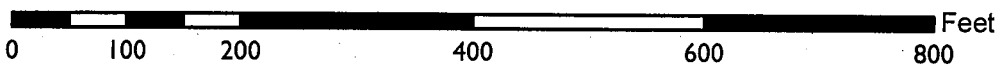
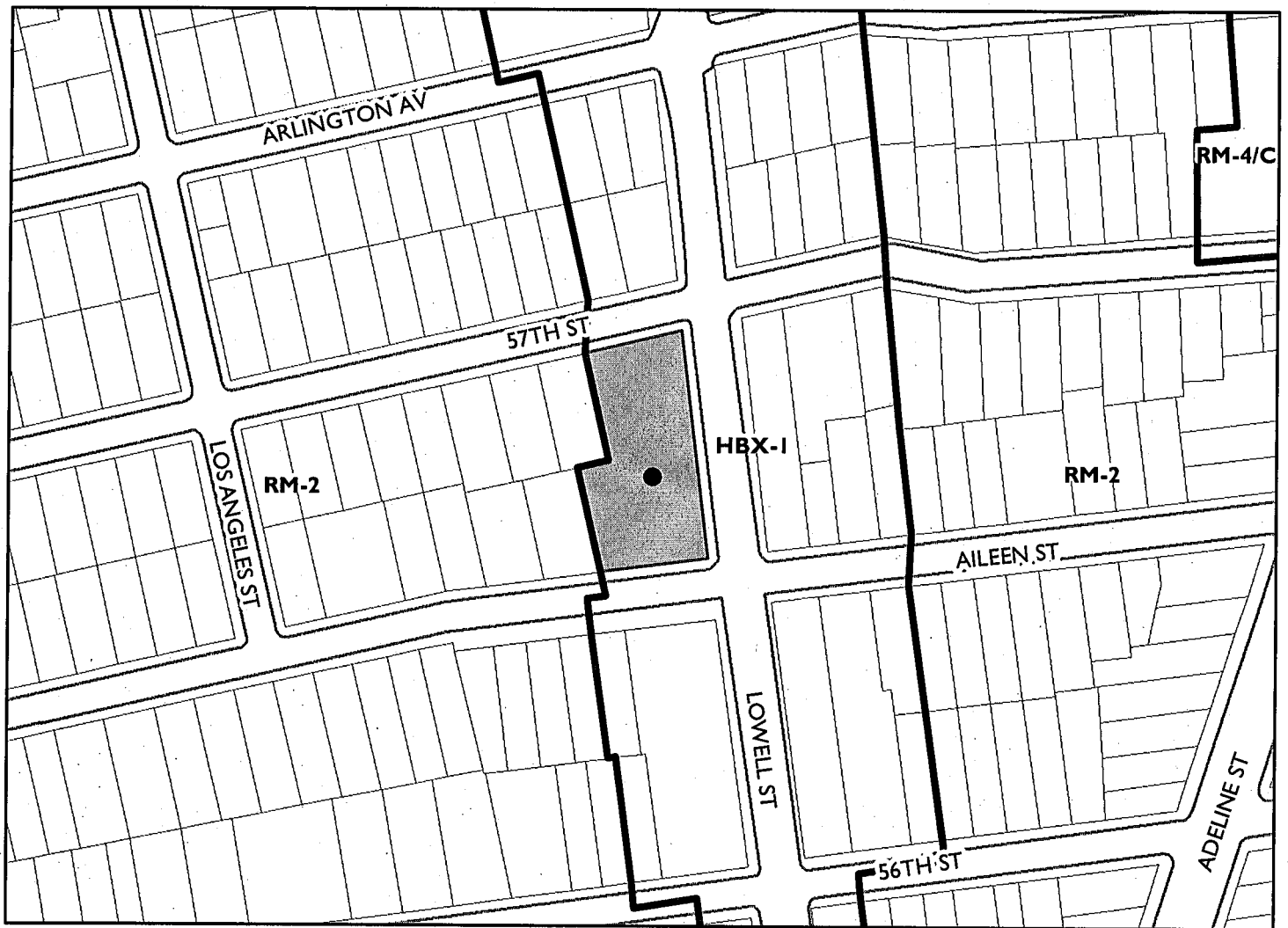


<b>Location:</b>	<b>Suprema Meats, Inc. 955 57<sup>th</sup> Street- See map on reverse</b>
<b>Assessor's Parcel Number:</b>	<b>(015 1298-009-00)</b>
<b>Proposal:</b>	Two Appeals of the Zoning Manager's partial Approval and partial Denial of an application to legalize an unpermitted canopy, loading dock, entry sliding fence/gate on 57th Street, and other unpermitted alterations; and to construct a loading dock with opening gates on Lowell Street, including making exterior building alterations to the existing transport and warehouse facility.  <i>Specifically, the Zoning Manager approved the Minor Conditional Use Permit for an open non-residential facility (the canopy and area under the canopy) and Regular Design Review for the unpermitted canopy, loading dock, entry sliding gate/fence and other exterior alterations and denied the Minor Variance to reduce the side yard setback for the canopy.</i>
<b>Applicant:</b>	Craig Miers and George Scott Architects LLP / Craig Miers (916) 780-0100
<b>Owner:</b>	955 57 <sup>th</sup> Street, LLC
<b>Appellant:</b>	Appellant 1) Steven J. Hassing on behalf of Suprema Meats, Inc. Appellant 2) Kim Lucas and Angela Gennino on behalf of the Golden Gate Community Association
<b>Case File Number:</b>	<b>PLN14303-A01; PLN14303-A02</b>
<b>Original Case File Number:</b>	<b>PLN14303</b>
<b>Planning Permits Required:</b>	Minor Conditional Use permit for an open non-residential facility (the canopy and area under the canopy); Minor Variance to reduce side yard setback where 5 feet is required and 0 feet is proposed; and Regular Design Review for the unpermitted canopy, loading dock, entry sliding gate/fence. Regular Design Review is also required for the new loading dock and exterior alterations to building.
<b>General Plan:</b>	Housing and Business Mix
<b>Zoning:</b>	Housing and Business Mix 1 (HBX-1) Zone
<b>Environmental Determination:</b>	Exempt pursuant to the following sections of the State CEQA Guidelines: Section 15301, Existing Facilities; Section 15303, New Construction or Conversion of Small Structures; Section 15183, Projects Consistent with a Community Plan or Zoning; and Section 15332 In-Fill Development Projects
<b>Historic Status:</b>	OCHS Rating: Dc3
<b>City Council District:</b>	1
<b>Status:</b>	The Zoning Decision Letter was mailed on February 7, 2018; Project was appealed on February 20, 2018 by two Appellants.
<b>Staff Recommendation:</b>	Deny the Appeals and uphold the Zoning Manager's Decision.
<b>Finality of Decision:</b>	The decision of the Planning Commission is final immediately pursuant to Planning Code Sections 17.134.060, 17.136.080, and 17.148.060. Notwithstanding the above, Appellant 2's challenge to the City's California Environmental Quality Act determination <u>only</u> may be appealed to City Council by Appellant 2 pursuant to California Public Resource Code Section 21151(c).
<b>For Further Information:</b>	Contact case Planner Heather Klein at (510) 238-3659 or <a href="mailto:hklein@oaklandca.gov">hklein@oaklandca.gov</a>

# CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN14303-A01; PLN14303-A02  
Applicant: Craig Miers and George Scott Architects LLP  
Appellants: 1) Steven J. Hassing on behalf of Suprema Meats, Inc.  
2) Kim Lucas and Angela Gennino on behalf of the Golden Gate Community Association  
Address: 955 57th Street  
Zone: HBX-1

## SUMMARY

Suprema Meats, Inc. (Suprema) began operating a meat distribution General Food Sales Commercial Activity at 955 57th Street in 1996. The City began receiving numerous complaints regarding noise, loading and unloading in the early morning, graffiti, blight, and building alterations without permits starting in 2007. Upon investigation, the City became aware that Suprema had constructed several building alterations without building permits, including but not limited to an unpermitted insulated canopy, loading dock and entry sliding fence/gate on 57th Street.

The City and Suprema entered into a Compliance Plan on October 20, 2014 to address the ongoing issues and complaints. Per the Compliance Plan, Suprema was to file a Planning application to legalize all unpermitted construction, construct a new loading facility along Lowell Street, and construct related public right-of-way improvements along the property's Lowell Street frontage. Suprema filed the application on October 20, 2014. Staff reviewed the plans (*Attachment A*) and published a public notice on March 6, 2015. Staff received over 100 comment letters in opposition to the proposal. Staff held a community meeting on April 23, 2015 to discuss Suprema's operation and neighborhood concerns.

In response to neighbor concerns, the City requested and reviewed documentation submitted by Suprema and the neighbors to determine whether the business had expanded or increased their operations and was, therefore, non-conforming and subject to the Performance Standards in Planning Code Chapter 17.120. The Performance Standards are intended to control dangerous and objectionable environmental effects of all activities in the City. Activities existing on the effective date of the zoning regulations, or of a subsequent rezoning or other amendment applying more restrictive performance standards to such activities, shall not be required to change their operations to comply with the Performance Standards unless the operations have changed as to result in a greater degree of nonconformity with respect to such standards. Initially, the City determined on March 1, 2016 (*Attachment B*) that Suprema had changed its activities since its inception in 1996 and this resulted in a greater degree of non-conformity with respect to noise and other applicable standards. Suprema filed a timely appeal of that Determination on March 10, 2016. After considering the Appeal documents as well as additional information, the City reevaluated the facts regarding the history of Suprema's activity and issued a revised Determination on October 19, 2017 (*Attachment C*) concluding that Suprema was not subject to Planning Code Section 17.120.050 based on insufficient evidence to support a Finding that there was a change in operation resulting in an increase in the degree of nonconformity.

On February 7, 2018, the Zoning Manager issued a decision partially approving and partially denying Suprema's application for a Minor Conditional Use Permit (CUP), Minor Variance, and Regular Design Review to legalize the unpermitted construction and approve construction of a new loading dock with opening gates on Lowell Street (*Attachment D*). The 10-day Appeal period ended on February 20, 2018 at 4:00 PM. On February 20, 2018 two timely Appeals were filed of the Zoning Manager's decision as detailed below.

### Appeal 1

The first Appeal (*Attachment E*) was filed by Steven J. Hassing (hereby referred to as Appellant 1) on behalf of Suprema. The basis of the Appellant 1's Appeal is that the Zoning Manager abused his discretion and made a decision and determination not based on substantial evidence. In summary, Suprema's Appeal appears to challenge the planning process itself, including the need for planning permits and the imposition of Conditions of Approval (CoA) and that the Zoning Manager made incorrect and/or erroneous statements in the CUP, Design Review and Minor Variance Findings. Appellant 1's specific arguments are described and responded to in detail in the *Basis of Appeal* section of the report below.

## Appeal 2

The second Appeal (*Attachment F*) was filed by Angela Gennino and Kim Lucas (hereby referred to as Appellant 2) on behalf of the Golden Gate Community Association (GGCA). The basis of the Appellant 2's Appeal is that the Zoning Manager abused his discretion in approving the project, that the project does not meet, and therefore, staff incorrectly made the CUP and Design Review Findings, the project does not meet the Findings for an exemption from the California Environmental Quality Act (CEQA), and the CoAs staff imposed are inadequate. Appellant 2's specific arguments are described and responded to in detail in the *Basis of Appeal* section of the report below. Appellant 2 also requests changes to the CoAs based on the Appeal 2 documentation to further address neighborhood concerns if the Planning Commission chooses to deny the Appeal 2 and uphold the Zoning Manager's decision.

Per Section 17.132.020 of the City of Oakland Planning Code, the Appellants must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager's decision is not supported by evidence in the record. The arguments raised by the Appellants are outlined below in the *Basis for the Appeal* portion of this report, along with City staff's response to each argument.

## SUMMARY CONCLUSION AND RECOMMENDATION

As detailed in this report, neither Appellant has demonstrated an error or abuse in discretion by the Zoning Manager, thus City staff considers the Decision to be valid and accurate. The project requires a Minor CUP and Design Review. When the project and operation is viewed as a whole, the project resulted in an expanded business and expanded overall movement of product throughout the business and along the street. To address adverse impacts on neighbors, staff approved the project with CoAs including construction of a Lowell Street loading dock as well as additional measures based on the Appeals. These CoAs are reasonable, justified, and typical of such a project near residential land uses. The project also meets the General Plan policies, HBX Design Review Guidelines and required Findings.

As such, staff recommends the Planning Commission deny the Appeals, thereby, upholding the Zoning Manager's decision based on the Findings and Conditions of Approval.

## BACKGROUND

- The project site has been used for food distribution activities since 1945 when a cold storage and office building were constructed.
- On June 1, 1996, Suprema received a Zoning Clearance to begin operating a General Food Sales Commercial Activity and the City's Business Certificate is for Wholesale Sales. Per the 1996 Planning Code, "General Food Sales includes retail sales from the premises of food and beverages for on and off-site consumption," while "General Wholesale Sales include the storage and sale from the premises, of goods to other firms for resale as well as the storage of goods on the premises and their transfer therefrom to the retail outlets of the same firm." It should also be noted that the M-20 zoning in 1996 permitted General Wholesale Sales and Transport and Warehousing Commercial Activities<sup>1</sup>, which include the provision of warehousing and storage, freight handling, shipping and trucking services."
- On June 11, 1996, the City adopted Ordinance 11895 C.M.S. changing the City's Performance Standards related to noise and vibration in the City Planning Code.
- From 2007 to the present, the City has received thirty (30) Code Compliance complaints regarding graffiti, unpermitted construction, and excessive noise emitted from the Suprema property. Of these, City inspectors found no or non-actionable violations in eight (8) cases, ten (10) abated or

<sup>1</sup> Suprema also has characteristics of a distribution warehouse. However, the business was not classified as a Transport and Warehousing Commercial Activity and this Activity is no longer a land use classification in the current Planning Code.

closed violations, and twelve (12) pending, open or violation verified cases.

- On October 20, 2014, to address the verified violations, and specifically Complaints 1303769 and 1305560, the City and Suprema entered into a Compliance Plan to mitigate Suprema's impact on nearby properties. The Compliance Plan required Suprema to submit a Planning application for Design Review, Variance, and CUP to legalize all unpermitted work. The Compliance Plan required that the full scope of improvements in the Planning application include construction of a new loading facility for at least one delivery truck inside existing warehouse building along Lowell Street and related public right-of-way improvements along the property's Lowell Street frontage as needed to accommodate unloading of semi-tractor trailer trucks. A list of the unpermitted work and a Delivery Truck Management Plan was included. Additionally, the Compliance Plan requires, among other things, that Suprema address delivery locations and timeframes, phase out non-hybrid trucks, pay appropriate fees and implement the approved plans.
- Also, on October 20, 2014, Suprema submitted an application (Case File PLN14303) to legalize the unpermitted work, including a canopy, loading dock and entry sliding fence/gate on 57th Street. The plans included a loading dock with opening gates on Lowell Street and exterior building alterations.
- On November 19, 2014, the City sent a letter noting that the Planning application PLN14303 was Incomplete.
- On March 6, 2015, City staff reviewed the project and published a public notice. Over 100 comments were received.
- On April 23, 2015, staff held a community meeting to discuss Suprema's operation and neighborhood concerns.
- In June and July of 2015, the City cited Suprema for 22 instances of using forklifts for delivery staging activities (i.e. movement of vehicles, equipment, and product into position for loading), vehicle loading and unloading activities, and vehicle & equipment maintenance activities between the hours of 9 p.m. and 7 a.m. in violation of paragraph 6 of the Compliance Plan. Suprema administratively appealed the notices of violation. In November 2015, the Hearing Officer found that Suprema had violated the Compliance Plan on six occasions. Suprema then brought a legal action seeking a writ of administrative mandate to contest the Hearing Officer's decision. The trial court denied Suprema's petition. Suprema then appealed the matter to the California 1st District Court of Appeal, where, in February 2018, the Court held that four of the six violations were supported by substantial evidence. In particular, the Court held that video recordings from June 19, July 2, July 3, and July 9, 2015 showed forklifts with boxes on them moving at prohibited times, in violation of paragraph 6 of the Compliance Plan. The City subsequently cited Suprema for 7 instances of violating paragraph 6 of the Compliance Plan on May 2, 2017. The parties agreed to reduce the penalties charged for the seven violations from \$1,000 each to \$600 each, and Suprema made payment in June 2017. The City cited Suprema for 17 further violations of paragraph 6 of the Compliance Plan on August 14, 2017, and Suprema paid the full penalty in September 2017. Planning staff is aware of at least one other instance which occurred in February of 2015 of the City issuing a Notice of Compliance Plan Violation to Suprema which Suprema recently paid.
- On September 23, 2015, Suprema sent a letter requesting termination of the Compliance Plan based on allegations that the City breached the Compliance Plan by issuing citations to Suprema, failing to work with Suprema in good faith, failing to provide Suprema with the CoAs, and adding forklift movement to the list of prohibited activities. Suprema filed a lawsuit for declaratory relief to remove themselves from any obligations outlined in the Compliance Plan
- On December 24, 2015, the City sent a letter to Suprema requesting additional information pertaining to their business operations and the Planning application. Specifically, staff asked for the number of employees, hours of operations, employee shifts, number of daily truck deliveries, outside vendor truck deliveries, area in square feet of operations, as well as the number and type of refrigeration units. The purpose of this information was to set a baseline condition related to the noise levels and the applicability of the Performance Standards in Planning Code Sections 17.120.020 Existing activities and 17.120.050 Noise.

