

**CEQA FINDINGS**

**Certification of the Environmental Impact Report, Rejection of Specified Alternatives and Mitigation Measures Due to Infeasibility, and Statement of Overriding Considerations for the Oakland 2045 General Plan Phase I Planning Code, Zoning Map, and General Plan Text and Map Amendments**

**I. Introduction**

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 *et seq.*; "CEQA") and the CEQA Guidelines (Cal. Code Regs, title 14, section 15000 *et seq.*) by the City of Oakland City Council in connection with the Environmental Impact Report (EIR) prepared for the Oakland 2045 General Plan Phase I Planning Code, Zoning Map, and General Plan Text and Map Amendments Project (the "Project").
2. These CEQA findings are attached and incorporated by reference into each and every staff report, resolution and ordinance associated with approval of the Project.
3. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings

**II. Project Description**

4. To ensure a path for construction of Oakland's Regional Housing Needs Assessment ("RHNA") assigned production target by 2031, the Housing Element Implementation (HEI) component of the Project includes adoption of Planning Code, Zoning Map, and General Plan text and map amendments to implement goals, policies, and actions related to housing contained in the Housing Element of the City's General Plan. The 2023-2031 Housing Element itself contains an updated housing needs assessment, a housing sites inventory that meets the City's RHNA including a buffer of additional housing development capacity, and a Housing Action Plan (HAP), which is a chapter of the 2023-2031 Housing Element that presents the updated goals, policies, and actions critical to respond to increasing housing pressures in Oakland. While the 2023-2031 Housing Element identifies sites available for housing and constraints that could limit the City's ability to reach its housing goals, the HEI Planning Code amendments include specific proposals to reduce and eliminate those constraints and otherwise incentivize the construction of affordable housing. Most significantly, the HEI proposes to redefine zoning designations and change development standards in zoning districts that have historically served as single-family neighborhoods to allow for missing middle housing development; to create a checklist review objective design review process; to adopt an affordable housing overlay zone that would provide for ministerial approval and other incentives to qualifying affordable housing developments; and to additionally create a "by right"

or ministerial approval process for qualifying housing development located on sites identified in the 2015-2023 Housing Element housing sites inventory.

As part of the Project, the City has prepared a comprehensive update to the Safety Element that builds on the City's 2021- 2026 Local Hazard Mitigation Plan; addresses all State requirements; and serves as a central reference point for the City's efforts to address safety and climate change. The policy development focuses on wildfire, toxic and hazardous materials, seismic risk, flooding, climate change adaptation and resilience, and drought. The Safety Element Update includes actionable strategies for addressing identified critical facility needs and enabling climate-smart development. The City last comprehensively amended its Safety Element in 2012.

The Project also includes the City's first Environmental Justice (EJ) Element. In response to recent State laws, the City has identified census tracts that are low-income areas and disproportionately impacted by pollution burden. The EJ Element identifies objectives and policies to reduce the unique or compounded health risks in these EJ Communities by including measures to reduce pollution exposure; promote equitable access to public facilities, healthy food, safe and sanitary homes, and physical activity; reduce barriers to inclusive engagement in the public decision-making process; prioritize improvements and programs that address the needs of EJ communities; and identify and reverse systemic funding inequities.

While the Proposed Project does not propose specific private developments, construction would be a reasonably foreseeable future outcome of the update. For the purposes of environmental review, the Draft EIR established a Phase 1 Oakland 2045 General Plan Update Buildout Program (Buildout Program), which represents the maximum feasible housing development that the City has projected can reasonably be expected to occur through 2030. The Buildout Program assumes approximately 41,458 new housing units would be developed under the Project during the projection period ending in 2030, although the actual pace of development will depend on market conditions, property owner interest, and—in the case of affordable housing—available funding and/or other incentives.

### **III. Environmental Review of the Project**

5. Pursuant to the requirements of CEQA and the CEQA Guidelines for initiation of environmental review, on **March 30, 2022**, the City sent a Notice of Preparation (NOP) of an EIR to the State Clearinghouse, responsible and trustee government agencies, organizations, and individuals potentially interested in the Phase I Oakland 2045 General Plan Update. The NOP requested that agencies with regulatory authority over any aspect of the proposal describe that authority and identify relevant environmental issues that should be addressed in the Draft EIR. Interested members of the public were also invited to comment. The comment period for the NOP extended from **March 30, 2022** to **May 5, 2022**, during which time, the City accepted written comments on the scope of the Draft EIR. A scoping meeting was held by the City on **April 20, 2022**, to accept oral comments. As discussed in the NOP and pursuant to the provisions of CEQA, the City did not prepare a CEQA Initial Study prior to preparation of the Draft EIR, because the City determined that it was clear at the time of the issuance of the NOP that a Draft EIR was required (CEQA Guidelines Section 15060(d)).

6. Subsequent to publication of the NOP, the City determined that one component of the Phase I Oakland 2045 General Plan Update, adoption of the 2023-2031 Housing Element, is exempt from CEQA review pursuant to each as an independent basis: (1) it can be seen with certainty that there is no possibility that adoption that the 2023-2031 Housing Element may have a significant effect on the environment (the “common sense” exemption, CEQA Guidelines Section 15061(b)(3)), because the 2023-2031 Housing Element involves policies, programs, and actions to meet the City’s regional housing needs allocation that either would not cause a significant effect on the environment or incorporates ongoing, existing actions being taken by the City; (2) the 2023-2031 Housing Element is a planning document that serves to implement the City of Oakland’s regional housing needs determination by identifying sites available for construction of housing under existing zoning (CEQA Guidelines Section 15283 and California Government Code Section 65584(g)); (3) the 2023-2031 Housing Element is a planning study containing actions that will require independent review, environmental determination, and adoption by the Oakland City Council prior to its implementation (CEQA Guidelines Section 15262 and California Public Resources Code Sections 21102 and 21150); and (4) the 2023-2031 Housing Element seeks to assure the protection of the environment by reducing greenhouse gas emissions per capita in the City through infill development, which is consistent with research, local and regional planning on the most impactful measures local governments can take in response to climate change (CEQA Guidelines Section 15308).

7. A Draft EIR was prepared for the Project to analyze its environmental impacts. Pursuant to CEQA and the CEQA Guidelines, a Notice of Availability (NOA) and the Draft EIR were published on **March 24, 2023**. The Notice of Availability was distributed to appropriate state and local agencies, published in the Oakland Tribune, and mailed to individuals who requested to specifically be notified of official City actions on the project. The NOA was posted in the office of the County Clerk on **March 24, 2023**. The Draft EIR was also posted on the City’s 2045 General Plan Update website at <https://www.oaklandca.gov/topics/general-plan-update>, and on its Current Environmental Review Documents webpage at <https://www.oaklandca.gov/resources/current-environmental-review-ceqa-eir-documents-2011-present>. A hard copy of the Draft EIR was also made available at the Main Branch of the Oakland Public Library Circulation Desk at 125 14th Street, Oakland, CA 94612.

7. A duly noticed public hearing on the Draft EIR was held at the **April 19, 2023** meeting of the Planning Commission. The Draft EIR was properly circulated in excess of the required 45-day public review period. The public comment period on the Draft EIR closed on **May 9, 2023**.

8. The City received written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues and made changes to the Draft EIR. The responses to comments, changes to the Draft EIR, and additional information were published in a Final EIR/Response to Comment document on **July 26, 2023**. The Draft EIR, the Final EIR and all appendices thereto constitute the “EIR” referenced in these findings. The Final EIR was made available for public review on **July 26, 2023**, seven (7) days prior to the duly noticed August 2, 2023, Planning Commission public hearing. A Notice of Availability of the Final EIR was distributed on **July 26, 2023** to those state and local agencies who commented on the Draft EIR,

and mailed and e-mailed to individuals who have requested to specifically be notified of official City actions on the project. Pursuant to CEQA Guidelines, responses to public agency comments have been published and made available to all commenting agencies through notice, publication and distribution of the Final EIR at least 10 days prior to the public hearing considering certification of the EIR and the Project. The City Council has had an opportunity to review all comments and responses thereto prior to consideration of certification of the EIR and prior to taking any action on the proposed Project.

