induction.

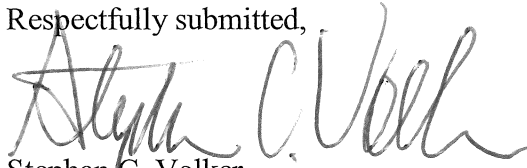
XV. CUMULATIVE IMPACTS

The DEIR must discuss cumulative impacts when, as here, a “project’s incremental effect is cumulatively considerable.” CEQA Guidelines § 15130(a). A “cumulative impact” refers to “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines § 15355. “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” CEQA Guidelines § 15355(b). The cumulative impacts discussion must include either a “list of past, present, and probable future projects producing related or cumulative impacts,” or “a summary of projections contained in an adopted” broader plan “that describes or evaluates the conditions contributing to the cumulative effect.” CEQA Guidelines § 15130(b). “The Agency must interpret this requirement in such a way as to ‘afford the fullest possible protection of the environment.’” *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 868-869 (quoting *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168). One of the many projects the DEIR should evaluate in the cumulative impacts analysis is the City’s planned renovation of the “Short Cut” path that runs from lower Alvarado Road along the southeastern border of the Claremont Hotel property to Tunnel Road.

XVI. CONCLUSION

The Project would likely cause many significant environmental impacts, all of which the City must analyze in the DEIR. To avoid many of the Project's aforementioned significant environmental impacts while still providing local housing, Concerned Residents urge the City to analyze and adopt an alternate location for the residential portion of the Project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephan C. Volker". The signature is written in a cursive style with a large initial 'S' and 'V'.

Stephan C. Volker

Attorney for John Lee and Concerned Residents

LIST OF EXHIBITS

1. Photo of small sink hole in the Claremont Hotel parking lot pavement located on parcel APN 48H-7670-28-3, taken with an iPhone on August 10, 2016 by Jamey Volker.
2. California Department of Conservation, January 1, 1982, Revised Official Map for the Oakland East Zone.
3. City of Oakland, October 28, 2013, CEQA Thresholds of Significance Guidelines.