- On January 19, 2016, and February 5, 2016, the City reiterated its request for information in the December 24, 2015 letter.
- On March 1, 2016, the Zoning Manager issued Suprema a Determination of Non-Conforming Status letter. The letter determined that Suprema was subject to the Performance Standards in Planning Code Chapter 17.120 because Suprema's activity had changed since it began operating in 1996, resulting in greater non-conformity related to noise and other applicable standards. The Determination was based on significant business growth up to at least 2002, physical unpermitted improvements to the property, the unlikelihood that the business had been at full capacity 10-days after the Performance Standards went into effect and as such the activity has increased, and the number of neighborhood complaints.
- On March 10, 2016, Suprema filed a timely appeal (APL16004) of the City's Determination of Non-Conforming Status.
- On October 19, 2017, the Zoning Manager rescinded the Determination of Non-Conforming Status dated March 1, 2016 and issued a revised Determination. The revised Determination noted that Suprema is not subject to the new Noise Performance Standards that were adopted on June 11, 1996 after a re-evaluation of Suprema's business operations because there was not sufficient evidence to support a Finding that there was a change in operations that resulted in a greater degree of nonconformity with respect to such standards
- On October 30, 2017, based on the revised Determination of Non-Conforming Status, Suprema withdrew their Appeal.
- On February 8, 2018, the Zoning Manager issued a decision partially approving and partially denying application PLN14303.

## **PROPERTY DESCRIPTION**

### **Subject Site**

The project site is located at 955 57th Street. The site is a 20,014-square-foot through lot, with street frontage on 57th Street, Lowell Street and Aileen Street. The main cold storage and office building, located at the corner of 57th and Lowell Streets, is one-two stories with a concrete foundation and a brick and stucco façade. Rear cold storage area additions to the building front onto Aileen Street and the interior side property line. The total size of the building is 15,328 square feet. Parking/loading areas are located off 57th Street along the interior side property line (*Attachment A*).

### **Surrounding Area**

Between 63rd/Market Streets and 53rd/Adeline Streets, Lowell Street is an industrial and commercial corridor. Except for the parcels at the corners of 57th and Lowell Streets and Aileen and Lowell Streets, 57th and Aileen Streets are mostly residential with one-to-two-story single-family homes and duplexes. Directly across 57th Street from the project site (northwest corner) is a one and half to two-story industrial building. On the northeast corner of 57<sup>th</sup> and Lowell Streets is a one and half-story manufacturing building. A surface parking lot and a vacant lot are directly across Lowell Street from the project site (southeast corner). Behind the project site on Aileen Street and across Lowell are one and half-story and two-story industrial buildings.

## **PROJECT DESCRIPTION**

As noted above, the site has been used for food distribution activities since the 1940's. At that time, the previous and current activities were outright permitted, and no limitations were placed on the operation of the business in terms of hours of operation, number of trucks, storage, noise, and other operational characteristics.

Staff's understanding of the past and present project operations is based on information provided the Owner, during a deposition (*Attachment G*), other documents resulting from Suprema's lawsuit against the City, emails from both the Owner, Appellant, and neighbors, staff site visits, and photos.

**Project Operations (Pre-Compliance Plan with the Unpermitted Improvement Constructed)**

Staff's understanding of Suprema's operations prior to entering into the Compliance Plan is outlined below:

- Semi-trucks arrived in the morning at the site from meat-producing states. These trucks were parallel parked on both 57<sup>th</sup> Street and Lowell Street.
- Suprema unloaded the product from the semi-trucks via forklifts that ran up and down 57<sup>th</sup> Street onto Lowell Street and then stored it in the warehouse.
- In the afternoon, approximately 8-10 Suprema-owned trucks were loaded with the product from the loading dock for delivery to other businesses. The business had approximately 30 employees (See *Attachment G*).

**Project Operations (Post Compliance Plan)**

Restrictions and Conditions were placed on Suprema's operations as part of the Compliance Plan signed in October of 2014. In addition to submitting an application for Design Review, Variance, and CUP to legalize all unpermitted work, the Compliance Plan required the following:

- Construction of a loading facility for at least one delivery truck inside the building on Lowell Street.
- Installation of public right-of-way improvements on Lowell Street to accommodate unloading of big rigs along Lowell Street.
- Set loading and unloading timeframes in the open loading facility on 57<sup>th</sup> Street.
- Restrictions on parking by Suprema's trucks.
- Compliance with the Delivery Truck Management Plan.
- Restrictions on staging activities (movement of vehicles, equipment and product into position for loading), vehicle loading and unloading, and vehicle maintenance.
- Restrictions on noise-generating activity between 9 p.m. and 7 a.m.
- Requirement to phase out all non-hybrid trucks within Suprema's open loading facility on 57<sup>th</sup> Street within certain timeframes and within 3 years on execution of the plan.

The operations changed as described below:

- Semi-trucks arrive in the morning around 7:00 a.m. at the site from meat-producing states. These trucks are parallel parked on Lowell Street.
- Product is unloaded from the semi-trucks via forklifts that run up and down 57<sup>th</sup> Street onto Lowell Street and then store it in the facility. Product is moved around the warehouse and compiled for deliveries for the next day.
- In the afternoon, Suprema-owned trucks are loaded with the product from the loading dock/area off 57<sup>th</sup> Street.
- The Suprema-owned trucks stay overnight and are refrigerated using hoses from the freezer. The truck drivers receive their routes at around 4:30 a.m. Under the Compliance Plan, Suprema is allotted two 3-minute windows of time during which a maximum of 5 pre-loaded trucks can be started and can exit the property. The first trucks depart around 4:30 a.m. and the second round of trucks depart shortly after 7:00 a.m. Other than the truck drivers and two employees who help build the routes for the delivery trucks, the rest of the staff arrive after 7:00 a.m. to take orders for the next day as well as to assist with pick-up orders.

Per *Attachment G*, the business operates six days a week and now has approximately 40 employees.

Customers include neighbors, restaurants, supermarkets, stores, other distributors and taco or mobile food vending trucks. Suprema owns approximately 14 trucks and receives 8 trucks per day with approximately 12 delivery routes per day. Per *Attachment G*, this is an increase in employees and Suprema-owned trucks.

**Application**

An application was submitted on October 20, 2014 to legalize unpermitted work per the Compliance Plan (*Attachment A*).

This unpermitted work includes:

- A steel insulated panel canopy,
- A cargo container break room under the canopy,
- New walls and doors throughout the warehouse,
- Mechanical refrigeration equipment (increased height for freezer, structural, access, enclosure screening and sound control),
- Electrical alterations and additions,
- A loading dock including plumbing,
- An entry gate and fence,
- New windows, framing and exterior changes to the 2<sup>nd</sup> story office,
- Reconfigured 2<sup>nd</sup> story walls of break room and storage room,
- Alterations to create 2<sup>nd</sup> story kitchen and bathrooms, and
- A concrete Masonry Unit (CMU) sound wall.

The permit set also included:

- Landscaping,
- Lighting, and
- Lowell Street loading dock and overhead door.

Design Review Exemptions (DRX150095 and DRX150365) were approved on January 20, 2015 and March 10, 2015 to replace 12 windows (item noted above) and replace the second-floor exterior plaster system with brick veneer over plaster compatible with existing first floor.

**GENERAL PLAN AND SPECIFIC PLAN ANALYSIS**

**Land Use and Transportation Element (LUTE) of the General Plan**

The subject site is in the Housing and Business Mix (HBX) land use classification per the Land Use and Transportation Element (LUTE) of the Oakland General Plan. The HBX classification intention and character and desired uses are discussed later in this report. The subject site is not within a Specific Plan area.

As noted in the Zoning Manager's decision letter, the proposed project, except for the canopy structure in the side setback, conforms with the HBX classification. This business is existing and has been located in the same location without restrictions. With implementation of the attached CoAs, impacts to residents related to traffic, noise and air quality and nuisances will be reduced. These CoAs are essential to the coexistence of the business and adjacent residential uses. Specifically, the project meets the following LUTE Objectives and Policies.

- Policy 1/C1.2 Retaining Existing Businesses- Existing businesses and jobs within Oakland which are consistent with the long-range objectives of this plan should, whenever possible, be retained. *The existing business will be retained.*



- Objective 1/C4 Minimize land use compatibility conflicts in commercial and industrial areas through achieving a balance between economic development values and community values. *The project, with the CoAs, places restrictions on the business where none were previously and will reduce impacts on neighbors.*
- Policy 1/C4.2 Minimizing Nuisances- The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls. *The project, with the CoAs, places restrictions on the business where none were previously and will reduce impacts on neighbors.*
- Objective T1.5 Reduce truck traffic impacts on residential neighborhoods. *Constructing a new dock for loading and unloading along Lowell Street will reduce vehicle traffic impacts on 57<sup>th</sup> Street and locate impactful operations next to industrial activities and away from residential properties.*
- Policy N1.5 Designing Commercial Development – Commercial development should be designed in a manner that is sensitive to surrounding residential uses. *The project, with the relocation of the canopy out of the side setback, is designed to be more sensitive to surrounding residential properties. Specific features of the project include constructing a new dock for unloading along Lowell Street to reduce vehicle traffic impacts on 57<sup>th</sup> Street and locate impactful operations next to industrial activities and away from residential, adding new streetscape improvements, lighting and landscaping.*

## ZONING ANALYSIS

The project site is located in the Housing and Business Mix - 1 Commercial Zone (HBX-1 Zone). As noted above, Suprema began operating in 1996 when the previous zoning was M-20 Industrial. The business was granted a Zoning Clearance for General Food Sales Activities and operated as a retail, wholesale and transport and warehousing activity which was permitted in the M-20 Zone similarly to the seafood distributor which previously occupied the building.

Per the January 23, 2019 deposition on the project (*Attachment G*) as a result of the pending lawsuit for declaratory relief, Miguel Jara Jr., Suprema's owner, testified that the operation mix was about 50% retail and 50% distribution as of the deposition on. Also, per the deposition, about three years prior, the business operations changed to approximately 50% retail, 30% to restaurants and 20% to other distributors. These activities would be classified per the current Planning Code as General Retail Sales, General Wholesale Sales, and Warehousing, Storage and Distribution all of which are permitted in the HBX-1 Zone with limitation on size. However, per the above, the project remains mostly a retail sales activity.

## ENVIRONMENTAL DETERMINATION

Staff has evaluated the project pursuant to the California Environmental Quality Act (CEQA). Staff has denied the Minor Variance for the canopy in the side setback. This denial is exempt from environmental review per Statutory Exemption 15270 which states that CEQA does not apply to projects or portions of projects that are disapproved. Staff has also determined that the project, including construction of the canopy outside the setback and at a 9-10' height, is exempt from environmental review under Sections 15301 (existing facilities), 15303 (new construction or conversion of small structures), 15332 (in-fill development projects) and 15183 (projects consistent with a community plan, general plan, or zoning), each as a separate and independent basis, and when viewed collectively, as an overall basis for exemption from CEQA. Staff's detailed CEQA Findings are in *Attachment D*. Appellant 2 has challenged the City's environmental determination. The basis for this challenge and staff's response is discussed later in the report.

## **BASIS FOR THE APPEALS**

The first Appeal (*Attachment E*) was filed by Steven J. Hassing on behalf of Suprema. The basis of Appellant 1's Appeal is that the Zoning Manager abused its discretion and made a decision and determination not based on substantial or any evidence. Specifically, Appeal 1 alleges that:

1. The proposal to legalize an unpermitted loading dock requires a Minor Conditional Use Permit (CUP).
2. The loading dock is an unenclosed facility, and therefore, considered an Open Non-Residential Facility.
3. The loading dock does not meet the definition of an accessory facility in Planning Code Section 17.10.70.
4. All but the west 5 feet of the canopy will constitute a new non-residential activity and open facility.
5. The canopy does not meet the definition of an accessory facility in Planning Code Section 17.10.70.
6. Construction of the loading dock is considered a new principal facility.
7. Construction of the loading dock is considered an expansion of the overall use and footprint.
8. The canopy and loading (dock) is considered a Warehousing and Storage activity.
9. The canopy will result in more loading and unloading outside, potentially added noise and visual intrusions.
10. The loading dock will result in more loading and unloading outside, potentially added noise, and visual intrusions.
11. Use of the canopy in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce nuisances.
12. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce noise impacts.
13. Use of the loading dock in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce traffic impacts.
14. Use of the loading dock in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce nuisances (same as Argument 33).
15. The specific operational CoAs the City is attempting to require, i.e. locating more deliveries to Lowell Street and inside, development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures will address new and additional loading, unloading, added noise, and visual intrusions caused by the loading dock and canopy.
16. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking, and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the unpermitted loading dock and canopy.
17. The loading dock is creating nuisances not existing before the dock was created.
18. The canopy (except for the west 5 feet thereof) is creating nuisances not existing before it was built.
19. The proposal is to add truck, traffic and noise elements to a warehouse facility.
20. City staff may impose CoAs related to the effects of the loading dock.
21. The delivery management, transportation improvements, truck loading and parking, and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the loading dock and canopy.
22. City found its staff may impose CoAs related to the effects of "these features" but failed to describe to what "feature" it was referring other than the loading dock.
23. City found that its staff may impose CoAs related to the effects of "these features" (loading dock and canopy?) but went on to find "and consistency with the intent (respect for environmental quality) and character (conditions to allow business and residential to co-exist)" which is

- unintelligible and makes no sense.
24. Implementation of the CoAs reduces impacts on residents related to traffic.
  25. Implementation of the CoAs reduces impacts on residents related to noise.
  26. The delivery management, transportation improvements, truck loading and parking, and noise measures are necessary to move loading activities to the more industrial façade along Lowell Street.
  27. The CoAs are essential to the co-existence of the business and adjacent residential.
  28. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking, and noise measures will address existing nuisances.
  29. Neighborhood nuisance complaints related to air quality will be reduced or resolved by the redesign of the facility and by implementation of the imposed CoAs.
  30. The delivery management, transportation improvements, truck loading and parking, and noise measures are necessary to minimize existing nuisances.
  31. Implementation of the CoAs will reduce nuisances.
  32. Use of the canopy (after the west five feet has been removed) in a manner which creates minimal impact on neighbors requires that the CoAs now imposed be implemented to reduce nuisances.
  33. Use of the loading dock in a manner which creates minimal impact on the neighbors requires that the CoAs now be imposed be implemented to reduce nuisances.
  34. Implementation of the CoAs reduces impacts on residents related to air quality.
  35. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact of neighbors requires that CoAs now imposed to be implemented to reduce air quality impacts.
  36. Use of the loading dock in a manner which creates minimal impact on neighbors requires that CoAs now imposed to be implemented to reduce air quality impacts.
  37. The CoAs related to truck traffic, unloading, parking, washing, and management, acoustic buffering and street improvements are necessary to ensure that the freezer addition will operate with minimum overflow of noise and other effects onto adjacent buildings.
  38. The canopy is retained as it has been constructed, open loading/unloading would occur closer to the property line.
  39. Removing the portion of the canopy that encroaches into the 5 foot setback area and the reduction of the screening wall to its original height (approximately 9 to 10 feet) will move the open unloading/loading activities away from the neighbor.
  40. Retaining the canopy along the side property line would increase potential nuisance activities occurring closer to the property line.
  41. The Applicant will not be constructing the loading dock on the east side of its building facing Lowell Street. The Applicant entered into the Compliance Plan in 2014 in good faith but the City delayed action until 2018. The City unfairly used the Compliance Plan to aid a neighbor in her quest to move the business from Oakland.
  42. Conditions 30-32, 38, and 40 bear no relationship to the unpermitted refrigeration equipment, the unpermitted loading dock, sliding gate or the unpermitted canopy and their requirement is error, abuse of discretion and unsupported by substantial evidence.