#### **IV. The Administrative Record**

9. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

- a. The EIR and all documents referenced in or relied upon by the EIR.
- b. All information (including written evidence and testimony) provided by City staff to the City Council, Planning Commission, and Landmarks Preservation Advisory Board relating to the EIR, the approvals, and the Project.
- c. All information (including written evidence and testimony) presented to the City Council, Planning Commission and Landmarks Preservation Advisory Board by City consultants including the environmental subconsultant who prepared the EIR or incorporated into reports presented to the City Council, Planning Commission and Landmarks Preservation Advisory Board.
- d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project or the EIR.
- e. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the EIR.
- f. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- g. The Standard Conditions of Approval and Mitigation Monitoring and Reporting Program for the Project.
- h. All other documents composing the record pursuant to Public Resources Code Section 21167.6(e).

10. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is the Director of the Planning and Building Department, or his/her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612.

## **V. Certification of the EIR**

11. In accordance with CEQA, the City Council certifies that the EIR has been completed in compliance with CEQA. The City Council has independently reviewed the record and the EIR prior to certifying the EIR and approving the Project. By these findings, the City Council confirms, ratifies, and adopts the findings and conclusions of the EIR as supplemented and modified by these findings. The EIR and these findings represent the independent judgment and analysis of the City and the City Council.

12. The City Council certifies that the EIR is adequate to support all actions in connection with the approval of the Project and all other actions and recommendations as described in the August 2, 2023, Planning Commission staff report and exhibits/attachments. The City Council certifies that the EIR is adequate to support approval of the Project described in the EIR, each component and phase of the Project described in the EIR, any variant of the Project described in the EIR, any minor modifications to the Project or variants described in the EIR and the components of the Project.

## **VI. Absence of Significant New Information**

13. The City Council recognizes that the Final EIR incorporates information obtained and produced after the DEIR was completed, and that the Final EIR contains additions, clarifications, and modifications. The City Council has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of a previously identified significant environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the City declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. Thus, recirculation of the EIR is not required.

14. The City Council finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

## **VII. Standard Conditions of Approval and Mitigation Monitoring and Reporting Program**

15. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the EIR are implemented. The Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCAMMRP") is attached and incorporated by reference into the August 2, 2023 Planning Commission staff report prepared for the approval of the Project and is adopted by the City Council. The SCAMMRP satisfies the requirements of CEQA.

16. The standard conditions of approval (SCA) and mitigation measures set forth in the SCAMMRP are specific and enforceable and are capable of being fully implemented by the efforts of the City of Oakland and/or other identified public agencies of responsibility. As appropriate, some standard conditions of approval and mitigation measures define performance standards to ensure no significant environmental impacts will result. The SCAMMRP adequately describes implementation procedures and monitoring responsibility in order to ensure that the Project complies with the adopted standard conditions of approval and mitigation measures.

17. The Planning Bureau will impose the feasible standard conditions of approval and mitigation measures as set forth in the SCAMMRP as enforceable conditions of approval, and revise Planning Bureau application forms as necessary. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

18. The standard conditions of approval and mitigation measures incorporated into and imposed upon the Project approval will not themselves have new significant environmental impacts or cause a substantial increase in the severity of a previously identified significant environmental impact that were not analyzed in the EIR. In the event a standard condition of approval or mitigation measure recommended in the EIR has been inadvertently omitted from the SCAMMRP, that standard condition of approval or mitigation measure is adopted and incorporated from the EIR into the SCAMMRP by reference.

### **VIII. Findings Regarding Impacts**

19. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City Council adopts the findings and conclusions regarding impacts, standard conditions of approval and mitigation measures that are set forth in the EIR and summarized in the SCAMMRP. These findings do not repeat the full discussions of environmental impacts, mitigation measures, standard conditions of approval, and related explanations contained in the EIR. The City Council ratifies, adopts, and incorporates, as though fully set forth, the analysis, explanation, findings, responses to comments and conclusions of the EIR. The City Council adopts the reasoning of the EIR, staff reports, and presentations provided by the staff as may be modified by these findings.

20. The City Council recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The City Council acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The City Council has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the City Council to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

## **IX. Significant but Mitigable Impacts**

21. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR, the SCAMMRP, and the City's Standard Conditions of Approval (SCAs), the City Council finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated, through the implementation of Standard Conditions of Approval (which are an integral part of the SCAMMRP):

22. Aesthetics: Adoption of the Proposed Project could result in new residential development in existing urban areas and could increase light and glare in the Plan Area by removing vegetation that provides shade, introducing reflective surfaces, and increasing interior and exterior nighttime lighting that would affect daytime and nighttime views. However, compliance with the Oakland existing Outdoor Lighting Standards, Titles 9 and 17 of the Municipal Code, and Standard Condition of Approval 19, Lighting Plan, would reduce light and glare impacts to a less than significant level. While proposed building height increases in certain areas have the potential to partially obstruct views of the hills and shoreline, the change would not be considered significant as views of these scenic resources would still be available and accessible. In addition, future development under the Proposed Project would be required to adhere to General Plan policies and SCAs, including SCA 16 (Trash and Blight Removal), SCA 17 (Graffiti Control), SCA 18 (Landscape Plan), SCA 19 (Lighting), and SCA 83 (Underground Utilities). Despite the change in visual character that could result from future development under the Proposed Project, height changes are consistent with the City's vision for more dense housing in these areas. While future development around BART stations may alter the visual character in the vicinity, these changes are not considered significant pursuant to SB 743. There are no policies in the General Plan related to the provision of shadow or adequate sunlight with which the Proposed Project could conflict.

23. Air Quality: Adoption of the Proposed Project would not conflict with or obstruct implementation of applicable air quality plans, including the 2017 Clean Air Plan. Adoption of the Proposed Project would not result in a cumulatively considerable net increase of any criteria air pollutant for which the Plan Area region is in nonattainment under any applicable federal or State air quality standard. Adoption of the Proposed Project would result in growth in VMT that would be less than the growth in service population. For this reason, adoption of the Proposed Project would result in a less-than-significant impact with respect to regional emissions of criteria air pollutants. Traffic associated with adoption of the Proposed Project would not contribute to carbon monoxide concentrations exceeding the California Ambient Air Quality Standards of nine parts per million averaged over eight hours and twenty parts per million for one hour.

24. Biological Resources:

a) Special-Status Plan Species: Potential habitat for pallid manzanita, western leatherwood, Presidio clarkia, Tiburon buckwheat, and most beautiful jewel flower is present in undeveloped hillside areas northeast of State Highway 13 and Interstate 580 southeast of

its intersection with State Highway 13 within the City of Oakland. These special-status plant species have the potential to be present in disturbed or undisturbed natural sites that are not developed with buildings, asphalt, compressed gravel, hardscape, turf, or landscaping. Construction activities, such as clearing and grubbing, ground disturbance (e.g., grading, trenching, etc.), site access, or construction staging within these areas could result in direct temporary or permanent impacts to these special-status plant species, if present. If these construction activities were to remove or otherwise damage individuals of these species, this would result in a potentially significant impact. However, implementation of Mitigation Measure BIO-1—including revisions to the City's development application form and adoption of a new SCA applicable to affected areas to require a qualified biologist to prepare a properly-timed special-status plant survey, establishment of adequate buffer areas for each plant population found to be present, and obtainment of all necessary approvals from U.S. Fish and Wildlife Services and the California Department of Fish and Wildlife—would reduce this potential impact to a less-than-significant level.

b) Special-Status and Nesting Birds: Construction within the study area of the Proposed Project could result in direct or indirect impacts on special-status and nesting birds, including but not limited to great egret, snowy egret, great blue heron, blackcrowned night heron, Cooper's hawk, sharp-shinned hawk, and peregrine falcon. Existing City SCA 29 (Tree Removal During Bird Breeding Season) includes measures to avoid impacts to nesting birds. However, SCA 29 does not protect nesting birds from direct impacts resulting from demolition of buildings or other structures they may be nesting upon, nor does it protect nesting birds from impacts resulting from indirect disturbance that could cause nest failure. To reduce the potential for significant impacts to nesting birds, implementation of Mitigation Measure BIO-2 includes measures to survey for nesting birds in unoccupied structures and in quieter areas of the City where birds may not be habituated to the noise and disturbance levels typical of the City's more urban areas. Implementation of Mitigation Measure BIO-2 would reduce construction-related impacts by limiting construction and tree removal to the non-nesting season when feasible or, if avoiding the nesting season is not feasible, conducting preconstruction surveys for special-status and nesting birds and establishing no-disturbance buffers around any active nests until birds have fledged and are able to leave the tree to be removed or the construction area; and reporting findings to the City prior to initiation of tree removal or construction. Therefore, implementation of Mitigation Measure BIO -2 would reduce potential for impacts on nesting birds to less than significant.

c) Special-Status Roosting Bats: Construction within the study area of the Proposed Project could result in impacts to roosting western red bat, pallid bat, and Yuma myotis, if present. Implementation of Mitigation Measure BIO-3—requiring the City to adopt a new SCA applicable to development involving full demolition or relocation of specified vacant and/or abandoned structures that would require the project applicant to retain a qualified biologist to conduct a pre-construction habitat assessment and, if potential bat habitat or signs or roosting are identified, place limitation on disturbance and demolition as specified



therein—would reduce this potential impact to a less than-significant level. Implementation of Mitigation Measure BIO-4 would similarly require the City to adopt a new SCA applicable to residential development requiring a tree permit for the disturbance of trees suitable for bat habitat, where such SCA would require a qualified biologist to conduct a pre-construction habitat assessment of the subject tree, and where trees with bat roost sites are identified to follow a two-step removal process outside of the bat maternity roosting season and period of winter torpor. Implementation of Mitigation Measure BIO-3 and BIO-4 would reduce construction-related impacts by requiring pre-construction surveys to identify potential bat roosting habitat and active bat roosts; establishment of protective buffers until roosts are no longer in use; and limiting the removal of trees with potential bat roosting habitat to the time of year when bats are active to avoid disturbing bats during the maternity roosting season or months of winter torpor. Implementation of Mitigation Measures BIO-3 and BIO-4 reduce potential impacts on roosting bats to less than significant with mitigation.

d) Alameda Whipsnake: A small portion of the study area is located within Alameda whipsnake Critical Habitat, Recovery Unit 6: Caldecott Tunnel Corridor (USFWS, 2002). Alameda whipsnake could suffer temporary or permanent loss of critical habitat, and, if Alameda whipsnakes are present in a construction area, mortality to individuals during clearing and grubbing and ground disturbing activities; these would be potentially significant impacts. Current City SCA 31, Alameda Whipsnake Protection Measures, avoids and minimizes impacts to Alameda whipsnake individuals; however, it does not avoid and mitigate temporary and permanent impacts to Alameda whipsnake habitat. Implementation of Mitigation Measure BIO-5, Text changes to SCA 31 would reduce impacts to Alameda whipsnake to less than significant by avoiding and minimizing impacts to the species' habitat.

e) Riparian Habitat and Other Sensitive Natural Communities: Construction on properties bordering riparian habitat would be subject to the City's Creek Protection Ordinance, which would require a Creek Protection Permit and a Creek Protection Plan. Operational impacts on riparian habitat associated with future development under the Proposed Project could occur due to increased disturbance caused by an incremental increase in residents accessing riparian corridors, but these potential impacts would be expected to be negligible since future development under the Proposed Project would occur in developed areas where disturbance of this kind is already occurring. Thus, construction-related and operational impacts on riparian habitat would be less than significant. Implementation of previously identified Mitigation Measure BIO-1 would reduce construction-related impacts on sensitive natural communities by requiring surveys to determine if special-status plants are present and reinforcing compliance with USFWS and CDFW approvals if direct impacts that cannot be avoided. Implementation of this mitigation measure would reduce potential impacts on sensitive natural communities to less than significant with mitigation. Operational impacts on sensitive natural communities associated with the Proposed Project are not expected. The highest density future development under the Proposed Project would be in Priority Development Areas, which are located in currently

developed regions of the Plan Area. While some housing may be built near natural or protected areas in the northeast of the Plan Area that could contain sensitive natural communities, the incremental numbers of housing units and people would still be minimal relative to existing populations and housing densities in these areas.

f) Protected Wetlands: Future development under the Proposed Project is not expected to involve the removal, filling, or hydrological interruption of ponds, lakes, creeks or other potentially jurisdictional wetlands and waters. If construction of subsequent projects were to involve the removal, filling, or hydrological interruption of ponds, lakes, creeks or other potentially jurisdictional wetlands and waters, the project proponent would be required to apply for permits from the appropriate regulatory agencies (e.g., the Corps, Regional Water Quality Control Board, CDFW) and would be evaluated once project details are known; therefore, anticipated impacts are less than significant. No potential operational impacts associated with the Proposed Project are anticipated due to the existing development and high-density development currently surrounding jurisdictional wetland and waters in the study area.

g) Native Wildlife Nursery Sites: Herons and egrets nest communally in sites referred to as rookeries. Heron and egret rookeries have been documented in the study area at Lake Merritt and near Chinatown in downtown Oakland. Potential construction- and operations-related impacts on communal nesting birds would be the same as those for individual special status and nesting birds; however, SCA BIO-29, Tree Removal During the Bird Breeding Season, and Mitigation Measure BIO-2: Avoid and Minimize Impacts on Nesting Birds, would reduce construction-related impacts to less than significant. Operational activities associated with the Proposed Project are unlikely to indirectly impact communally nesting birds due to the baseline level of human disturbance already occurring in and adjacent to the study area. Birds nesting in these areas following construction are assumed to be habituated to such disturbance, and therefore, the impacts of future development under the Proposed Project would be less than significant.

h) Native Wildlife Movement Corridors: Future development under the Proposed Project would require heavy equipment for construction of new buildings, potentially for demolition of existing buildings, and may include excavators, cranes, pile drivers, dump trucks, concrete mixers, concrete pump trucks, and other industrial machinery that generate increased noise and vibration. Migratory birds could easily find undisturbed portions of Lake Merritt or utilize other areas, including calm offshore waters outside of the study area. Therefore, construction activities associated with the Proposed Project would result in a less than significant impact on resident and migratory bird movements. Future development under the Proposed Project could increase building heights, glazed surfaces, and nighttime uplighting in the study area relative to existing conditions. Although proposed increases in maximum building heights are focused on transit corridors, future development under the Proposed Project could be designed with a glass façade and be located near bird attractants such as water bodies, open spaces, and green roofs. SCA BIO-28, Bird Collision Reduction Measures, requires project proponents to prepare and submit

a Bird Collision Reduction Plan for City review and approval. The Bird Collision Reduction Plan shall include mandatory measures and best management practice strategies to reduce bird strike impacts. With implementation of SCA BIO-28, future development under the Proposed Project would result in less than significant impacts related to the movement of native or migratory birds.

i) Conflicts with Local Policies Protecting Biological Resources: The local policies relevant to the biological resources present, or with potential to occur, in the study area include the City of Oakland General Plan, City of Oakland Creek Protection, Storm Water Management and Discharge Control Ordinance, and the City of Oakland Tree Protection Ordinance. The Proposed Project is consistent with the goals and policies of the Open Space, Conservation and Recreation (OSCAR) element to protect the ecology of Oakland's creeks, lakes, and nearshore waters; to protect native plant communities and preserve Oakland's trees; to conserve wetlands; to protect rare, endangered, and threatened species; and to sustain a healthy wildlife population within the City of Oakland. The 2023 – 2031 Housing Element sites are primarily planned for currently developed portions of the City, thereby limiting potential impacts on areas of special ecological significance, such as creeks, lakes, wetlands and intact wildlife habitat. With adherence to SCA 58, Creek Protection Plan, which requires creek setbacks, implementation of litter prevention measures, dust control measures, methods of cleaning tools and equipment, construction site fencing, sediment and erosion control measures, wet weather protection, and emergency preparations for construction-related spills, the Proposed Project would not conflict with the City of Oakland Creek Protection, Storm Water Management and Discharge Control Ordinance. Tree removals would be subject to SCA 30, Tree Permit. Implementation of this SCA would ensure that tree replacement plantings would be conducted in accordance with the requirements of the City's Protected Tree Ordinance. Therefore, with implementation of SCA 30, the Proposed Project would not conflict with the City's Tree Protection Ordinance.