### **Discussion of Appeal 1**

The following is a summary of the specific issues raised in the Appeal 1 along with staff's response to each point. Appellant 1 argues that Findings made by the Zoning Manager are not supported by substantial evidence, are erroneous, and constitute abuse of discretion. Each challenged Finding is shown in **bold** text, and staff's response follows each point in regular type. In some instances, the arguments have been grouped together or re-ordered as they relate to one topic.

Appellant 1's Appeal raises issues pertaining to the approval of the CUP and Design Review, the denial of the Minor Variance, general issues with the application of CoAs, and with the construction to be completed as part of the applications submitted by the Applicant. When the grounds of Appeal are reviewed together,

it is unclear what decision Appellant 1 is requesting the Planning Commission to make. Despite agreeing to a Compliance Plan that required Suprema to submit a planning application for Design Review, CUP, and Variance to legalize unpermitted uses and for the construction of a loading dock and off-site improvements on Lowell Street, Suprema's Appeal appears to challenge the planning process itself, including the need for planning permits and the imposition of CoAs. Staff recommends the Planning Commission consider each ground of the Appeal to determine whether the Zoning Manager's determination was supported by substantial evidence.

Before addressing each appeal ground in Appeal 1, staff would like to clarify terms used throughout the decision letter and our responses to Appellant 1's arguments as well as the on-site location of the elements described below (*Attachment H and I*). In some instances, staff used terms interchangeably which created confusion in the Findings.

- "Canopy" means the newly constructed 30' x 50' or approximately 1,500 sq. ft. overhang that is located approximately 57' back from 57<sup>th</sup> Street and immediately adjacent to the side property line.
  - "Unloading/loading dock" means only the cut-out portion of the loading area ramp where trucks back up at grade and load/unload from the elevated loading area (as defined below).
  - "Loading area" includes the ramp, loading dock, truck and product storage area under the existing canopy, and storage of product and new canopy off of 57<sup>th</sup> Street. In some instances, the "loading area" includes the area of the public right-of way adjacent to the building's Lowell Street façade and the forklift route along 57<sup>th</sup> and Lowell Streets.
  - "Nuisances" means impacts or adverse effects or land use conflicts as a result of the project to health, safety and quality of life pursuant to the Planning Code.
1. **The proposal to legalize an unpermitted loading dock requires a Minor CUP.**
  2. **The loading dock is an unenclosed facility, and therefore considered an Open Non-Residential Facility.**
  3. **The loading dock does not meet the definition of an accessory facility in Planning Code Section 17.10.70.**
  4. **Construction of the loading dock is considered a new principal facility.**

**(Issues 1, 2, 3, and 6 raised by Appellant 1)**

Staff Response

While a Minor CUP is required to legalize the unpermitted canopy (see discussion below), Appellant 1 is correct that the unpermitted loading dock meets the definition of an accessory facility, and therefore, does not independently require a Minor CUP. Planning Code Section 17.10.070A defines accessory facilities as those facilities that are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal facility, and includes "off-street parking and loading facilities serving a principal Residential or Nonresidential Facility, whether located on the same lot thereas or on another lot, but only if they are reserved." The loading dock does meet the definition of an accessory facility and is not a new principal facility. Nonetheless, because a Minor CUP is required to legalize other unpermitted facilities, the Zoning Manager's erroneous Findings are harmless error that cannot serve as a basis for reversing the Zoning Manager's decision.

Appellant 1 further argues that because the unpermitted loading dock proposal by itself does not require a CUP, that the unpermitted loading dock also does not require design review. This is incorrect. The loading dock is not exempt from design review. The overall project of which the loading dock is one part requires

a CUP as discussed below. The overall project does not meet the exemptions from design review in Planning Code Sections 17.136.025A and B. Per Planning Code Section 17.136.040A(2), "Regular design review is required for any construction, addition or alteration of structures requiring a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code." When determining which permits are required, Staff considers the entire project. Therefore, because part of the project needs a CUP, the entire project is subject to design review.

**5. Construction of the loading dock is considered an expansion of the overall use and footprint.**

**(Issue 7 raised by Appellant 1)**

Staff Response

To issue a CUP, the Zoning Manager must find that the proposal conforms in all significant respects with the Oakland General Plan. Under discussion of this Finding, the Zoning Manager's determination letter states, "While the business and operations were previously considered 'grandfathered,' construction of the canopy and loading dock are now considered a new principal facility and expansion of the overall use and footprint. As such, staff may impose Conditions of Approval related to the effects of these features and consistency with the intent (respect for environmental quality) and character (conditions to allow business and residential to co-exist)."

The term loading dock in the above Finding refers not to the dock itself but to the overall loading area and all improvements made without proper permits that have resulted in increased operations. Appellant 1 is correct that the dock alone is not an increase in footprint.

However, per the Applicant's own admission (*Attachment G*), the number of trucks used in the operation has increased since the Compliance Plan went into effect. Staff understands that the loading dock is designed to allow for expedited loading and unloading of trucks. As such, the number of deliveries, use of the loading dock and overall use of the loading area has expanded.

- 6. All but the west 5 feet of the canopy will constitute a new non-residential activity and open facility.**
- 7. The canopy does not meet the definition of an accessory facility in Planning Code Section 17.10.70.**
- 8. The canopy and loading (dock) is considered a Warehousing and Storage activity.**

**(Issues 4, 5, and 8 raised by Appellant 1)**

Staff Response

Appellant 1 challenges whether the canopy is an accessory facility, and whether the proposed alterations fall under certain activity designations, in an effort to dispute whether a CUP is required for the alterations that are the subject of this approval. Accessory facilities are generally not subject to CUP requirements separate from the primary facility, while primary facilities may require a CUP depending on the type of facility. Nonresidential Open Facilities require a CUP in the HBX-1 Zone.

The canopy and area under the canopy are not accessory facilities. Per Planning Code Section 17.10.070: "In addition to the principal facilities expressly included therein, each Residential and Nonresidential Facility type shall be deemed to include such facilities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal facility; are located on the same lot as such principal facility except as otherwise provided in Subsections A., F., and G. of this Section."

The canopy expanded the area the product could be stored. As such, the canopy and area under it are not considered a building or facility incidental and customarily associated with a principal facility. While a food distribution business has existed at the property since the 1940's, the canopy did not exist until approximately 2014. The canopy is used to store meat products until pallets can be loaded onto trucks. This use is confirmed in staff and neighbor photos and Google maps, (*Attachment H*). Outdoor unrefrigerated food storage of meat is not customary, which is why it likely required an insulated panel canopy.

Furthermore, Planning Code Section 17.10.070C notes that "storage and service areas and accessory buildings, other than those listed elsewhere in this Section, if serving a principal facility on the same lot may be considered accessory; provided, however, that no such facilities which are unenclosed shall qualify as accessory to any principal Enclosed Nonresidential Facility except for open areas, not exceeding two hundred (200) square feet each, for the temporary storage of trash." Since the canopy is unenclosed, is not solely used for trash but is used as outdoor storage as discussed above, and is greater than 200 square feet, it cannot be considered an accessory facility.

Instead, the canopy and area under the canopy constitute an open non-residential facility, which requires a CUP. Per Section 17.10.080, "if the facilities on a single lot resemble two or more different facility types, each facility which is not classified by Section 17.10.070 as an accessory facility shall be classified separately." In this case, the lot contains both an enclosed and open non-residential facility. As such and per Section 17.65.040, a Minor CUP is required for an open non-residential facility.

Planning Code Section 17.01.100 states "Any proposal determined to clearly conform with the General Plan, and which is permitted or conditionally permitted (meaning requiring a CUP) by the Zoning Regulations shall be processed in accordance with such code and/or regulations." Since the canopy conforms to the General Plan, is an open non-residential facility and, per the HBX-1 Zone requires a CUP, the Zoning is clear, there is no Express Conflict<sup>2</sup>, and the canopy shall be processed in accordance to the Planning Code and regulations (meaning an application and decision on the CUP).

Furthermore, since the canopy is over 1,000 sq. ft. (30' x 50' or approximately 1,500 sq. ft.), Regular Design Review is required per Planning Code Section 17.136.040(2), which notes that any construction, addition or alteration of structures requiring a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code and Section 17.136.040 (5): New construction of principal facilities (enclosed structure and open area) in the HBX or D-CE Zones.

The Oakland Planning Code requires analysis both of a proposal's facility and activity type. Appellant 1 is correct, and staff is in error, that the canopy will not constitute a new non-residential or a warehousing and storage *activity*. Per Planning Code Section 17.10.040G, Accessory Activities includes "storage of goods sold by a principal Commercial Activity, or used in or produced by a principal Industrial Activity, engaged in by the same firm on the same lot." As such, the CUP requirement is triggered by the canopy's designation as an open non-residential facility, and not by its activity type.

- 9. The canopy will result in more loading and unloading outside, potentially added noise and visual intrusions.**
- 10. The loading dock will result in more loading and unloading outside, potentially added noise and visual intrusions.**

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<sup>2</sup> An "Express Conflict" shall be deemed to be any situation where a proposal clearly conforms with the General Plan but is not permitted (prohibited) by the portion of Zoning Regulations that have not been fully updated, or where a proposal clearly does not conform with the General Plan, but is permitted or conditionally permitted by the portion of Zoning Regulations that have not been fully updated. The Zoning was amended in 2011 to be consistent with the General Plan and so there is no Express Conflict.

11. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce noise impacts.
12. Use of the loading dock in a manner which creates minimal impact on neighbors requires that the CoAs now imposed be implemented to reduce traffic impacts.
13. The specific operational CoAs the City is attempting to require, i.e. locating more deliveries to Lowell Street and inside, development and implementation of a delivery management plan, transportation improvements, truck loading and parking, and noise measures will address new and additional loading, added noise, and visual intrusions caused by the loading dock and canopy.
14. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the unpermitted loading dock and canopy.
15. City staff may impose CoAs related to the effects of the loading dock.
16. The delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impact on residential neighbors associated with the loading dock and canopy.
17. Implementation of the CoAs reduces impacts on residents related to traffic.
18. Implementation of the CoAs reduces impacts on residents related to noise.
19. The delivery management, transportation improvements, truck loading and parking and noise measures are necessary to move loading activities to the more industrial façade along Lowell Street.
20. The CoAs are essential to the co-existence of the business and adjacent residential.
21. City found that its staff may impose CoAs related to the effects of "these features" but failed to describe to what "feature" it was referring other than the loading dock.

(Issues 9, 10, 12, 13, 15, 16, 20, 21, 24, 25, 26, 27, and 22 raised by Appellant 1)

#### Staff Response

It is clear from the above arguments, as well as the entire Appeal, that Appellant 1 is quoting from portions of the Findings to focus narrowly on individual elements of the project, especially those related to the canopy and loading dock. In doing so, Appellant 1 seeks to limit the discussion related to impacts of these elements only, and therefore, the need for CoAs.

Staff, however, does not look at individual features or elements of a proposal, but instead evaluates the entire project and operation as a whole. This is because certain features may allow the business to operate differently or result in adverse effects on the neighborhood. Certain elements potentially considered benign might result in an adverse effect when considered together or based on the location of the improvements. Take for example, a school wanting to convert a practice field to a game playing field. The proposal is only to install a new fence and goal posts, but this change has potential implications for noise impacts to adjacent residences (more players, cheering from players and spectators, whistle use, weekend or evening use) and traffic impacts (bringing other teams and parents to the field or increase in athletic programs). Furthermore, these elements affect the overall school use in that games could occur during the pick-up and drop-off periods affecting traffic, and parking and noise in the area could be an issue if games occur in conjunction with other events.

Appellant 1 argues that there is no evidence that the unpermitted loading dock or canopy has increased loading and unloading, increased noise or created visual intrusions. With respect to the loading dock, Appellant 1 states that the overall time and manpower to load the trucks has decreased, and that operations resulting in noise, such as use of forklifts and hand jacks, have ceased. Finally, Appellant 1 argues that

Suprema would be loading the exact same number of trucks with or without the unpermitted canopy and dock which incidentally serves to reduce noise at the street, and that without the dock, there is far more noise and truck traffic.

Based on numerous conversations with the Applicant and Appellant 1, site inspections, and review of site plans, staff understands that semi-trucks presently are unloaded from Lowell Street via forklifts that run up and down Lowell and 57<sup>th</sup> Street, delivering product to the building or temporary storage area under the insulated canopy. Suprema's trucks are then loaded at the loading dock which leads to the insulated canopy where the product is temporarily stored under the freezer and near the outdoor break room. As such, the loading dock and canopy facilitates the movement of product through the business and business's overall delivery operations. These are not individual components to be reviewed out of context of the whole operation. For example, the number of trucks and employees expanded with the canopy, loading dock, freezer and other improvements; the canopy allows temporary storage outside of product; the inclusion of a canopy and outside break room frees up space for other uses in the building; the freezer and other equipment allows trucks to stay cold overnight; and the loading dock facilitates additional product movement and the loading area. These improvements are not benign in this instance due to the location adjacent to residential uses and the fact that after the improvements were installed, the operations increased (number of employees and number of trucks). The adverse impact or nuisances include but are not limited to noise from trucks and loading/unloading equipment and freezer, people under the canopy and in the loading area; vibration issues, traffic and pedestrian safety issues resulting in forklift use of the sidewalk and street, parking issues with semi-trucks parking in a traffic lane with no signed loading zone, air quality issues related to loading near residents, and hydrology issues as a result of truck washing are well documented by the over 100 comment letters from residents and Appellant 2's Declarations.

Beyond the factual circumstances of Suprema's operation, Appellant 1 generally argues that the City does not have authority to impose conditions on the business's operation intended to reduce land use conflicts. The City's guiding documents, which are used to review and consider projects, note the need to avoid adverse impacts, and allow the City to consider CoAs necessary to achieve this goal. The LUTE describes the intent and desired character and uses within the HBX land use classification. The intent of the HBX classification states: "Respect for environmental quality, coupled with opportunities for additional housing and neighborhood-friendly businesses is desired, as well as the transition from industry that generates impacts detrimental for residences." The desired character of the HBX classification states: "Future business development within this classification should be compatible with housing, and development should recognize the mixed business nature of the area. Development of site-specific buffers are essential as are specific conditions under which business and housing will co-exist." In sum, the HBX land use classification acknowledges that the area is ripe for potential land use conflicts.