j) Cumulative Impacts to Biological Resources: The Proposed Project would result in less-than-significant impacts (in some cases with mitigation measures implemented) on biological resources, including special-status species, riparian habitat, jurisdictional waters, native wildlife nursery sites, and native wildlife movement corridors. In addition, all other cumulative development has been, or will be, subject to the same SCAs related to biology, hydrology, and water quality and would be required to comply with the same provisions of the City's Protected Tree Ordinance and Creek Protection, Stormwater Management, and Discharge Control Ordinance. With implementation of SCA 28, Bird Collision Reduction Measures; SCA 29, Tree Removal During Bird Breeding Season; SCA 30, Tree Permit; SCA 31, Alameda Whipsnake Protection Measures; SCA 58, Creek Protection Plan; Mitigation Measure BIO-1. Avoid and Minimize Impacts on Special-Status Plant Species; Mitigation Measure BIO-2: Avoid and Minimize Impacts on Nesting Birds; Mitigation Measure BIO-3: Avoid and Minimize Impacts on Special-Status Roosting Bats in Buildings; Mitigation Measure BIO-4: Avoid and Minimize Impacts on Special-Status Roosting Bats in Trees; and Mitigation Measure BIO-5: Text changes to

SCA 31, Alameda Whipsnake Protection Measures, adoption of the Proposed Project would not result in a considerable contribution to cumulative impacts; therefore, the cumulative impact would be less than significant.

25. Cultural and Tribal Cultural Resources: Implementation of the Proposed Project would allow for increased land use densities and intensities possibly impacting the area's archeological or paleontological resources or disturb human remains. However, application of SCA 32 (Archaeological and Paleontological Resources – Discovery During Construction), SCA 33 (Archaeologically Sensitive Areas – Pre-Construction Measures), and SCA 34 (Human Remains – Discovery During Construction) would reduce the project's potential impacts. To avoid significant impacts in areas of archaeological sensitivity, Mitigation Measure CUL-2 recommends that both Provision A and Provision B of SCA 33 should be followed. In addition, if Native American archaeological resources are identified or suspected in a project site, a Native American representative(s) registered with the Native American Heritage Commission that is traditionally and culturally affiliated with the geographic area shall be consulted. Implementation of Mitigation Measure CUL-2 would reduce impacts to archaeological resources, including cumulative impacts, to a less-than-significant level by requiring minor text changes to SCA 33.

26. Energy: Construction and operation of the future development under the Proposed Project would increase energy consumption within the Plan Area. Overall, construction activities that would occur with future development under the Proposed Project would not be unusual as compared to overall local and regional demand for energy resources and would not involve characteristics that require equipment that would be less energy efficient than at comparable construction sites in the region or State. Therefore, the Proposed Project would not result in the inefficient, wasteful, or unnecessary consumption of energy during construction and the impact would be less than significant, and no mitigation is required. Considering compliance with regulatory requirements, such as construction diesel regulations, building energy efficiency standards, and Pavley standards for vehicle fuel efficiency, energy use associated with the construction and operation of development under the Proposed Project would not be considered unnecessary and wasteful and would be consistent with all applicable plans, policies, and regulations developed to encourage energy conservation and renewable energy use. Therefore, impacts, including cumulative impacts, would be less than significant.

27. Geology, Soils, and Paleontological Resources: Implementation of the Proposed Project would allow for increased land use densities and intensities possibly exposing people to seismic or geologic hazards. However, application of SCA 36 through SCA 39, which collectively require future development to conduct geotechnical investigations to identify seismic and geologic hazards and provide recommendations to address those hazards, would reduce the Proposed Project's impacts to a less-than-significant level. These measures are reinforced by SCAs 48 through 55 that establish requirements to control runoff during construction, as well as construct permanent measures to control runoff during operations and prevent pollution from entering waterways.

28. Greenhouse Gas (GHG) Emissions: Implementation of the Proposed Project would not fundamentally conflict with a plan, policy, or regulation adopted for the purpose of reducing GHG emissions. The Proposed Project is consistent with the 2030 Equitable Climate Action Plan

(ECAP) and associated targets, and is also consistent with the California Air Resources Board 2022 Scoping Plan for Achieving Carbon Neutrality. Further, development would be subject to all the regulatory requirements including the City's approach to reducing GHG emissions by requiring development to demonstrate consistency with the 2030 ECAP as part of the basic application process. Such projects must do this by completing the ECAP Consistency Checklist and implementing SCA 41 (ECAP consistency). SCA 41 is required of all future development under the Proposed Project as part of each project's basic application. Future development under the Proposed Project which is unable to comply with SCA 41 must comply with SCA 42 (GHG reduction plan) or otherwise would be considered a discretionary project that would be subject to independent CEQA review. Therefore, future development projects under the Proposed Project are required to be consistent with the 2030 ECAP either by committing to all of the GHG emissions reductions strategies described on the ECAP Consistency Checklist or quantitatively demonstrating equivalent GHG reductions by preparing a GHG Reduction Plan pursuant to SCA 42. The impact would be less than significant.

29. Hazards and Hazardous Materials: Implementation of the Proposed Project would allow for increased land use densities and intensities that possibly would involve use of hazardous materials as part of routine transport of materials, building demolition or construction, or the operations of certain businesses. However, the use of construction best management practices which would be required to be implemented as part of construction and required by SCA 35, Hazards Best Management Practices, along with SCA 41, Asbestos Removal in Structures, SCA 63 and SCA 65, Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment; SCA 64, Environmental Site Assessment Reports Remediation; and SCA 67, Health and Safety Plan per Assessment would minimize the potential adverse effects to groundwater and soils; SCA 68, Best Management Practices for Soil and Groundwater Hazards, and SCA 69, Radon or Vapor Intrusion from Soil or Groundwater Sources. Furthermore, adoption and development under the Specific Plan would be required to comply with the City's SCA 66, Other Materials Classified as Hazardous Waste, and SCA 74, Hazardous Materials Business Plan, which outlines the guidance for transporting hazardous materials safely to and from the project sites, in addition to SCA 61, Site Review by Fire Services Division, to ensure overall compliance of projects for hazardous materials. Moreover, compliance with various policies, and goals contained in the City's general plans and other regulatory requirements would ensure there would not be significant adverse hazards and hazardous materials impacts.

30. Hydrology and Water Quality: Construction associated with the Proposed Project would likely involve ground-disturbing activities, such as trenching and excavation, removal of trees and other vegetation, and grading. Construction projects that cause one or more acre of ground disturbance would be required to obtain coverage under the National Pollution Discharge Elimination System Construction General Permit, including through preparation and implementation of a Stormwater Pollution Prevention Plan. Development projects implemented under the Proposed Project would be subject to controls and requirements described in Section 13.16 of the Oakland Municipal Code, which establishes permanent stormwater pollution prevention measures for development and redevelopment projects. Additionally, SCA 48 through 54 impose requirements to control runoff during construction, as well as construct permanent measures to control runoff during operations

and prevent pollution from entering water ways. The impact associated with construction activities would therefore be less than significant. Once constructed, future development under the Proposed Project would be subject to municipal stormwater requirements. Adherence to proposed policies, SCAs, and the NPDES permits cited above would ensure that operational water quality impacts associated with future development under the Proposed Project would be less than significant. Similarly, adherence to SCAs and regulatory compliance would ensure that future development under the Proposed Project would result in a less than significant impact related to groundwater supplies and groundwater recharge. Adoption of the Proposed Project would not result in substantial erosion or siltation on- or off-site that would affect the quality of receiving waters; result in substantial flooding on- or off-site; create or contribute substantial runoff which would exceed the capacity of existing or planned stormwater drainage systems; create or contribute substantial runoff which would be an additional source of polluted runoff; or substantially degrade water quality. Adoption of the Proposed Project could place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, that would impede or redirect flood flows; or expose people or structures to a substantial risk of loss, injury, or death involving flooding. SCA 60 requires projects to be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding and that finished site grades and floor elevations are above the base flood elevation. To address sea level rise, the Proposed Project includes policies that require future development under the Proposed Project to incorporate shoreline protection measures, protective setbacks, and other adaptation strategies; conduct a SLR vulnerability assessment for projects proposed in areas susceptible to SLR; prepare an SLR Adaptation Plan for implementation as part of the project designs; and submit the assessment, adaptation plan, and conceptual design to the City for review and approval. Identified Mitigation Measure HYD-1 (Sea Level Rise Vulnerability Assessment), will require the City to adopt a new SCA applicable to projects located in the 100-year coastal flood zone with 5.5 feet of Sea Level Rise, or the most current sea level rise projections to be determined by the City. The SCA will require applicants to conduct a sea level rise vulnerability assessment for the project and prepare an adaptation plan for implementation as part of the project designs. With adherence to proposed policies, SCAs, regulatory compliance, and Mitigation Measure HYD-1, future development under the Proposed Project would result in a less than significant impact related to flooding and sea level rise. With adherence to proposed policies, SCAs, and regulatory compliance, impacts related to flood hazard, tsunami, or seiche zones would be less than significant. With adherence to the City's Creek Protection Ordinance, future development under the Proposed Project would result in a less than significant impact related to alteration of drainages. With adherence to proposed policies, SCAs, regulatory compliance, and Mitigation Measure HYD-1; future development under the Proposed Project would result in less than significant impacts related to water quality; groundwater supplies and groundwater recharge; erosion and siltation; flooding and SLR; flood hazard, tsunami, or seiche zones; and alteration of drainages. Therefore, future development under the Proposed Project, combined with cumulative development, would not cause or contribute considerably to a significant cumulative impact related to hydrology and water quality. Cumulative impacts would, therefore, be less than significant.

31. Land Use and Planning: Although the Proposed Project would allow for development at higher density, implementation of the Proposed Project would not physically divide the community. The Proposed Project is anticipated to enhance connectivity in the community rather than result in a perceived or physical division. Future development under the Proposed Project would occur on sites already zoned for residential use and would not disrupt the existing land use connectivity and circulation routes within the area. The General Plan's existing policy directions on compatible land uses would apply to future development under the Proposed Project. Conformance to the General Plan, including Land Use and Transportation Element policies (Policy T1.2, T2.2, T4.1, T6.2.) direct development to be oriented toward transit and pedestrian- and bicycle-oriented connectivity within neighborhoods. In addition, the Environmental Justice Element contains several policies and actions that focus on reducing conflicts between residential and industrial land uses, particularly in EJ Communities. Implementation of Proposed Project means that no significant land use impacts related to land use incompatibility or the physical division of an established community would occur as a result of the adoption and development under the Proposed Project.

32. Noise and Vibration: Implementation of the Proposed Project would potentially increase construction noise levels and excessive ground borne vibration. Implementation of SCA 62, 63, 64, 65 and 66 would reduce impacts from construction noise and vibration. SCA 62 limits construction operation hours and further limits extreme noise-generating activities. SCA 63 requires projects to institute a noise reduction program. SCA 64 requires site-specific noise attenuation measures for pile driving and other extreme sources of construction noise. SCA 65 requires site specific attenuation measures to protect adjacent sensitive receptors and SCA 66 establishes procedures for responding to and tracking complaints received pertaining to construction noise. These SCA are comprehensive in their content and for practical purposes represent all feasible measures available to mitigate construction noise. In addition, SCA 70 addresses potentially significant construction vibration impacts by requiring project applicants to prepare a Vibration Analysis that identified design means and methods to avoid damaging structures and/or substantially interfering with activities. Implementation of these measures would reduce construction impacts associated with extreme noise actions and vibration to less than significant levels. Any noise from new ventilation equipment on the new residential construction would be required to comply with the stationary noise provisions of Chapter 17 of the Oakland Municipal Code and would reduce impacts to a less-than-significant level.

33. Population and Housing: Due to: (a) the role of the Proposed Project in facilitating housing development consistent with requirements under State law; (b) the appropriate magnitude of population and housing growth within the cumulative, regional context, and (c) the location of housing sites in existing neighborhoods and transit corridors already well-served by infrastructure, the adoption of and development under the Proposed Project would have a less-than significant-impact in inducing substantial population growth in a manner not contemplated by the General Plan, either directly by facilitating development of housing or businesses, or indirectly through infrastructure improvements.

34. Public Services and Recreation: Future development allowed under the Proposed Project would result in additional residents and employees. This potential increase in population would result in

increased demand for the City's fire, police, recreational facilities, and school services. These impacts will be reduced to a less than significant level through the implementation of SCA 46 (Fire Safety Phasing Plan), SCA 47 (Vegetation Management) and SCA 73 (Capital Improvements Impact Fee), as well as through future development paying school impact fees in compliance with Senate Bill 50.

35. Transportation and Circulation: Adoption of the Proposed Project would not conflict with a plan, ordinance, or policy addressing the safety or performance of the circulation system, including transit, roadway, bicycle lanes, and pedestrian paths. Adoption of the Proposed Project would not cause substantial additional VMT per capita, per service population, or other appropriate efficiency measure. Future development under the Proposed Project is anticipated to improve the City's jobs/housing balance and provide more opportunities for Oakland residents and employees to access jobs and services within the City and within shorter distances and with non-auto transportation options. This reduction also reflects that in most cases, future individual buildings consistent with the proposed action would be in areas of the City and within zones where the daily VMT per capita is more than 15 percent below the regional VMT thresholds and would therefore not result in substantial additional VMT.

36. Utilities and Service Systems: New construction under the Proposed Project would result in increased solid waste, stormwater and wastewater generation. These impacts will be reduced to a less than significant level through the implementation of SCA 85 or 86 (Green Building Requirements/Green Building Requirements – Small Projects), SCA 87 (Sanitary Sewer System), SCA 88 (Storm Drain Systems), SCA 89 (Recycled Water), SCA 90 (Water Efficient Landscape Ordinance) and SCA 49, 54, and 55, which require project applicants to submit stormwater pollution prevention plans.

37. Wildfire: Future development under the Proposed Project within a VHFHSZ could increase the risk of wildfire by introducing new sources of ignition (i.e., vehicles and residents). Future development would be required to comply with the City's Fire Code; SCA 47 (Designated Very High Fire Severity Zone – Vegetation Management); and the proposed Safety Element policies and actions. Policy SAF-2.3 requires a Fire Protection Plan for new developments in the VHFHSZ; Policy SAF-2.7 encourages protecting against indoor smoke; Action SAF-A.7 encourages reducing fire load in the VHFHSZ; Action SAFA.8 requires projects in the VHFHSZ to include fire-rated construction; and Action SAF-A.9 supports review of development proposals to ensure they include fire-mitigation measures. Further requirements relate to emergency planning and preparedness, fire service features, building services and systems, access requirements, water supply, fire and smoke protection features, building materials, construction requirements, defensible space and vegetation management, and specific requirements for specialized uses involving flammable and hazardous materials. Each of these requirements has been developed over many decades to reduce the risks associated with wildfire, including potential impacts associated with accidental ignitions emanating from project sites and potential impacts associated with wildfires encroaching onto project sites from adjacent areas. The impact would therefore be less than significant.