In addition, Planning Code Section 17.07.030 states: "The general purposes of the zoning regulations are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare and to achieve the following objectives." The most relevant objectives in this case are "To protect residential, commercial, industrial, and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services." The City implements the Planning Code's purpose through regulating outright permitted, conditionally permitted, and prohibited activities and facilities, and this project requires a CUP. Per the Planning Code Section 17.134.010 Title, purpose, and applicability (for CUPs): "The purpose of these provisions is to prescribe the procedure for the accommodation of uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary, the imposition of special CoAs."

Further, since CUPs run with the land and could continue indefinitely if the activity is not suspended or discontinued for a consecutive period of two or more years, it is staff's responsibility to consider any existing and future adverse effects. Again, based on the over 100 comment letters from residents and



Appellant 2's Declarations, the project is generating adverse impacts on neighbors, and the construction of the canopy and loading dock increased those impacts as 1) it expanded the business and 2) facilitated and effected the overall operation. While Appellant 1 believes that the new loading dock and canopy actually reduce noise, it is entirely possible that as a result of the proposal under consideration, larger or longer trucks could be loaded in the future; that the pallet jacks, forklifts or other noisy equipment could be again used in the future; that the business could expand which could extend the loading hours and number of trucks; that the business could diversify or contract its customer base (i.e. become more of a distributor or wholesaler) and that employees won't follow noise or traffic reducing measures. As noted in the *Attachment G*, "loading is a direct function of orders." As such, if the number of orders increases, the amount of noise, traffic, and other adverse impacts could increase. To address these current and potential adverse impacts, the City is within its right to apply appropriate CoAs, and which staff routinely apply to other businesses.

It should also be noted that while the Planning Code has Performance Standards to address noise, odors, smoke, vibrations, etc., these standards set a prescribed threshold but are not the only indicator of or remedy for an adverse effect. City staff consistently applies CoA that exceed the performance standards to address adverse effects. For example, in a new bar with live music, CoAs could include loitering, littering, sound and noise attenuation, and security. In another example for a school, staff required traffic pick-up/drop-off management plans, traffic subsidies, video submittals, third party monitors, limiting staff, students and construction and compliance and enforcement measures. These are reasonable CoAs that have been imposed on other projects to successfully address adverse effects. Bureau of Planning staff rely on common sense, best Planning practices, and professional experience with other similar cases in determining existing and possible future adverse effects and CoAs.

While the Bureau of Planning issued a Zoning Clearance for General Food Sales, the business additionally operates as a distribution warehouse. The addition of the loading dock and canopy results in increased movement of product with more of the business occurring outside. As such, the issues that would normally be associated with a retail business such as customer traffic and parking do not apply, and it is necessary to address the adverse effects of changing an accessory loading area for a retail business to more of a major distribution operation.

In summary, a critical purpose of the land use classification and Planning Code is to alleviate adverse impacts associated with development. These documents give staff broad authority to evaluate and impose CoAs necessary to regulate adverse effects and reduce potential conflicts, so long as those conditions are aimed at addressing those adverse effects and roughly proportional to the impact.

- 22. The loading dock is creating nuisances not existing before the dock was created.**
- 23. The canopy (except for the west 5 feet thereof) is creating nuisances not existing before it was built.**
- 24. Use of the canopy in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce nuisances.**
- 25. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures will address existing nuisances.**
- 26. The delivery management, transportation improvements, truck loading and parking and noise measures are necessary to minimize existing nuisances.**
- 27. Implementation of the CoAs will reduce nuisances.**
- 28. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce nuisance.**
- 29. Use of the loading dock in a manner which creates minimal impact on the neighbors requires that the CoAs now imposed be implemented to reduce nuisances (same as Argument 33).**

(Issues 17, 18, 11, 28, 30, 31, 32 and 14(33) raised by Appellant 1)

Staff Response

Appellant 1 argues that Suprema has never been found to have created a public or private nuisance; that in nuisance hearings brought by the City against Suprema the Hearing Officer found no nuisance relating to noise, and that the City has hired noise experts to try to catch Suprema violating noise ordinances but no citations have been issued; therefore, the above Findings are not supported by substantial evidence, are in error, and are an abuse of discretion.

As described in the background above, the Hearing Officer at the November 2015 hearing found that Suprema had violated the Compliance Plan due to the use of forklifts as and for a delivery staging activity. However, the Hearing Officer also found that the City had failed to prove any violations of Oakland Municipal Code (OMC) Chapter 1.08, which governs general public nuisances, and should have prosecuted any noise complaints under OMC Chapter 8.18, which addresses noise-related nuisances specifically. The California 1st District Court of Appeal held that four of the six violations originally noted by the Hearing Officer were supported by substantial evidence. Appellant 1 correctly states that the City hired a noise consultant and had Code Compliance staff investigate noise and potential violations of the 1996 Noise Ordinance at the site. Neither found violations of the Noise Ordinance.

The Hearing Officer addressed the circumstances and citation of “nuisances” within the context of the OMC Title 8 (Health and Safety), whereas the Bureau of Planning’s purview is Title 17, Planning Code. Planning staff have used the term “nuisance” in the Findings and this staff report and responses more broadly to include any impacts, adverse effects or land use conflicts as a result of the project to health, safety and quality of life. As shown in staff’s response above, Suprema’s operations have resulted in the health, safety and quality of life impacts that were existing and with the proposed improvements which resulted in the expansion of the business (*Attachment G*) necessitating the imposition of CoAs.

- 30. Neighborhood nuisance complaints related to air quality will be reduced or resolved by the redesign of the facility and by implementation of the imposed CoAs.**
- 31. Implementation of the CoAs reduces impacts related to air quality.**
- 32. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on neighbors requires that the CoAs now imposed be implemented to reduce air quality impacts.**
- 33. Use of the loading dock in a manner which creates minimal impact of neighbors requires that the CoAs now imposed be implemented to reduce air quality impacts.**
- 34. City found that its staff may impose CoAs related to the effects of “these features” (loading dock and canopy?) but went on to find “and consistency with the intent (respect for environmental quality) and character (conditions to allow business and residential to co-exist)” which is unintelligible and makes no sense.**

(Issues 29, 34, 35, 36, and 23 raised by Appellant 1)

Staff Response

Appellant 1 argues that there is no evidence to support the contention that the loading dock and canopy have impacted air quality, making it worse than before it was installed. In the Findings, staff noted several times that with implementation of the attached CoAs, impacts to residents related to air quality will be reduced. Staff did not specifically say that the canopy or loading dock impacted air quality or made it worse than before these features were installed. However, trucks do create Toxic Air Contaminants and in the case of diesel trucks, diesel emissions, which affect air quality. By the Applicant’s own admission (*Attachment G*), the number of trucks has increased from around 8-10 to 14. As such, air quality particulates have

increased. Appellant 2's Appeal includes documentation in Exhibit C regarding the concerns related to diesel exhaust and air quality issues. To address this issue, staff added CoAs to construct a loading dock on Lowell Street to move loading further away from the adjacent residential use, a continuation of the Compliance Plan which required a phase-out of non-hybrid trucks and no idling during construction. Staff is also proposing to add a provision to CoA # 30 requiring that semi-trucks idle for no longer than 3 minutes (*Attachment I*). These measures are consistent with the Bay Area Air Quality Management District's methods to reduce air quality emissions including locating truck loading docks as far from nearby sensitive receptors as feasible, using clean diesel trucks, higher-tier diesel engine trucks with added Particulate Matter filters, hybrid trucks, alternative energy trucks, and limiting idling times. With these CoAs, the project will be more consistent with the intent and character of the LUTE's HBX land use classification.

Appellant 1 additionally argues with respect to its challenge to these Findings that the existing loading dock is exempt from design review and that the proposal does not need a Conditional Use Permit. See above for a discussion regarding the loading dock needing design review and the proposal needing a CUP.

- 35. The CoAs related to truck traffic, unloading, parking, washing and management, acoustic buffering and street improvements are necessary to ensure that the freezer addition will operate with minimum overflow of noise and other effects onto adjacent buildings.**

**(Issue 37 raised by Appellant 1)**

#### Staff Response

Appellant 1, objecting to staff's Design Review Findings, argues that there is no evidence to support the contention that the modifications made to the freezer have an impact on (or are impacted by) truck traffic, unloading, parking, washing and management or street improvements. In doing so, Appellant 1 appears to be challenging the City's ability to impose conditions intended to address adverse impacts caused by the expansion of freezer facilities included in the project.

The design review discretionary criteria for nonresidential facilities require finding that:

*The proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area.*

Staff's Design Review Findings state that the canopy and freezer additions have been designed to facilitate operation of the food distribution business with minimum overflow of noise and other effects onto adjacent buildings, subject to new CoAs. Specifically, staff has included CoAs related to truck traffic, unloading, parking, washing, and management as well as acoustic buffering and street improvements. Several of these CoAs, including those related to truck traffic, unloading, parking, washing and management and street improvements, were not applied because of the freezer additions, and instead relate to other elements of the project such as the canopy and loading dock which also require design review. As stated in the staff responses above, these are not individual components to be reviewed out of context of the whole operation. For example, the number of trucks and employees expanded with the canopy, loading dock, freezer and other improvements; the canopy allows temporary storage outside of product; the inclusion of a canopy and outside break room frees up space for other uses in the building; the freezer and other equipment allows trucks to stay cold overnight; and the loading dock facilitates additional product movement and the loading area. The Acoustic Buffering and Noise Control CoAs were included because of, among other noise-generating elements, adverse noise impacts associated with the freezer. In response to these Appeals, staff

has further reviewed the project-specific Conditions and recommends minor modifications to ensure the CoAs properly address the impacts resulting from the resulting operations.

The freezer is not exempt from design review. First, the project does not meet the exemptions from design review in Planning Code Sections 17.136.025A and B. Second, the overall project already needed a CUP as discussed above and below. Per Planning Code Section 17.136.040A(2), Regular Design Review is required for any construction, addition or alteration of structures requiring a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code. The canopy and loading dock also require design review as described in the responses above.

**36. The proposal is to add truck, traffic and noise elements to the warehouse facility.**

**(Issue 19 raised by Appellant 1)**

Staff Response

The proposal is to add a canopy, loading dock, freezer, and other building alterations to an existing building. Truck and traffic elements from the proposal include but are not limited to the loading dock, canopy, and new loading zone on Lowell Street. Elements pertaining to noise in the proposal include but are not limited to the freezer, mechanical equipment screening and CMU wall. All of these elements do affect overall operations.

**37. If the canopy is retained as it has been constructed, open loading/unloading would occur closer to the property line.**

**38. Removing the portion of the canopy that encroaches into the 5 foot setback area and the reduction of the screening wall to its original height (approximately 9 to 10 feet) will move the open unloading/loading activities away from the neighbor.**

**39. Retaining the canopy along the side property line would increase potential nuisance activities occurring closer to the property line.**

**(Issues 38, 39, and 40 raised by Appellant 1)**

Staff Response

Appellant 1 raises three issues with respect to Staff's Findings in support of denying the Minor Variance, which would allow for canopies to be located closer than the zoning standard of five feet from neighboring properties. Appellant 1 argues that the above Findings, which in part form a basis for Minor Variance finding numbers 1 and 3, are incorrect for the following reason:

There is no evidence and in fact it is totally false, that if the canopy and loading dock were both removed that loading activities would not take place close to the west property line as they do now. In fact, with the loading dock, each truck is loaded 20 feet east of the neighbor to the west. If the dock is removed, Appellant will pull three trucks in instead of one and load all three. The third truck would be right at the property line between Appellant and his neighbor to the west.

Appellant 1 is correct that if the loading dock is removed, the actual loading and unloading of the truck will not occur closer to the property line. However, the canopy did increase the ability to store the product closer to the property line as such the loading area expanded to include this area. In addition, for purposes of the Minor Variance, staff's Findings are focused on whether the presence of the canopy within five feet of the property line would result in additional impacts to the adjacent neighbor. Because the product is being stored underneath the canopy, storage, handling and movement of the product from the truck to the canopy

and loading area in an unenclosed facility would occur closer to the property line than it would likely occur otherwise without the insulated canopy.

A Minor Variance may be granted only upon determination that all applicable required conditions described in Section 17.148.050 are met. In its determination, the Zoning Manager found that Variance Finding numbers 1, 3, and 6 could not be met. Finding number 1 requires finding that strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulation due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a Minor Variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance. Staff could find no reasons to support such a finding of practical difficulty or unnecessary hardship due to topographic or unique circumstances, is not an effective design solution, and Appellant 1 has not presented any evidence supporting such a finding. Furthermore, staff must make all Findings in order to support a Minor Variance. Even if staff believed that the Finding could be met, staff was still not able to make all the required Findings. Therefore, notwithstanding the evidence presented by Appellant discussed above regarding the position of loading trucks, the Minor Variance cannot be granted based on a lack of substantial evidence supporting the first, third or sixth required finding.

**40. The Applicant will not be constructing the loading dock on the east side of the building facing Lowell Street. The Applicant entered into the Compliance Plan in 2014 in good faith but the City delayed action until 2018. The City unfairly used the Compliance Plan to aid a neighbor in her quest to move the business from Oakland.**

Staff Response

The Compliance Plan, which the Applicant signed in 2014, included the requirement for a loading dock to be constructed on Lowell Street to address open complaint (1305560) related to an industrial operation and noise during the day, nights, and weekends verified by staff.

The Compliance Plan notes: "Owner shall submit (a) a complete planning permit application (i.e. Design Review, Variance, and Conditional Use Permit) as required by Zoning Division staff that seeks to legalize building and site improvements installed without permits, and (b) any building or specialty permits to legalize any improvements or repairs undertaken that do not require planning approvals (see Exhibit A for the list of Unpermitted Improvements. The full scope of the required private (on-site) and public (off-site) improvements to be included requiring planning and building permit applications shall include (c) construction of a new loading facility for at least one delivery truck inside the existing warehouse building along Lowell Street (east elevation) . . ."

With the construction of the unpermitted loading dock and canopy, more trucks are now being loaded and more storage and handling of the product is occurring from 57<sup>th</sup> Street. To mitigate the loading and handling noise, and pedestrian and traffic safety issues associated with forklift traffic occurring in the public right-of way and to address complaints per the Compliance Plan, staff required the Lowell Street loading dock as a major project component. Plans including the Lowell Street loading were submitted by the Applicant and approved by the Bureau of Planning consistent with the Compliance Plan. As noted above, Planning has broad authority to regulate the operations of businesses to implement the General Plan's policies and the overall intent of the Planning Code.

This is further noted in CoA #9, "Severability," which states: "The approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such approval."

As such, Appellant 1 cannot now remove this feature from the proposal. CoA # 4 describes the procedure to address major and minor changes in the proposal. Staff would consider this a major change require submittal of a Revision application removing the Lowell Street loading dock which would then be re-reviewed for approval or denial.

Finally, it should be noted that it is not unusual for complicated projects with neighbor opposition to take several years to process. Staff approached our review of the proposal carefully and neutrally per the Planning Code, General Plan Elements, HBX Design Guidelines and basic planning principals. The decision was not unreasonably delayed and such a delay provides no justification to removal of the Lowell Street loading dock.

- 41. Conditions 30-32, 38, and 40 bear no relationship to the unpermitted refrigeration equipment, the unpermitted loading dock, sliding gate or the unpermitted canopy and their requirement is error, abuse of discretion and unsupported by substantial evidence.**

Staff's Response

See response to Appellant's Arguments #9-34. The loading dock, canopy, refrigeration equipment, gate and other improvements are part of the overall loading operations and distribution process and facilitated the expansion of the overall business operations, altered movement of product through the building and increased adverse impacts on neighbors. As discussed above, the City's guiding documents for the site note the need for CoAs in order for residents and businesses to co-exist. Staff routinely applies CoAs to businesses in areas where existing and potential conflicts occur. As such, the imposition of the CoAs related to the business and those element's effect on the operations is not an error or abuse of discretion.