## **X. Significant and Unavoidable Impacts**

38. Under Public Resources Code sections 21081(a)(3) and 21081(b), and CEQA Guidelines sections 15091, 15092, and 15093, and to the extent reflected in the EIR and the SCAMMRP, the City Council finds that the following impacts of the Project remain significant and unavoidable, notwithstanding the imposition of all feasible Standard Conditions of Approval and mitigation measures as set forth below.

### **39. Aesthetic Impact AES-4 (shadows), AES-6 (wind), AES-7 (cumulative shadow and wind):**

Adoption of the Proposed Project and future development under the Proposed Project could result in substantial new shadow that would shade solar collectors, passive solar heaters, public open space, or historic resources with sunlight-sensitive character defining features, or otherwise result in inadequate provision of adequate light. Although proposed Mitigation Measure AES-1 would require that project sponsors with proposed projects with a height of fifty feet or greater to either provide photographic evidence demonstrating no specified resources are within a project's potential shadow path or alternatively prepare a site-specific shadow study, even with this mitigation measure it cannot be known with certainty that impacts would be mitigated. As such, the impact is identified conservatively as significant and unavoidable. Further, based on the City's proposal to adopt objective design review and other streamlining measures that would allow for greater numbers of ministerially approved projects, the City Council finds that this mitigation measure is not feasible to impose on a project-by-project basis, as set forth further below.

Adoption of the Proposed Project and future development under the Proposed Project could result in adverse wind conditions that exceed 36 miles per hour for more than one hour during daylight hours in cases where structures 100 feet in height or taller are proposed for development. Although proposed Mitigation Measure AES-2 would require that project sponsors with proposed projects in Downtown or adjacent to a substantial body of water that propose a height of 100 feet or greater to complete a site-specific wind analysis and modify the design of the project to reduce wind impacts, even with this mitigation measure it cannot be known with certainty that impacts would be mitigated. As such, the impact is identified conservatively as significant and unavoidable. Further, based on the City's proposal to adopt objective design review and other streamlining measures that would allow for greater numbers of ministerially approved projects, the City Council finds that this mitigation measure is not feasible to impose on a project-by-project basis, as set forth further below.

For the reasons listed above, the Proposed Project is conservatively deemed to also result in significant cumulative shadow and wind impacts. The Proposed Project, combined with cumulative sources in the Plan Area and areas in the immediate vicinity of City boundaries, could contribute to cumulative aesthetics, wind, and shadow impacts.

These impacts result from specific CEQA thresholds previously adopted by the City rather than the aesthetics thresholds that exist in Appendix G of the CEQA Guidelines, which does not include any thresholds pertaining to shadow or wind impacts. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

40. Air Quality Impact AIR-3 (Criteria Air Pollutant Emissions), AIR-5 (On-Site Exposure to Toxic Air Contaminants), AIR-6 (Exposure of Sensitive Receptors to Fine Particulate Matter and Toxic Air Contaminants), AIR-8 (Cumulative Exposure of Sensitive Receptors to Fine Particulate Matter and Toxic Air Contaminants):

Construction of future development under the Proposed Project would potentially include demolition and removal of existing structures, excavation, site preparation, construction of new buildings, paving, and application of architectural coatings. Emissions generated during construction activities would include exhaust emissions from the use of heavy-duty off-road diesel equipment, on-road diesel trucks, and employee vehicles, as well as fugitive emissions associated with Earth-disturbing activities and other demolition and construction work. While many projects would not exceed construction screening criteria, some may not meet applicable screening criteria and therefore could potentially generate emissions of criteria air pollutants that contribute a cumulatively considerable amount of non-attainment pollutants. Although existing City SCAs and Mitigation Measure AIR-1 would reduce impacts, the impact would remain significant and unavoidable.

Future development under the Proposed Project could site sensitive receptors near existing major sources of TACs including major highways I-580, I-880, and I-980, the Oakland Ferry Terminal, the Oakland Airport, and the Port of Oakland. Adherence to the Title 24 Building Code requirements, proposed policies, and SCA 23; and implementation of Mitigation Measure AIR-2 would minimize the health risks to new receptors; however, without specific details about where projects would site new sensitive receptors and what the health risks would be at these locations, it is impossible to determine whether health risks at these receptor locations would exceed the applicable thresholds of significance. Although health risks would be reduced through implementation of the following SCAs and Mitigation Measure, the impact would remain significant and unavoidable.

Both construction and operation of future development under the Proposed Project could generate Toxic Air Contaminant (TAC) emissions that could cause significant health risk impacts. Although the adherence to proposed policies, SCAs, and Mitigation Measure AIR-3, AIR-4, AIR-5, and AIR-6 would reduce the health risk impacts from future projects, the impact would remain significant and unavoidable.

Cumulative impacts associated with the siting of sensitive receptors near existing sources of TACs and the health risk impact from construction and operation of individual projects would be significant and unavoidable, even with application of proposed mitigation measures. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

41. Cultural Resources Impact CUL-1 (historic architectural resources), CUL-4 (cumulative): Construction of future development under the Proposed Project could result in the physical demolition, destruction, relocation, or alteration of historical architectural resources that may be eligible for listing in the federal, state, or local registers of historical resources, including structures that could be eligible but have not been identified as historic resources at the time of application.

Further, construction of a new building on a vacant parcel located within an existing historic district could potentially result in a design that adversely impacts the eligibility of the district as a resource. Development under the Proposed Project combined with cumulative development in the Plan Area and its vicinity, including past, present, existing, approved, pending, and reasonably foreseeable future development, would contribute considerably to a significant adverse cumulative impact to cultural resources. Implementation of General Plan policies, Oakland Planning Code 17.136.075 (Regulations for Demolition or Removal of Designated Historic Properties and Potentially Designated Historic Properties and Potentially Designated Historic Properties), SCA 35 and 70, as well as Mitigation Measure CUL-1 (Identify Architectural Historic Resources) would reduce potential impacts, but not to a less-than-significant level for the Plan Area and its vicinity. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

42. Hazards Impact HAZ-6 and Wildfire Impact WLD-1 (Impairment of Emergency Response Plan or Emergency Evacuation Plan):

Six evacuation scenarios (tsunami, dam failure, 100-year/500-year flooding, and three wildfire) were modeled and determined that in each scenario evacuation traffic would have a significant impact on area roadways. The increased housing density throughout the City would impair emergency evacuation because it causes congestion and exacerbates over-capacity problems that preclude timely and safe evacuation. No additional mitigation has been identified that can feasibly reduce this impact to less than significant.

In the event that increased housing density in Very High Fire Hazard Severity Zone and/or Wildland-Urban Interface areas impairs emergency evacuation during a wildfire because it causes congestion and overcapacity problems that preclude timely and safe evacuation, a significant impact would occur. The City would be required to periodically update its emergency response and evacuation plan(s) as required under AB 747 and the City's Safety Element detailed in policies SAF-8.1, Emergency Response, and SAF-8.2, Emergency Services Review. In addition, policies SAF-8.10 and SAF-8.11 promote identification of public facilities and critical facilities to be used in emergencies requiring evacuation. However, the policies described above for the updated Safety Element would not clearly and adequately mitigate potential evacuation interference caused by congestion and over-capacity issues on I-580 that would result from increased density. No additional mitigation has been identified that can feasibly reduce this impact to less than significant. Therefore, the impact would be significant and unavoidable. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

## **XI. Findings Regarding Infeasible Mitigation Measures**

43. The California Environmental Quality Act does not require that the City adopt every mitigation measure identified in an EIR. However, when a lead agency rejects any of the mitigation measures for a significant impact recommended in an EIR, it must make specific findings that the rejected measures are infeasible pursuant to California Public Resources Code Section 21081, subsection (a)(3).