Discussion of Appeal 2

The second Appeal (*Attachment F*) was filed by Angela Gennino and Kim Lucas on behalf of the GGCA. The basis of the Appellant 2's Appeal is that the Zoning Manager abused its discretion in approving the project and imposing inadequate CoAs. Specifically, that:

1. Approval of Suprema's Minor CUP and other General Use Permits, especially without adequate Conditions of Use, will only serve to prolong and legalize a public nuisance.
2. Suprema increased the height of the warehouse to accommodate an industrial freezer and rooftop equipment and constructed a cinderblock retaining wall along the side of the property. There is no mention of these construction projects in either the proposal or required permits. The City's failure to mention that Suprema, without permits, increased the height of the warehouse to accommodate an industrial freezer and rooftop equipment and constructed a cinderblock retaining wall along the side of the property, deprived neighbors of an opportunity to comment or benefit from design review and inspections.
3. The project does not meet CUP Finding A as the project is not compatible with and will adversely affect the livability of adjacent homes, and especially in terms of traffic generation.
4. The project does not meet CUP Finding B that the location, design and site planning will not provide a convenient and functional living and working environment.
5. The project does not meet CUP Finding E or Design Review Finding 3 that the project conforms in all significant respects to the General Plan policies and objectives or the HBX Design Review Guidelines.
6. The project does not meet Design Review Finding 1 and 2.
7. The project does not meet the CEQA criteria for an Exemption as the project involves a significant expansion of use (freezer capacity, number of trucks, and unpermitted construction projects). The CoAs will not prevent the business from expanding as the new loading dock on

- Lowell Street would allow more trucks to be loaded and the CoAs expand the hours of operation. Finally, the surrounding area has changed regarding land uses.
8. CoA 2: Effective Date, Expiration, Extensions and Extinguishment will be ineffective as the residents should not be subjected to further nuisances as the CUP is being challenged.
  9. CoA 5: Compliance with CoAs will be ineffective as the City has not enforced resident's complaints. The City rarely issued fines for violations and instead choose to settle violations rather than expend resources.
  10. CoA 30: Semi-Truck Delivery Management Plan<sup>3</sup> will be ineffective as Suprema loads their trucks in the public-right-of way causing hazardous situations. The use of the street as a loading zone should be prohibited. The business owner cannot enforce non-Suprema owned trucks from arriving at non-business hours or using designated truck routes.
  11. CoA 31: Transportation Improvements will be ineffective to address pedestrian concerns as well as the implementation of a planned bike lane. The Appellant notes that given the location of the proposed sidewalk and loading dock on Lowell Street with hundreds of fork lifts trips per day, a second sidewalk is needed on the east side of Lowell Street for pedestrians to ensure that the loading dock does not interfere with the proposed bike lane.

Appellant 2 requests that the Planning Commission overturn the Zoning Manager's decision. Staff recommends the Planning Commission consider each ground of the Appeal to determine whether the Zoning Manager's determination was supported by substantial evidence. However, if the Planning Commission denies the Appeal, Appellant 2 also includes requests for several revisions to the CoAs and implementation of an adequate enforcement plan with staff accountable for enforcement as outlined below.

1. The Appellant notes that the gate along 57th Street "screeches" as it moves in the tracks. The Appellant is requesting a taller, quieter model with sound attenuation characteristics.
2. The Appellant requests clarification that the proposed loading facility on Lowell Street noted in CoA 35: Street Improvements and Loading System will be consistent with the Compliance Plan in that the facility will accommodate one truck inside the existing warehouse.
3. The Appellant is concerned that the measures in CoA 40: Acoustical Buffering and Noise Prevention do not adequately address noise from the project operation. The Appellant believes that the additional measures which were noted in the 2014 Wilson report should be included as well as the recommendation to enclose the entire loading dock area and add the provision of a roll-up door. The entire enclosure would be treated with acoustical absorption.
4. The Appellant is concerned that the measures in CoA 42: Enforcement will not alleviate the burden on neighbors to report violations or complaints.

### **Discussion of Appeal 2**

The following is a summary of the specific issues raised in Appeal 2 along with staff's response to each point. The basis for the appeal is shown in **bold** text and staff's response follows each point in regular type.

1. **Approval of Suprema's Minor CUP and other General Use Permits, especially without adequate Conditions of Use, will only serve to prolong and legalize a public nuisance.**

#### Staff Response

The approval of the project will not serve to prolong and legalize a public nuisance. California Civil Code Section 3479 defines a nuisance as anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable

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<sup>3</sup> This Condition along with Conditions 36, 37, and 38 include items from the Delivery Truck Management Plan which is part of the Compliance Plan.

enjoyment of life or property, or unlawfully obstructs free passage or use of a public street or highway. The City has consistently recognized that Suprema's activities have historically had negative impacts on surrounding neighbors. The CoAs included in the project approval are intended to address these impacts. However, under California law, the fact that an activity is permitted does not authorize the creation or maintenance of a nuisance. In other words, permitting the project does not allow for Suprema to operate in a manner that creates nuisances and the City would retain the right to take action to mitigate any public nuisance.

Appellant 2's Appeal includes declaration letters from over twenty neighbors detailing what they describe as nuisance impacts per the OMC. While the City has not specifically declared that Suprema has operated as a nuisance, Suprema did agree to enter into a Compliance Plan with the City to mitigate Suprema's impact on nearby properties, specifically with regard to noise and traffic impacts and unpermitted property improvements. Appellant 2 did hire a land use attorney to advocate for the execution of this Compliance Plan.

The City's approval of the project is consistent with the Compliance Plan. The Compliance Plan requires Suprema to submit a planning permit application that seeks to legalize building and site improvements installed without permits. The CoAs imposed on the project will improve the overall noise and truck traffic situation adjacent to residential use. Examples include the Semi-Truck Delivery Management which will restrict hours of operation and arrival of these vehicles. Further, staff has clarified Condition 38 in *Attachment I* related to the Truck Delivery Management to include outdoor use of forklifts before 7:00 AM. The Transportation Improvements will increase safety for pedestrians and vehicles, include loading zones and loading areas and timeframes. The washing of trucks is no longer permitted. The gate screening will reduce noise. The Loading System, Truck Loading and Truck Parking CoAs will require a new loading dock off Lowell Street with no loading or parking in the public right of way on 57th Street. The Delivery Management Condition again sets hours of operation and number of trucks in the early morning hours. The Acoustical Buffering Condition will reduce noise emanating from the business. Finally, an Enforcement CoA is also included.

- 2. Suprema increased the height of the warehouse to accommodate an industrial freezer and rooftop equipment and constructed a cinderblock wall along the side of the property. There is no mention of these construction projects in either the proposal or required permits. The City's failure to mention that Suprema, without permits, increased the height of the warehouse to accommodate an industrial freezer and rooftop equipment and constructed a cinderblock wall along the side of the property, deprived neighbors of an opportunity to comment or benefit from design review and inspections.**

#### Staff's Response

The construction of the cinderblock wall and increase in height of the warehouse to accommodate industrial freezer and rooftop equipment are within the scope of the project application. See *Attachment A*. Due to the limitation of the public noticing, not every item for construction or under consideration is included in the project description in the public notice. Staff summarizes the major elements for the public and includes a site plan or elevation on the notice. Staff also provided the public with a contact person so that the full plan set can be reviewed. Furthermore, while staff generally publishes the notice closer to making a decision, projects have been known to be slightly revised after notice. Staff made our decision and Findings based on the latest plans and all improvements shown on the plans, including the wall and the freezer. The neighbors had the ability to comment on these items as well as the overall project during and after as part of the public comment period. Neighbors did provide comments on these items to City staff.



- 3. The project does not meet CUP Finding A as the project is not compatible with and will adversely affect the livability of adjacent homes, and especially in terms of traffic generation.**

Staff's Response

In support of CUP Finding A, staff found that compliance with the CoAs imposed on the project, the location, size, and design of the proposed improvements will not have an adverse effect on the livability or development of abutting properties.

The project site has always had a parking and loading area adjacent to the residential property and has operated without restrictions. The noise was measured via an independent noise consultant for the City and by Code Compliance staff. Noise was found not to exceed the 1996 Noise Ordinance. With implementation of the CoAs related to the Semi-Truck and Truck Delivery Management, Transportation Improvements, loading dock on Lowell Street, truck gate screeching, and acoustical noise and buffering, adverse impacts will be reduced, and livability will be improved. Finally, it should be noted that if the Applicant were to remove the unpermitted improvements, the business could continue to operate unrestricted without imposition of any CoAs.

The City did consider the generation of traffic and capacity of the streets. The CoAs, which require sidewalks, loading docks, posted loading areas, and video enforcement, will improve circulation and pedestrian circulation and safety. The addition of a loading buzzer will improve bicycle safety. Specifically, the Semi-Truck Delivery Management Plan requires the Applicant to unload one-at-a time along the Lowell Street loading dock and that all semi-trucks be held in another location until the loading areas are clear. The Truck Loading Condition also notes that semi-trucks shall not unload on 57th Street within the right-of way. As such, limits have been placed on traffic generation.

- 4. The project does not meet CUP Finding B that the location, design and site planning will not provide a convenient and functional living and working environment.**

Staff's Response

The site has been used for food distribution activities since the 1940's and has been surrounded by residential uses throughout this period. The building takes up most of the site. The loading area along the side property line has been in that location since at least the 1950's as shown on the Sanborn maps. The Housing and Business Mix (HBX) land use classification takes into consideration the equal important of both housing and business within this area. The City determined that several CoAs were needed to ensure harmony between these uses. The design of loading docks on 57<sup>th</sup> Street and on Lowell Street will provide a convenient and functional working environment that accommodates the loading necessary for the business while ensuring that the operations are moved out of the public right way which is a pedestrian and vehicle safety issue and away from the side property line which is a concern for residents. The canopy, gate, and CMU wall, with implementation of the CoAs, will improve the noise situation for residents while retaining an existing business. The City found that with the inclusion of these CoAs, the project meets CUP Finding B.

- 5. The project does not meet CUP Finding E or Design Review Finding 3 that the project conforms in all significant respects to the LUTE policies and objectives or the HBX Design Review Guidelines. Specifically, that:**

- **The HBX-Zone is only 2-3 parcels in either direction surrounded by residential. The Zone does serve as transition between heavy industry and residential. The project**

cannot co-exist with residential development and it is anticipated that these issues and conflicts will grow.

- The project does not meet LUTE Policy 1/C4.2 Minimizing Nuisances.
- The project does not meet LUTE Objective T1.5. Reduce truck traffic impact on residential neighborhoods.
- The project doesn't meet design HBX Design Review Objective 1 and 4 as freezer doubled the height of the building as the freezer addition is of relatively the same height as the office building on the east side of the property and almost double the height of the warehouse and is not appropriately scaled to the location adjacent to a residential neighbor. The overall bulk will shadow the neighbor. A CMU wall was also built on the property line. These are not minor modifications and not have the benefit of the design review, restrictions on construction and opportunity to comment.

#### Staff's Response

- In addressing the zoning designation of the property, staff understands Appellant 2 to be arguing that the HBX zoning designation along Lowell Street is inappropriate due to the surrounding residential uses. However, the City is not able to rezone a property through the review of a specific development application that does not request a rezoning. In challenging the zoning, Appellant 2 does not state where the project doesn't conform to the General Plan, guidelines or criteria, specific or district plan adopted by the Planning Commission, but discusses the zoning of the site. This site has long been industrial surrounded by residential uses. The City did amend the zoning on October 31, 2006 when the site was changed from M-20 Zone to the HBX-2 Zone. The zoning of the site was further evaluated and amended during a process to rezone the entire City on March 15, 2011. At that time, the site was changed from HBX-2 to HBX-1. Further, even if the site was or in the future is rezoned, or the General Plan land use classification amended to be residential for example, the existing business would remain as a non-conforming use, able to operate, until the business closed.
- The project does meet LUTE Policy 1/C4.2 Minimizing Nuisances. This Policy notes that there is a potential to create nuisance impacts on surrounding residential land uses from new and existing industrial and commercial uses and should be minimized through siting and efficient implementation and enforcement of environmental and development controls. The building and business are already located on the site. CoAs allow for implementation and enforcement of development controls related to the proposed improvements and their contribution to the overall operation.
- The project does meet LUTE Objective T1.5. The Objective notes that many industrial activities need trucking services that are located adjacent to residential areas. Impacts such as noise, odor, and parking due to trucks directly affect resident's quality of life. The Objective does not require that all truck traffic be eliminated. The CoAs will reduce truck impacts to residential properties by moving some these activities off the residential street to the area zoned HBX.
- *HBX Design Review Objective 1 states: Create a development pattern that encloses the street space by defining a street wall and street section while providing transitions from existing patterns and respecting the light and air of residential properties, if present.*

This objective is related to setbacks, not height of a building. The guidelines under each objective must be met for the objective to be met. In this case, Guideline 1.1 and 1.2 are not applicable as the freezer addition is set back 108' from the street front. Guideline 1.3

is not applicable as the site is not residential, and the site is through lot. Guideline 1.4 is not applicable as this requires a limited side setback only at the front of the property and the freezer is 108' from the front. Guideline 1.5 requires design of setbacks to provide appropriate light and air to neighboring residential development. This guideline describes techniques that developments can use to mitigate light and air impacts on single family homes and duplexes with windows facing the sides of a new development. Methods to address this include setbacks, driveways, and recreational space that leave open areas between a property line and a proposed building and stepped back upper stories. The freezer mass is setback 5-13', sloped and is askew on the roof to reduce any impact. The other mechanical equipment on the roof is setback 30' from the side and rear (Aileen Street) property lines. As such, the freezer addition and mechanical equipment meets the above objective and guidelines. The wall is not a building as noted in the Objective and Guidelines and is subject to Guideline 8.4.

- *HBX Design Review Objective 4 states: Use design techniques to scale buildings appropriate to their location.*

This objective is related to the height of a building. The guidelines under each objective must be met for the objective to be met. In this case, Guideline 4.3 is not applicable as this relates to breaking up a façade through massing, modulation, window patterns, colors, textures, strong entries, varied and visually interesting materials, and the freezer is not at the front of the property. Guideline 4.1, 4.4, and 4.5 are not applicable as these pertain to human scale and street presence and the freezer is setback 108' from the front of the property. Guideline 4.4 is not applicable as the freezer does not affect the main entrance. Guideline 4.6 is not applicable as the project does not exceed the maximum height. Guideline 4.2 is applicable and notes that: A designer should apply methods to avoid an abrupt transition from adjacent shorter intact buildings, particularly residential buildings. Methods to address this include a partial setback, using a sloped roof as a transition and modulating heights near neighboring buildings. The freezer mass is setback 5-13', sloped and is askew on the roof to reduce any impact of the pop up roof. The other mechanical equipment on the roof is setback 30' from the side and rear (Aileen Street) property lines. As such, the freezer addition and mechanical equipment meets the above objective and guidelines. The wall is not a building as noted in the Objective and guidelines and is subject to Guideline 8.4.

The CMU wall and height are permitted per the Planning Code Section 17.108.140C and HBX Design Guideline 8.4: Provide landscape and architectural wall buffers for commercial and industrial activities.

See staff response above related to the freezer and wall and the public's ability to comment. Construction hours are set in the Oakland Municipal Code and cannot be revised, though it should be noted that both the freezer and wall are now existing.

**6. The Appellant alleges that the project does not meet Non-Residential Design Review Finding 1 or 2.**

Staff's Response

Staff has determined that the project meets the Non-Residential Design Review Findings 1 and 2.

- *Finding 1 states: That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-*

*composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060.*

- *Findings 2 states: That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.*
- Appellant 2 alleges that the freezer elevation does not result in a well-composed design with respect to bulk, height, and arrangement given the lack of a setback or transition from the residential properties. As noted in the above response, the freezer is set back over 108' from the street, and between 5-13' from the side property lines. This reduces the bulk from the street and is sloped and askew on the roof, providing an appropriate transition. Although the freezer did increase in height, the freezer is under the permitted height limit.

Appellant 2 alleges that the loading dock and canopy are a new principal facility and expansion, given the openness, will impact neighbors. The loading dock is not a new principal facility, but the canopy is. Staff concurs that the expansion, given its openness will impact neighbors. See staff's response to Appellant 1's arguments 4, 6 and 7. Implementation of the CoAs will alleviate impacts on neighbors by addressing loading operations. Despite the openness of the facility, the CoAs, which restrict hours, number of vehicles, and require acoustical buffering, will reduce impacts to neighbors. See also staff's response to neighbor's concerns regarding Condition 40 in the report below.

Appellant 2 alleges that the open facility is not consistent with the HBX-1 Zone and does not harmonize with the residential property. As discussed in the responses above and in response to neighbor's concerns regarding Condition 40 in the report below, the proposed open facility is an extension of the existing loading area which has been used since the 1940's. The canopy covers the outdoor storage area, the loading docks will improve conditions in the public right-of-way, the CMU wall and gate will have acoustical measures to reduce. Finally, the CoAs will restrict operations, include public right-of-way improvements and reduce noise thereby improving the area.

- Appellant 2 alleges that the CoAs are not sufficient to address the impacts. As stated in the decision letter and throughout this report, the CoAs will improve the overall noise and truck traffic situation adjacent to residential uses. Examples include the Semi-Truck Delivery Management Plan which will restrict hours of operation and arrival of these vehicles. Further, staff has clarified Condition 38 in *Attachment I* related to the Semi-Truck Delivery Management to include outdoor use of forklifts before 7:00 AM. The Transportation Improvements will increase safety for pedestrians and vehicles, include loading zones and loading areas and timeframes. The washing of trucks is no longer permitted. The gate screening will reduce noise. The Loading System, Truck Loading and Truck Parking CoAs will require a new loading dock off Lowell Street with no loading or parking in the public right of way on 57<sup>th</sup> Street. The Delivery Management Condition again sets hours of operation and number of trucks in the early morning hours. The Acoustical Buffering Condition will reduce noise emanating from the business. Finally, an Enforcement CoA is also included.

7. The Appellant challenges several statements staff made in support of concluding that the project is exempt from environmental review under the California Environmental Quality Act based on the exemption provided in CEQA Guidelines Section 15301 Existing Facilities. Specifically, Appellant 2 argues that:

- The expansion of the freezer increased freezer capacity and that expanded the use, and as such, is not a “minor alteration”;
- There was no evidence to support the City’s determination that the business did not expand.
- The CoAs do not prevent the business from expanding;
- The project is disqualified from the use of an Exemption because it meets the Exceptions for use of an Exemption for a project having a cumulative impact and unusual circumstances.

#### Staff’s Response

The City determined that the project was exempt from CEQA pursuant to four Exemptions. As noted in the decision letter, each Exemption provides a separate and independent basis for why the project is exempt. Appellant 2 is only challenging one of the Exemptions in the Appeal. Each basis of Appellant 2’s challenge to the existing facilities exemption is addressed below.

- Staff has concluded that the project is exempt per CEQA Guidelines Section 15301. Minor alteration of existing private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination are eligible for this Exemption. This exemption acknowledges that it may apply to alterations or construction, including additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet. The exemption further acknowledges that both interior and exterior alterations, including those involving plumbing and electrical conveyances, fall under this exemption.
- The project is not an expansion of use beyond that existing for CEQA purposes. As discussed in the Determination letter, the project site already contained a food distribution operation with no restriction on hours of operation, number of employees, number of shifts, noise control, truck loading, parking, and washing, and management. The City did make a determination regarding whether the business expanded in 2017, and ultimately concluded that the City had insufficient evidence that the business expanded resulting in an increase in noise over what occurred in 1996. This revised determination was sent to the business owner as well as the neighbors and was not appealed. While, more recently it has been shown that Suprema increased employees and trucks, staff can still not conclude that this resulted in a greater degree of noise non-conformity.
- The CoAs do prevent the business from expanding in certain ways. The approval places restrictions on the hours of operation, location and times of loading and unloading, prohibits washing of vehicles, requires site and operation improvements that improve noise, traffic, and other issues of concern, requires measures to ensure enforcement.
- Finally, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2 that would disqualify it from using an exemption. The project will not result in a cumulative impact of successive projects that occur over time. The threshold is that over time successive projects have resulted in a cumulative impact that requires additional CEQA review. No additional projects are proposed for the site, and staff considered the entire project when making our determination. As noted in the decision letter, the site has been consistently used as a food distribution center. Any improvements increased the

operational efficiency and did not result in a cumulative impact that triggered the City's CEQA Thresholds of Significance. These thresholds are different than the Findings for a CUP or for a nuisance. Finally, the project will not result in a significant effect due to the unusual circumstances as noted in the decision letter. The neighborhood remains partially industrial and partially residential. This is not unusual, especially in north and west Oakland which were originally developed with worker housing nearby ship yards and other related shipping and industrial businesses. The fact that the neighborhood has increased its residential units or that improvements are proposed to the area does not make the addition of a loading dock and canopy and other improvements unusual pursuant to CEQA.

- 8. CoA 2: Effective Date, Expiration, Extensions and Extinguishment will be ineffective as the residents should not be subjected to further nuisances as the CUP is being challenged.**

Staff's Response

The OMC and Planning Codes contain two separate and different processes for addressing complaints and both Codes provide due process rights that require an investigation and confirmation of the violation and, if found, methods to address compliance including the possibility of appeals. These rights are not altered with approval of a Planning Permit. While the City has not specifically declared that Suprema has operated as a nuisance per the OMC or California Civil Code, Suprema did agree to enter into a Compliance Plan with the City to mitigate Suprema's impact on nearby properties, specifically with regard to noise and traffic impacts and unpermitted property improvements. See staff's response to Appellant 2's argument #1 above.

Appellant 2 is correct that Condition 2 will not be effectual if the CUP is challenged in court. Once an Appeal or lawsuit is filed, the Planning permit and implementation of the CoAs are held in abeyance until those processes have been resolved. Until that time, any nuisances, per the OMC, would need to be resolved under the OMC enforcement proceedings. It should be noted that whether or not the Planning Commission overturns the Zoning Manager's decision and upholds Appeal 2, any nuisance complaint, per the OMC, would be addressed through the OMC investigation and enforcement proceedings.

- 9. CoA 5: Compliance with CoAs will be ineffective as the City has not enforced resident's complaints. The City rarely issued fines for violations and instead choose to settle violations rather than expend resources.**

Staff's Response

See staff's response above regarding the differences in enforcement proceeding based on nuisances as defined in the OMC.

However, an additional method to address non-compliance with the CoAs is included as part of approval of a Planning permit. Condition 5 is placed on all projects and provides the City with the ability to proceed with enforcement and possible revocation of the Planning permit pursuant to Section 17.152 of the Planning Code. This Section also requires an investigation of the complaint. If a determination is made that sufficient evidence does not exist to set a revocation hearing, the complainant may appeal the Determination to a City Hearing Officer. The Hearing Officer's decision may be appealed to the Planning Commission and further appealed to the City Council who could choose to revise the CoAs, revoke the CUP, or remove the features/uses requiring the CUP. Staff believes that this process along with the videos and other CoAs will be effective to address compliance. This process, though not quick, has been used effectively in the past.

- 10. CoA 30: Semi-Truck Delivery Management Plan will be ineffective as Suprema loads their**

trucks in the public-right-of way causing hazardous situations. The use of the street as a loading zone should be prohibited. The business owner cannot enforce non-Suprema owned trucks from arriving at non-business hours or using designated truck routes.

#### Staff's Response

Staff agrees that the public right-of-way should not be used as an extension of the loading area. It is anticipated that the installation of a sidewalk along Lowell, the loading dock along Lowell and the Semi-Truck Delivery Management Plan and Truck Loading Condition will alleviate the use of the public right-of-way as a loading zone. Specifically, the Semi-Truck Delivery Management Plan requires that the Applicant unload one truck at a time along the Lowell Street loading dock and that all semi-trucks be held in another location until the loading areas are clear. The Truck Loading Condition also notes that semi-trucks shall not unload on 57<sup>th</sup> Street within the right-of way. The Enforcement Condition requires video evidence be submitted to verify compliance and requires either Compliance or Revocation if more than three instances occur in a 30-day period. Staff believes that compliance with these CoAs will be effective in eliminating a public vehicle and pedestrian safety hazard.

- 11. CoA 31: Transportation Improvements will be ineffective to address pedestrian concerns and conflict with the implementation of a planned bike lane. The Appellant notes that given the location of the proposed sidewalk and loading dock on Lowell Street with hundreds of fork lifts trips per day, a second sidewalk is needed on the east side of Lowell Street for pedestrians to ensure that the loading dock does not interfere with the proposed bike lane.**

#### Staff's Response

Staff disagrees with Appellant 2 for the following reasons:

First, the CoAs require the installation of a sidewalk and public improvements along the side of the Lowell Street for the safety of vehicles and pedestrians. It is typical practice for all development projects in Oakland to require an Applicant to install sidewalks on streets fronting the development. There is no need to require a second sidewalk across Lowell Street as this area is not affecting the loading operation. These improvements would be required when that site gets developed.

Second, there are many instances throughout the City where loading occurs across sidewalks. This is especially true in the Downtown or on commercial corridors where many older buildings were built without any or adequately sized loading docks to accommodate large trucks. It is also true that these areas have a high rate of pedestrian usage and are in areas with bike lanes. Staff does not concur that the proposed loading dock for Lowell Street will need to accommodate a semi-truck "inside the building" Though, one Suprema truck should be accommodated inside the building as shown on the approved plans. The dock will eliminate the need to have forklifts traverse the City streets. Staff would also recommend that an additional CoA to install a buzzer be imposed to address pedestrian/vehicle safety conflicts in *Attachment I*. This Condition is typically placed on other loading or parking driveways to prevent collisions and has been vetted with the Department of Transportation. However, staff would not recommend this Condition if the hours of operation are revised to be before 7:00 AM as it will result in additional noise.

#### Requested Changes to the CoAs based on the Appeals

In addition to the CoAs outlined above, Appellant 2 also requests additional changes to the CoAs. Below is a discussion of those items in bold along with staff's response.

1. **The Appellant notes that the gate along 57<sup>th</sup> Street “screeches” as it moves in the tracks. The Appellant is requesting a taller, quieter model with sound attenuation characteristics.**

Staff’s Response

Staff agrees that a taller, quieter gate could improve noise in the area. To address neighborhood concerns, staff recommends that a CoA be added to this Condition as outlined in *Attachment I*.

2. **The Appellant requests clarification that the proposed loading facility on Lowell Street noted in CoA 35: Street Improvements and Loading System will be consistent with the Compliance Plan in that the facility will accommodate one truck inside the existing warehouse.**

Staff’s Response

See Appeal 2 staff response to argument #11 above. Staff has added clarifying language in Condition 35 as outlined in *Attachment I*.

3. **The Appellant is concerned that the measures in CoA 40: Acoustical Buffering and Noise Prevention do not adequately address noise from the project operation. The Appellant believes that the additional measures which were noted in the 2015 Wilson report should be included as well as the recommendation to enclose the entire loading dock area and add the provision of a roll-up door. The entire enclosure would be treated with acoustical absorption.**

Staff’s Response

The 2014 Wilson Report was written without the benefit of seeing the CoAs staff would require. That said, CoA 40 includes items a-d first noted in the Appeal and the 2014 Wilson report. While enclosure of the entire loading zone area along 57th Street would be beneficial in terms of noise; staff did not require this as we are requiring a loading dock on Lowell Street and a Semi-Truck Delivery Management Plan which includes discontinuance of all outdoor forklift movement (per the revised Condition in *Attachment I*) and delivery staging activities (i.e. movement of vehicles, equipment, and product into position for loading), vehicle loading and unloading activities, and vehicle & equipment maintenance activities at the 57th Street open loading facility between the hours of 8 pm and 7 am (daily). Staff believes that this would alleviate the need to enclose the 57th loading facility.

However, staff is not opposed to including the additional measures a and c in Condition 40 to further reduce the noise in this location. Per the HBX Design Guidelines (Guideline 8.4), “Providing the appropriate buffering between properties is critical in allowing the various activities in the HBX zones to coexist compatibly. Therefore, lots that contain commercial or industrial activities (not including those in live/work units) and new residential construction next to existing commercial or industrial properties should provide sufficient landscaping and buffering to mitigate noise and visual impacts to the residential activities.” However, staff is not at this point recommending that measure b be included in the Condition as a freestanding wall adjacent to residential would require a Minor Variance for a height great than 10’ per Planning Code Section 17.108.140C.

4. **The Appellant is concerned that the measures in CoA 42: Enforcement will not alleviate the burden on neighbors to report violations or complaints.**

Staff’s Response

The City has the discretion to determine compliance, methods of compliance and what evidence is



considered to be acceptable to make such a determination. Further, it should be noted that in a City with over 425,000 residents, thousands of businesses and approximately 50 Inspectors, the Department does not have the ability to proactively conduct Code Enforcement. The City will continue to rely on neighbors to report compliance violations.

CoA 5c discusses Compliance with the CoAs and the measures available to the City to address non-compliance including civil, criminal enforcement, abatement proceedings, or revocation of the approval.

That said, Planning staff has used videos in the past to determine compliance and Condition 10 to recoup staff costs of reviewing the videos for compliance. Where this has been applied, the Applicant has supplied the videos and staff has reviewed them for compliance on a semi-regular basis. Staff believes that the application of this Condition is the best method to ensure compliance while addressing the Department's staffing resources.

**CONCLUSION**

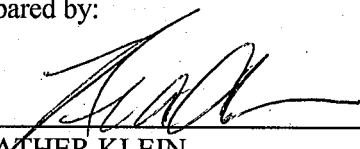
Neither Appellant has demonstrated an error or abuse in discretion by the Zoning Manager, thus City staff considers the Decision to be valid and accurate. Staff has reviewed the project and operation as a whole as the project expanded the business and overall movement of product throughout the business and along the street. Staff believes that the CoAs will address the adverse effects occurring for neighbors and are reasonable and typical for such a business directly adjacent to residential uses. Staff has also considered and included several additional CoAs that will further reduce impacts to neighbors.

One of these CoAs was clarification regarding the Lowell Street loading dock. It should be noted that Planning staff would not have recommended approval of the project without the inclusion of the Lowell Street loading dock. If Appellant 1 does not wish to implement the loading dock, the applicant must re-apply for a Revision to this approval.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination, and Deny both Appeals and uphold the Zoning Manager's decision based on the Findings and Conditions of Approval, including the additional Conditions in Attachment I.