44. The City may reject a mitigation measure recommended in an EIR if it finds that it would be infeasible to implement the measure because of specific economic, legal, social, technological, or other considerations. Feasible, as defined in California Public Resources Code Section 21061.1, means “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”

45. Mitigation Measure AES-1: The City Council finds and determines that implementation of Mitigation Measure AES-1, to minimize and/or avoid impacts related to shadows associated with new development under the Project cast upon solar collectors, passive solar heaters, public open space, or sunlight-sensitive character-defining features of historic resources, is infeasible. Mitigation Measure AES-1 would require project sponsors with proposed projects with a height of 50 feet or greater to either present evidence that the specified resources are not within the project’s potential shadow path or complete a site-specific shadow study when individual projects are proposed. Under this Mitigation Measure AES-1, if the shadow study provides support to determine that the proposed project building design would adversely affect the described resources, the project sponsor would be required to modify the building design and placement and provide a revised shadow study to support the determination that the revised new project shadow would minimize and/or avoid shadow effects adversely affecting the described resources. The effectiveness of Mitigation Measure AES-1 cannot be determined with certainty because there are not sufficient details available to analyze specific impacts. As such, the EIR concludes that adoption of the Proposed Project, even with adherence to existing Standard Conditions of Approval (SCAs) and Mitigation Measure AES-1, would result in a significant and unavoidable impact related to shadows. Mitigation Measure AES-1 is infeasible based on it conflicting with the height and density allowed provided under the Oakland Planning Code, as well as conflicting with the objectives of the Proposed Project, including: 1) to remove constraints on the development of housing; 2) encourage more housing along corridors and in transit-proximate areas; and 3) create more affordable housing restricted for extremely low-, very low-, low-, and/or moderate-income households. Requiring a project to revise its design in a manner that would reduce the building’s height or allowed residential density would be inconsistent with Planning Code requirements and the City’s objectives for increased residential development as stated in the Housing Element.

46. Mitigation Measure AES-2: The City Council finds and determines that implementation of Mitigation Measure AES-2, to avoid impacts related to wind hazards associated with new development under the Proposed Project, is infeasible. Mitigation Measure AES-2 would require project sponsors to complete a site-specific wind analysis, prepared by a qualified wind consultant approved by the Oakland Planning & Building Department, when individual projects are proposed. This would be required for proposed projects with a height of 100 feet or greater, measured to the top of the building roof at any point, and one of the following conditions exist: The project is located adjacent to a substantial water body (i.e., Oakland Estuary, Lake Merritt, or San Francisco Bay); or the project is located in Downtown, (Downtown is defined in the Land Use and Transportation Element of the General Plan, p. 67, as the area generally bounded by West Grand Avenue to the north, Lake Merritt and Channel Park to the east, the Oakland Estuary to the south, and I-980/Brush Street to the west). If the wind analysis demonstrates that the

building design would not create a net increase in hazardous wind hours or locations compared to then—existing conditions, no further review would be required. However, if the wind analysis determined that the building’s design would increase the hours of wind hazard (36 mph for one hour of the year) or the number of test points subject to hazardous winds compared to existing conditions, the project sponsor would be required to work with the wind consultant to identify feasible mitigation strategies, including design changes (e.g. setbacks, rounded/chamfered building corners, stepped facades, landscaping and/or installation of canopies along building frontages), to eliminate increased hours of wind hazards. The mitigation strategies would then need to be tested and presented in a revised wind report to demonstrate a reduction in wind hazards as compared to the then existing conditions. Implementation of a wind analysis that includes design recommendations to reduce ground level wind speeds could reduce the severity of wind impacts. The effectiveness of this cannot be determined with certainty because there are not sufficient details available to analyze specific impacts, as such the impact is conservatively significant and unavoidable. Mitigation Measure AES-2 is infeasible based on it conflicting with the height and density allowed provided under the Oakland Planning Code, as well as conflicting with the City’s goals and objectives for the Project. Based on the City’s proposal to adopt objective design standard review and other streamlining measures that would allow for greater numbers of ministerially approved projects, this mitigation measure would be infeasible to impose on a project-by-project basis. Requiring a project to revise its design in a manner that could reduce the building’s height or allowed residential density would be inconsistent with Planning Code requirements and the City’s objectives for increased residential development as stated in the Housing Element.

## **XII. Findings Regarding Alternatives**

47. The City Council finds that specific economic, social, environmental, technological, legal and/or other considerations make infeasible the alternatives to the Project described in the EIR for the reasons stated below. And that despite the remaining significant unavoidable impacts, the Project should nevertheless be approved, as more fully set forth in Section XIII below, Statement of Overriding Considerations.

48. The EIR evaluated a reasonable range of alternatives to the project that was described in the Draft EIR. Of the five alternatives considered, two were not analyzed in detail as explained in the Draft EIR. The two alternatives that were not analyzed in detail in the Draft EIR include: a) an off-site alternative and b) a moratorium on market-rate housing development. The City Council adopts the EIR's analysis and conclusions eliminating these two alternatives from further consideration. Each reason given in the EIR for rejecting an alternative constitutes a separate and independent basis for finding that particular alternative infeasible, and, when the reasons are viewed collectively, provides an overall basis for rejecting an alternative as being infeasible.

49. The three potentially feasible alternatives analyzed in detail in the EIR represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project or provide decision makers with additional information. These alternatives include: Alternative 1: The No Project Alternative, Alternative 2: The No Affordable Housing Overlay

Buffer Zone on parcels in the Very High Fire Hazard Severity Zone Alternative, and Alternative 3: The No Missing Middle Alternative.

50. As presented in the EIR, the alternatives were described and compared with each other and with the proposed project. The EIR found that the No Project Alternative would not reduce any of the Proposed Project's significant and unavoidable impacts to a less than significant level and would meet only some of the basic objectives of the Proposed Project. The No Project Alternative would have the ability to meet eight of the basic objectives of the Proposed Project, although four to a lesser degree, and would not meet four of the basic objectives of the Proposed Project.

51. The EIR further found that Alternatives 2 and 3 would not increase the severity of significant impacts but would neither avoid nor substantially lessen the significant effects of the Proposed Project. These alternatives would meet some but not all of the Proposed Project objectives (more than the No Project Alternative) and would meet some objectives more effectively than others. Alternative 2 would have the ability to meet all of the basic objectives of the Proposed Project, although four to a lesser degree. Alternative 3 would meet nine of the basic objectives of the Proposed Project, although four to a lesser degree, and would not meet one of the basic objectives of the Proposed Project.

52. After the No Project Alternative, Alternative 3, the No Missing Middle Alternative, was identified as the environmentally superior alternative. However, this alternative would again not meet the City's objectives for the Proposed Project and would fail to achieve implementation of City of Oakland Resolution No. 88554, requesting Planning Bureau Staff study and the Planning Commission to consider allowing fourplexes in areas currently designated for single-family residences. In addition, this alternative would not be consistent with Goals 3, 4, and 5 of the City of Oakland General Plan 2023-2031 Housing Element Housing Action Plan to address systemic housing inequity and affirmatively further fair housing.

53. The City Council certifies that it has independently reviewed and considered the information on the alternatives provided in the EIR and in the record. The EIR reflects the City Council's independent judgment as to alternatives. The City Council finds that the Proposed Project provides the best balance between the City's goals and objectives and the Project's benefits as described in the Staff Report and in the Statement of Overriding Considerations below. While the Project may cause some significant and unavoidable environmental impacts, mitigation measures and the City's SCAs identified in the EIR mitigate these impacts to the extent feasible. The three potentially feasible alternatives proposed and evaluated in the EIR are rejected for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the project alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

54. Alternative 1: No Project. Under the No Project Alternative, the General Plan Amendments and Planning Code Amendments would not be adopted, and therefore the projected buildout would not occur. However, the No Project Alternative does include reasonably foreseeable development that could occur even without adoption and development under the Project. An

estimated 36,774 residential units would be developed under the No Project Alternative during the projection period ending in 2030. This results in approximately 5,000 fewer units when compared with the Proposed Project Buildout Program. In addition, this development would occur without new or more stringent policies related to environmental justice or safety, and the City's 2004 Safety Element would apply. The No Project Alternative would not reduce any of the Proposed Project's significant and unavoidable impacts to a less than significant level and would meet only some of the basic objectives of the Proposed Project. The No Project Alternative is rejected as infeasible because it does not meet most of the basic project objectives. Alternative 1 would not reduce racial segregation, facilitate integrated living patterns, or transform racially and ethnically concentrated areas of poverty (objectives 2 and 3); encourage a diversity of housing types in high resource neighborhoods (objective 4); reduce pollution exposure (objective 7); promote equitable access to public facilities, healthy food, safe and sanitary homes, and physical activity (objective 8); reduce barriers to inclusive engagement and participation in the public decision making process (objective 9); or prioritize improvements and programs that address needs of EJ communities (objective 10).