Prepared by:

  
HEATHER KLEIN  
Planner IV

Reviewed by:

  
ROBERT MERKAMP  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:



---

EDWARD MANASSE  
Deputy Director  
Bureau of Planning

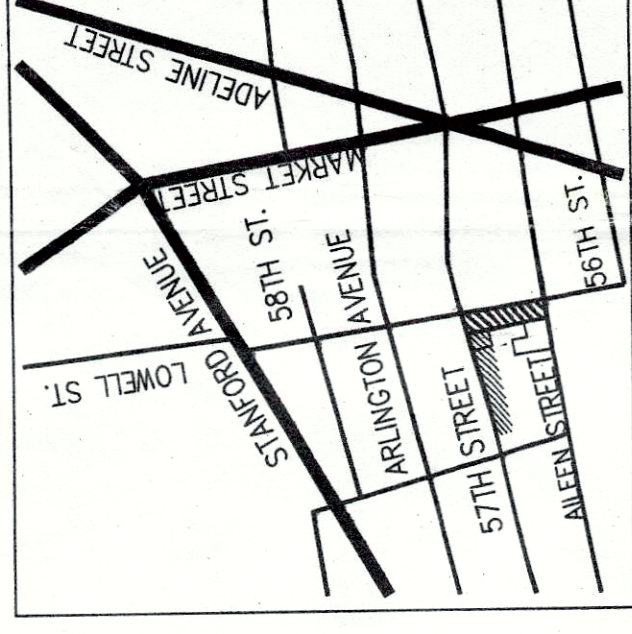
**ATTACHMENTS:**

- A. Project Plans, dated March 21, 2015
- B. City Determination Planning Code Section 17.120.050, dated March 1, 2016
- C. Revised City Determination Planning Code Section 17.120.050, dated October 19, 2017
- D. Zoning Manager's Decision dated February 8, 2018 with CEQA Findings
- E. Appeal filed by Steven J. Hassing on behalf of Suprema (Appeal 1)
- F. Appeal filed by Kim Lucas on behalf of the Golden Gate Community Association (Appeal 2)
- G. Deposition of Miguel Jara, taken January 23, 2019, Excerpt from Second Amended Complaint Seeking Declaratory Relief (pages 1-4 and 12-18)
- H. Annotated Site Plan, describing areas in the decision letter and Appeal staff report / Staff Photos from Site Visits or other documents within the Project File
- I. Proposed Amendments to the CoAs based on the Appeals, redline version.
- J. Golden Gate Community Association Appeal presentation

**LEGAL NOTICE:**

**ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.**

VICINITY MAP



SHEET INDEX

- P1 EXISTING SITE PLAN
- P2 PROPOSED SITE PLAN
- P3 1ST FLOOR PLAN
- P4 2ND FLOOR PLAN
- P5 ELEVATIONS
- P6 SITE PHOTOS
- P7 EXISTING ROOF PLAN
- P8 MECHANICAL UNIT ELEVATIONS

KEYNOTES

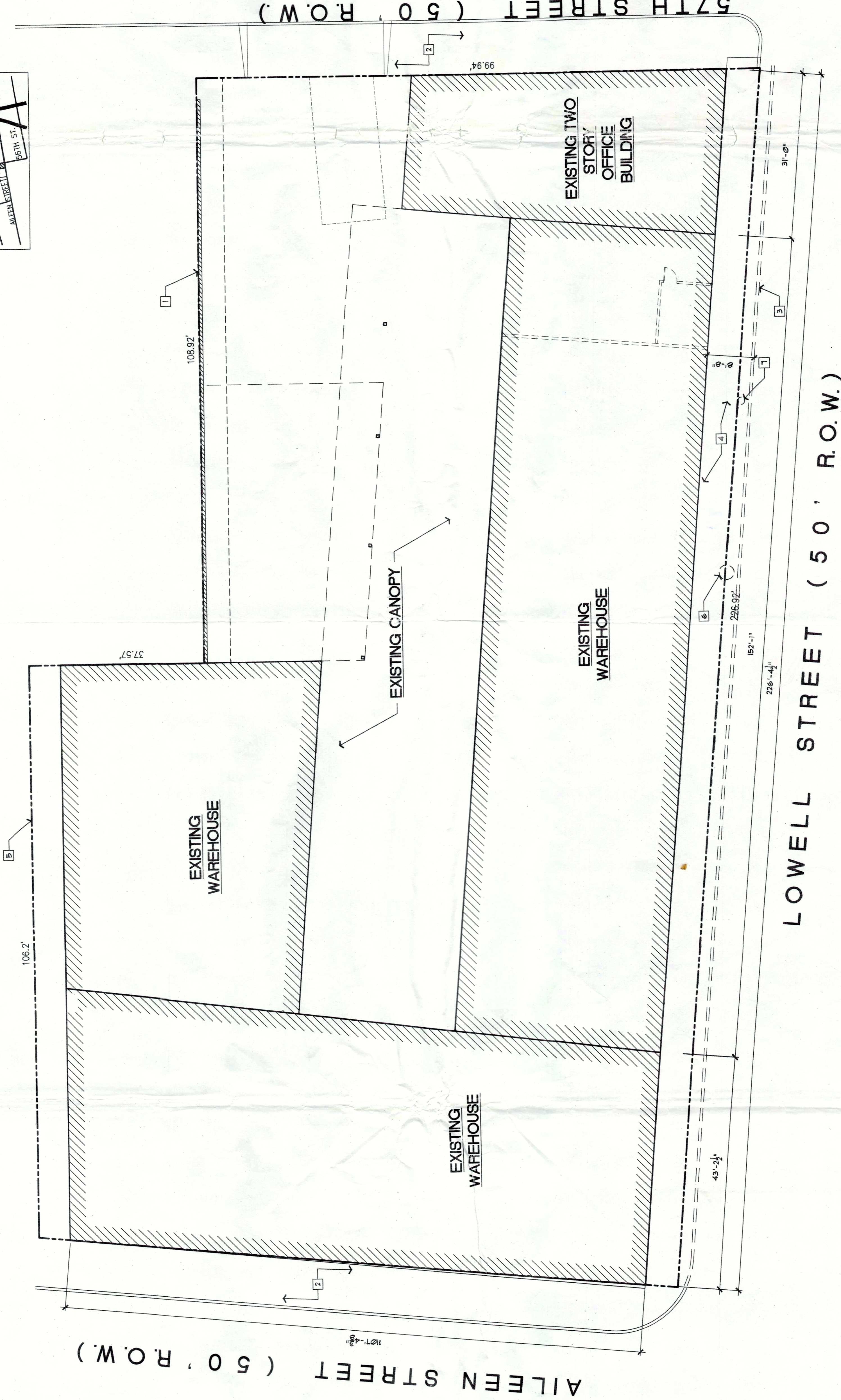
- 1 (E) 10'-0" CMU WALL W/ 3" BRICK CAP & VENER
- 2 (E) CITY SIDEWALK
- 3 (E) AC CURB
- 4 (E) GRAVEL SURFACE
- 5 (E) PROPERTY LINE
- 6 (E) LIGHT POLE
- 7 (E) ABANDONED POLE

PROJECT INFORMATION

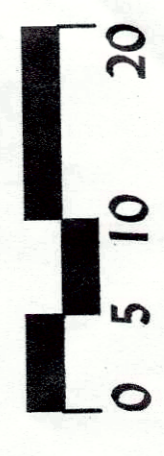
ZONING: HBX-1 HOUSING AND BUSINESS MIX  
 LOT AREA: 4,060 SF  
 MINIMUM LOT FRONTAGE AND WIDTH: 35 FT.  
 EXISTING LOT FRONTAGE AND WIDTH: 99.9 FT.  
 EXISTING FOOTPRINT: 15,328 SF (CONDITIONED)  
 FOOTPRINT W/ PROPOSED AND EXISTING CANOPIES: 20,725 SF

FLOOR AREA RATIO: 17% ALLOWABLE  
 ACTUAL FLOOR AREA RATIO (FAR): 2/49  
 BUILDING SF INCLUDING 2ND FLOOR / 23,014 SF SITE = 94  
 PROPOSED FOOTPRINT: NO CHANGE  
 PROPOSED FAR: NO CHANGE

ALLOWABLE BUILDING HEIGHT: 35'-0"  
 EXISTING BUILDING HEIGHT ABUTTING RM-2: 30'-0"  
 PROPOSED BUILDING HEIGHT AT TECH. SCREENS: 27'-4"  
 EXISTING BUILDING HEIGHT OFFICE BUILDING: 27'-4"  
 CONSTRUCTION TYPE: V B WOOD FRAME  
 BUILDING OCCUPANCY: B, S-1, AND S-2  
 FIRE SPRINKLERS: NONE  
 PROPOSED ADDITION: NO CHANGE



APR 03 2015  
 APRIL REVISION



M+S JOB NO.: 4.233

MARCH 31, 2015 DECEMBER 10, 2014 OCTOBER 7, 2014

**SUPREMA-OAKLAND** (DESIGN REVIEW PERMIT)

OAKLAND, CALIFORNIA  
 SUPREMA MEAT COMPANY

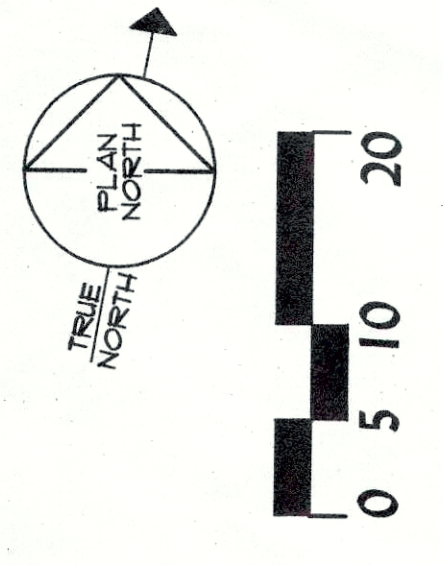
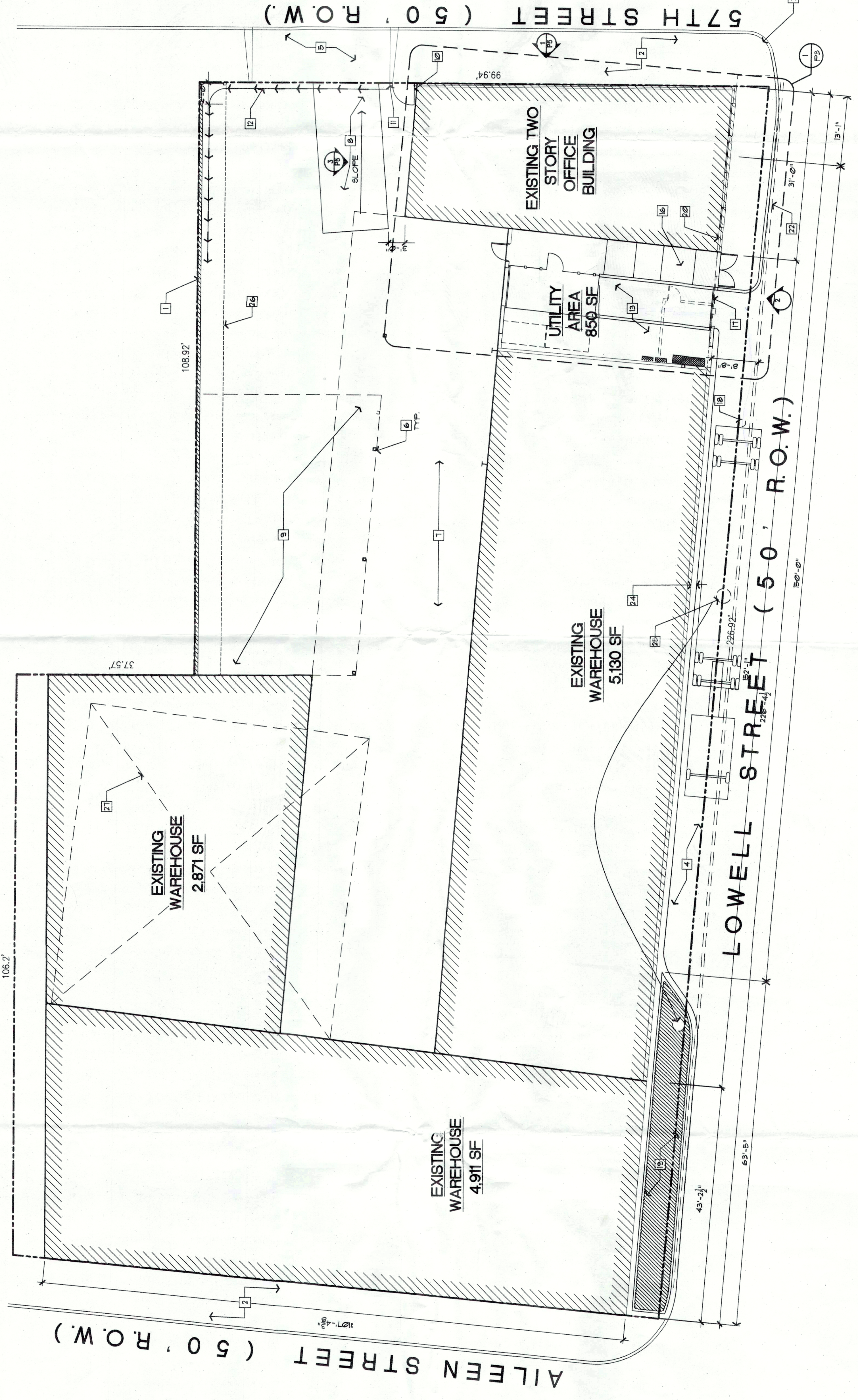
**PI**

EXISTING SITE PLAN

**craig MIERS + george SCOTT ARCHITECTS**  
 824 South Clark Drive, Suite 200  
 Oakland, CA 94612  
 510.762.0000  
 510.762.0002 fax  
 craig@miersscottarchitects.com

- KEYNOTES**
- 1 (E) 10'-0" CMU WALL W/ 3" BRICK CAP & VENER
  - 2 (E) CITY SIDEWALK
  - 3 (E) AC CURB
  - 4 AC PAVING PER CITY STANDARDS
  - 5 (E) CONCRETE DRIVEWAY APPROACH
  - 6 (E) CANOPY COLLUMS
  - 7 (E) CANOPY
  - 8 PROPOSED LOADING DOCK
  - 9 PROPOSED INSULATED PANEL CANOPY (UNDER REVIEW CIP APPLICATION)
  - 10 PROPOSED 42" METAL GATE
  - 11 PROPOSED 6x6 T.S. TYP. OF 5
  - 12 PROPOSED SEGMENTED SLIDING GATE
  - 13 REMOVE (E) BUILDING SLAB AND PROVIDE STREET LEVEL CONC. SLAB FOR TRUCK ACCESS FROM LOWELL STREET
  - 14 OVERHEAD DOORS
  - 15 RELOCATE ELECTRICAL MAIN SWITCH PANEL
  - 16 PROPOSED RAMP
  - 17 PROPOSED OVERHEAD DOOR
  - 18 REMOVE 'OLD' POWER POLE
  - 19 PROPOSED LANDSCAPING
  - 20 (E) WALLS
  - 21 (E) CITY SIDEWALK AND CURB
  - 22 (E) AC CURB TO BE REMOVED
  - 23 AC PAVING SLOPE 2% TO (E) CURB LOCATION
  - 24 1'-0" WIDE CURB AGAINST THE BUILDING
  - 25 RELOCATE (E) CITY STREET LIGHT
  - 26 5'-0" BUILDING SETBACK LINE
  - 27 PROPOSED AREA HEIGHT INCREASE TO EXISTING FREEZER AREA