55. Alternative 2: No Affordable Housing Overlay Buffer Zone on Parcels in the Very High Fire Hazard Severity Zone. The majority of the Oakland Hills are within a Very High Fire Hazard Severity Zone (VHFHSZ) / wildland urban interface. Much of the land in the Oakland Hills is currently zoned for either Hillside Residential (RH) or Open Space (OS). As part of efforts to advance racial equity, proposed policies attempt to balance fire safety considerations with actions that further opportunity in exclusionary single-family areas. The AHO Zone is intended to create and preserve affordable housing restricted for extremely low, very low, low, and/or moderate-income households. The Draft EIR analysis assumed the Affordable Housing Overlay (AHO) Zone would include areas within 1,000 feet in either direction from Highway 13 and I-580 corridor that are outside the S-9 Fire Safety Protection Combining Zone. Many of the parcels included within this 1,000-foot buffer area were parcels located in the designated VHFHSZ. Alternative 2 would include all components of the Proposed Project, including most of the provisions of the AHO, with the exception of parcels in the VHFHSZ within the AHO 1,000-foot buffer area surrounding the Highway 13 and I-580 corridor. Buildout of Alternative 2 is estimated to result in 250 fewer affordable units when compared with the Proposed Project Buildout Program. During the Safety Element Update process, city staff studied the VHFHSZ to identify areas with adequate emergency access (i.e., easy access to primary regional routes in the City) and evaluated the VHFHSZ for congestion issues in emergency wildfire scenarios (i.e., parcels with less than two access points to evacuation). Planning staff used the results of this study, as well as discussions with the City Administrator's Office, the Housing and Community Development Department, and the Fire Department's Emergency Services Program Unit, to identify specific areas of the VHFHSZ that would be excluded from AHO Zone. As a result, the number of parcels in the VHFHSZ included in the AHO Zone under the proposed project were reduced and only the following commercial areas with direct access to the freeway would be included:

- Oak Knoll + Barcelona City-owned sites;
- CC-1 Commercial zoned area near Redwood Road;

- CN-3 Commercial zoned area near Mountain Blvd. near Woodminster Lane;
- CN-3, CN-4, and RM-3 zoned area in the Montclair district (where Moraga Avenue turns into Mountain Blvd.);
- CN-4 zoned area near intersection of Seminary Avenue and Kuhnle Avenue.

Alternative 2 would not include these sites within the AHO zone. The City Council finds that the Proposed Project as revised utilizes an appropriately balancing of project objective and safety concerns, and finds that Alternative 2 would be infeasible based on it being less effective in terms of reducing racial segregation, facilitating integrated living patterns, and transforming racially and ethnically concentrated areas of poverty (objectives 2 and 3); and encouraging a diversity of housing types in high resource neighborhoods (objective 4).

56. Alternative 3: No Missing Middle: Alternative 3 would include all components of the Proposed Project with the exception of the proposed Housing Element Implementation (HEI) Planning Code amendments to change development standards for the existing lower density residential zoning districts (RD, RM, RU and RH-4). Buildout of Alternative 3 is estimated to result in approximately 1,500 fewer units when compared with the Proposed Project Buildout Program. Alternative 3 would not increase the severity of significant impacts but would neither avoid nor substantially lessen the significant effects of the Proposed Project. Alternative 3 would meet nine of the basic objectives of the Proposed Project, although four to a lesser degree, and would not meet one of the basic objectives of the Proposed Project. Alternative 3 is rejected as infeasible because the reduction in housing production in the RD, RM, RU, and RH-4 zones would defeat the purpose of implementing City of Oakland Resolution No. 88554, requesting Planning Bureau staff study and the Planning Commission consider allowing fourplexes in areas currently designated for single-family residences. In addition, this alternative is rejected as infeasible as it would not be consistent with Goals 3, 4, and 5 of the Housing Action Plan in the City's adopted 2023-2031 Housing Element to address systemic housing inequity and further fair housing.

### **XIII. Statement of Overriding Considerations**

57. The City Council finds that each of the following specific economic, legal, social, technological, environmental, and other considerations and the benefits of the Project separately and independently outweigh the remaining significant unavoidable adverse impacts discussed above, and is an overriding consideration independently warranting approval. The remaining significant unavoidable adverse impacts identified above are acceptable in light of each of the overriding considerations that follow. Each individual benefit/reason presented below constitutes a separate and independent basis to override each and every significant unavoidable environmental impact, and, when the benefits/reasons are viewed collectively, provide an overall basis to override each and every significant unavoidable environmental impact.

58. The Proposed Project updates the goals and policies of the General Plan and provides more detailed guidance for specific areas within the City.



59. The Proposed Project promotes increased housing densities in close proximity to employment generating land uses which supports the City and regional objectives for achieving a jobs/housing balance and transit-oriented development.

60. The Proposed Project creates additional opportunities for housing, including by removing barriers to housing in predominantly single-family home neighborhoods that have been used to create exclusive communities which perpetuate racial disparities and inequities.

61. The Proposed Project includes additional incentives for the construction of affordable housing throughout the City by providing for streamlined development review and relaxation of development standards, which will alleviate the crisis of housing affordability and help the City reach its lower income regional housing needs allocation.

62. The Proposed Project would create employment opportunities, both short-term construction jobs as well as permanent jobs, and increase revenues through sales, property and other taxes.

63. The Proposed Project would reduce constraints to the development of housing, as required under the 2023-2031 City of Oakland Housing Element, including through the reduction of parking requirements, minimum lot size requirements, revisions to development open space regulations, and elimination of residential density conditional use permit requirements, to incentivize further development of housing necessary to meet the City's regional housing needs allocation.

64. The Proposed Project would reduce environmental burden due to pollution impacts on sensitive receptors by enacting greater land use buffers for heavier industrial and truck intensive uses.

65. The Proposed Project would facilitate the production of special housing types by updating special housing regulations to comply with State Law, including expanding areas where residential care facilities and emergency shelters are permitted by right, providing development standards for low-barrier navigation centers, and removing regulatory constraints to the development of transitional and supportive housing.

66. The Proposed Project would implement City of Oakland Housing Element policies to create a more diverse mix of homes to meet community needs by developing zoning standards to encourage missing middle and multi-unit housing types, to expand resources for the construction of affordable homes through the implementation of an affordable housing overlay, to streamline the approval of new housing through the expansion of by-right approvals.

67. Oakland's lack of sufficient housing options worsens air pollution, as community members priced out of the local housing market are forced to drive long distances to their jobs. The City's 2030 Equitable Climate Action Plan (ECAP) recognizes that households living near employment-dense areas and transit corridors have lower carbon footprints than those living in less dense areas further from transit ([www.oaklandca.gov/projects/2030ecap](http://www.oaklandca.gov/projects/2030ecap)). Affordable housing located near transit is particularly impactful, as low-income households are more likely not to own cars if they have access to quality transportation options. To that end, the ECAP

Action TLU-1 calls for the General Plan, upon its next update, to align with the City's greenhouse gas (GHG) reduction, adaptation, resilience, and equity goals.

68. The Proposed Project aligns with ongoing work to implement community-driven strategies from the West Oakland Community Action Plan (WOCAP); and are intended to improve health and eliminate racial disparities in exposure to air pollution for impacted communities, reduce air pollution from high impact industrial zones adjacent residential zones, and minimize conflicting siting of sensitive uses (e.g., schools) in industrial zones.