TOTAL ENCLOSED WAREHOUSE AND UTILITY AREA SF = 13,762 SF

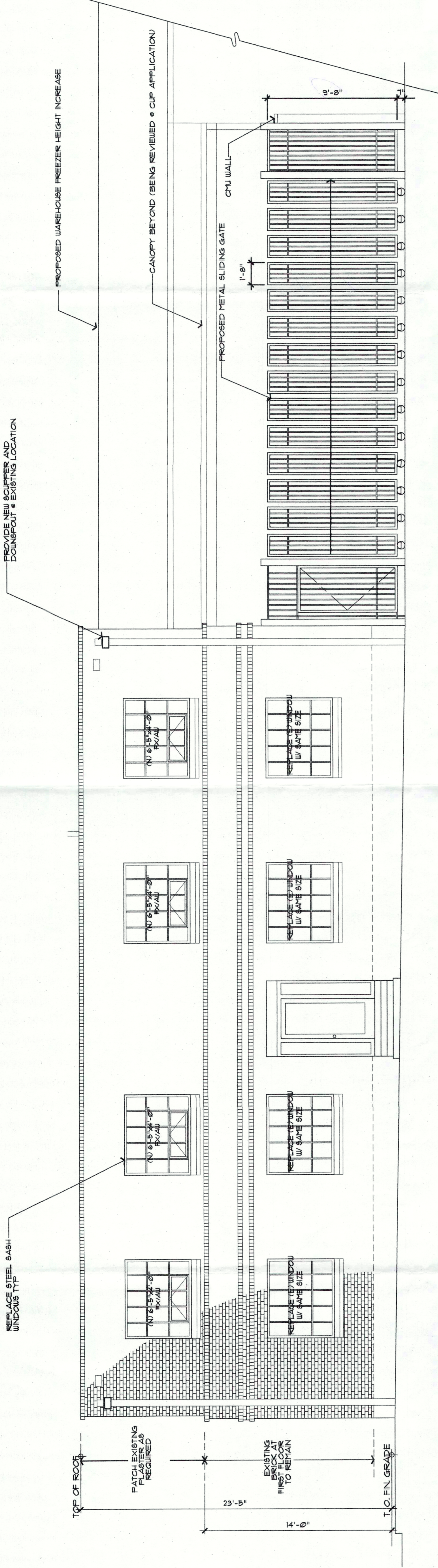


**SUPREMA- OAKLAND** ( DESIGN REVIEW PERMIT )  
 OAKLAND, CALIFORNIA  
 SUPREMA MEAT COMPANY

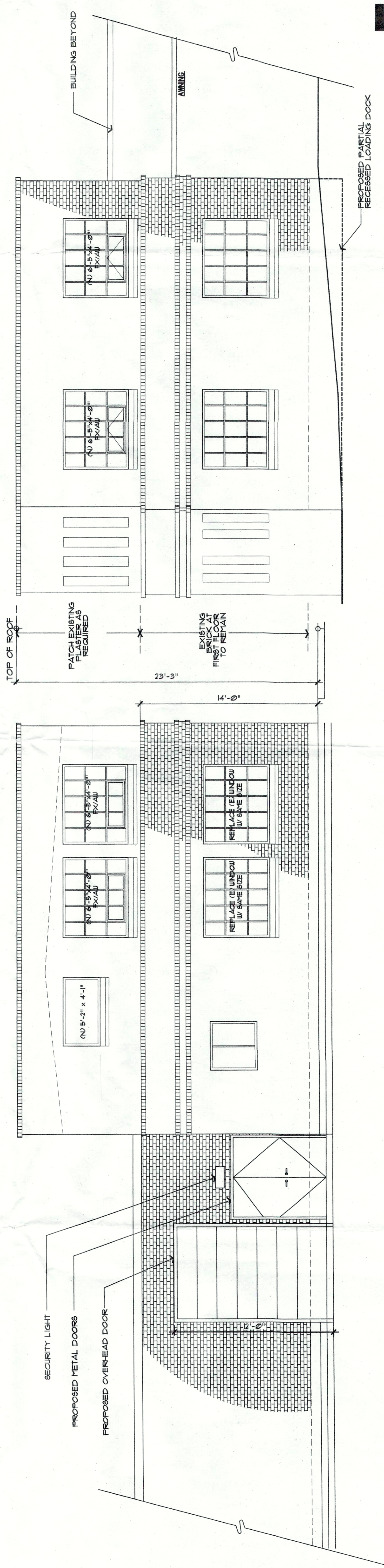
M+S JOB NO.: 4.233  
 MARCH 31, 2015 DECEMBER 10, 2014 OCTOBER 7, 2014

**craig MIERS + george SCOTT ARCHITECTS llp**  
 1624 Santa Clara Drive, Suite 200  
 Berkeley, CA 94601  
 916.833.2207 mobile  
 916.833.2207 fax  
 craig@miers-scott.com

**PROPOSED SITE PLAN**  
**P2**

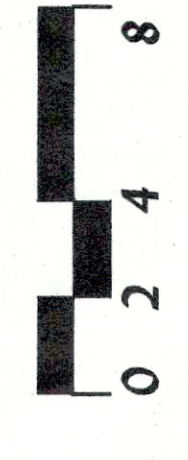


1 NORTH ELEVATION  
1/4"=1'-0"



3 WEST ELEVATION  
1/4"=1'-0"

2 EAST ELEVATION  
1/4"=1'-0"



**SUPREMA- OAKLAND** ( DESIGN REVIEW PERMIT )  
 OAKLAND, CALIFORNIA  
 SUPREMA MEAT COMPANY

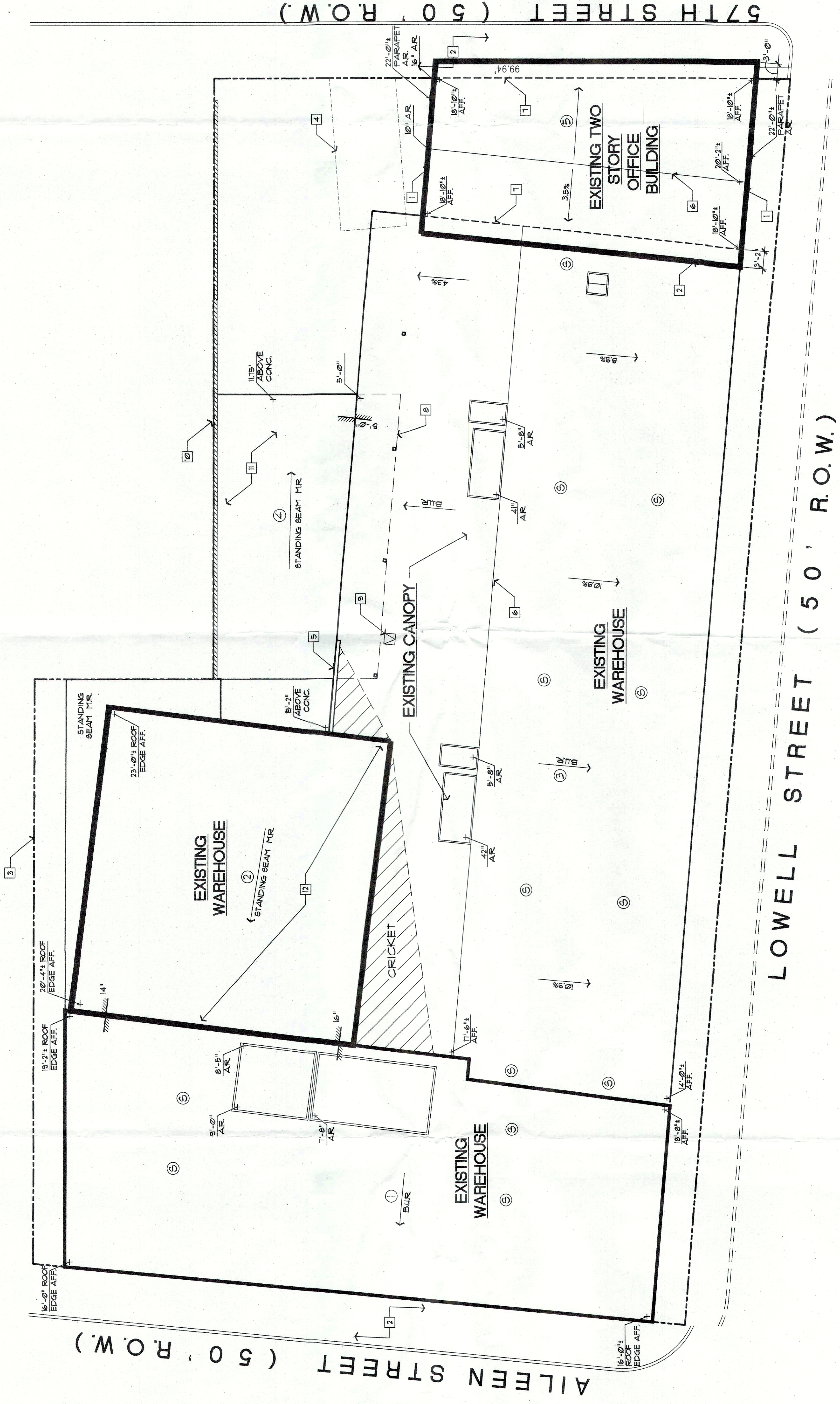
M+S JOB NO.: 4.233  
 MARCH 31, 2015 DECEMBER 10, 2014 OCTOBER 7, 2014

craig MIERS + george SCOTT ARCHITECTS llp  
 824 BAY ST. OAKLAND, CA 94612  
 949.763.0050 FAX 949.763.0052  
 949.763.0052 FAX 949.763.0052  
 cmi@scottmiers.com

**P5**  
 ELEVATIONS

LEGEND	
	SKYLIGHT
	EQUIPMENT ROOF SCREENS
	SQUIRREL CAGE VENTILATOR
①	4.44% ± ROOF SLOPE
②	4.17% ± ROOF SLOPE
③	10% ± ROOF SLOPE
④	5.40% ± ROOF SLOPE
⑤	XXXX% ± ROOF SLOPE
AR	ABOVE ROOF
BLR	BUILT UP ROOF
MR	METAL ROOF
←	DIRECTION OF ROOF SLOPE

KEYNOTES	
1	(E) PARAPET
2	(E) OVERHANG
3	(E) PROPERTY LINE
4	(E) DOCK AREA BELOW
5	(E) PARAPET
6	(E) RIDGELINE
7	(E) BUILDING WALL BELOW
8	(E) CANOPY EDGE BELOW
9	(E) ROOF HATCH
10	(E) 10'-0" CRTU WALL W/ 3" BRICK CAP & VENER
11	PROPOSED CANOPY PER CUP. APPLICATION
12	AREA OF PROPOSED ROOF HEIGHT INCREASE

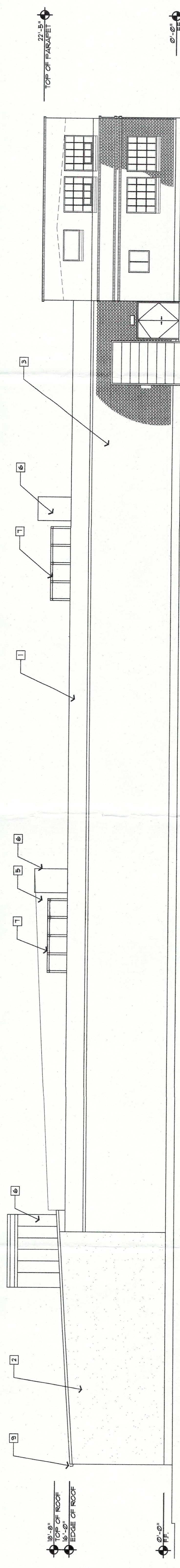


**SUPREMA- OAKLAND** ( DESIGN REVIEW PERMIT )  
 OAKLAND, CALIFORNIA  
 SUPREMA MEAT COMPANY

MARCH 31, 2015 ~~DECEMBER 10, 2014~~ ~~OCTOBER 7, 2014~~  
 M+S JOB NO.: 4.233

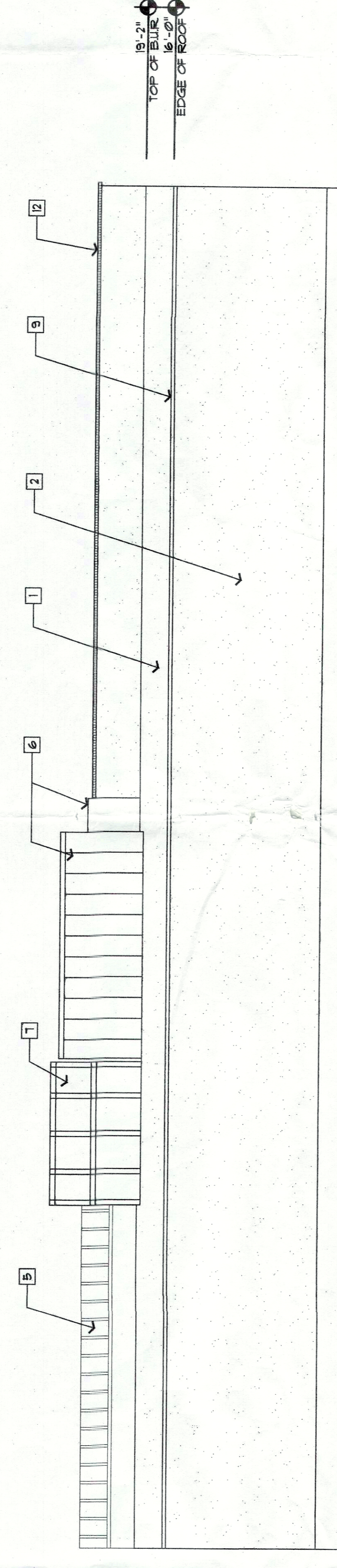
**craig MIERS + GEORGE SCOTT ARCHITECTS llp**  
 824 Santa Clara Drive, Suite 200  
 Berkeley, CA 94601  
 949.380.2252 mobile  
 949.380.2252 fax  
 craig@miersandscott.com

**P7**  
 EXISTING ROOF PLAN

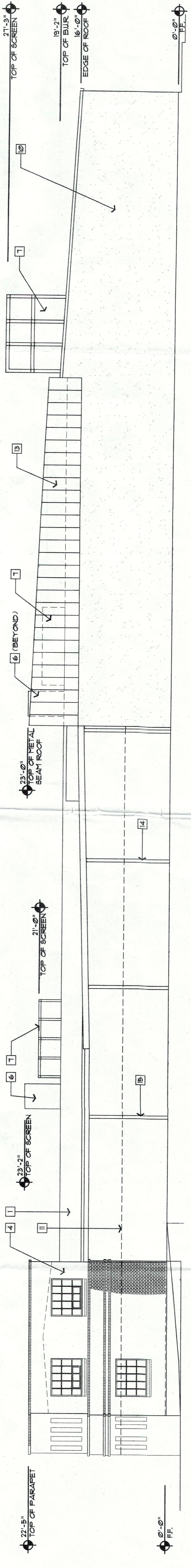


3 - EAST ELEVATION (LOWELL STREET)  
1/8" = 1'-0"

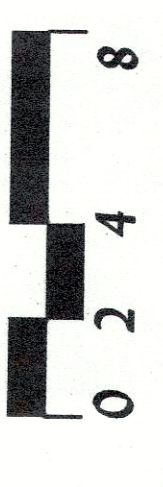
- 1 (E) BUILT UP ROOF
- 2 (E) PLASTER
- 3 (E) BRICK FINISH
- 4 PROPOSED BRICK FINISH
- 5 STANDING BEAM METAL ROOF BEYOND OF RAISED ROOF AREA
- 6 (E) MECHANICAL SCREEN-INSULATED PANEL
- 7 (E) MECHANICAL SCREEN
- 8 (E) PAINTED SHEET METAL ROOF EDGE
- 9 (E) PAINTED SHEET METAL GUTTER
- 10 (E) MASONRY
- 11 (E) CMU WALL (NOT SHOWN FOR CLARITY)
- 12 EDGE OF OFFICE BUILDING BEYOND
- 13 INSULATED PANEL FINISH, OF RAISED WAREHOUSE AREA
- 14 CANOPY COLLING
- 15 (E) STEEL COLUMN



2 - SOUTH ELEVATION (AILEEN STREET)  
1/8" = 1'-0"



1 - WEST ELEVATION (RESIDENTIAL PROPERTY LINE)  
1/8" = 1'-0"



**SUPREMA- OAKLAND**  
OAKLAND, CALIFORNIA  
SUPREMA MEAT COMPANY

( DESIGN REVIEW PERMIT )

M+S JOB NO.: 4.233  
MARCH 31, 2015 DECEMBER 10, 2014 OCTOBER 7, 2014

craig MIERS + george SCOTT ARCHITECTS llp  
104 Santa Clara Drive, Suite 200  
Berkeley, CA 94704  
949.230.2227 mobile  
949.230.2227 fax  
cm@miersscottarchitects.com

MECHANICAL UNIT ELEVATIONS **P8**

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building  
Zoning Division

(510) 238-3911  
FAX (510) 238-4730  
TDD (510) 238-3254

## **SENT VIA EMAIL AND US MAIL**

March 1, 2016

Miguel Jara  
Suprema Meats  
955 57 Street, LLC  
955 57<sup>th</sup> Street  
Oakland, California 94608

Steven J. Hassing  
Law Offices of Steven J. Hassing  
425 Calabria Court  
Roseville, California 95747

RE: Determination of Nonconforming Status - Suprema Meats, 955 57<sup>th</sup> Street

Dear Mr. Jara and Mr. Hassing:

As summarized here, and explained below in detail, the City has determined that the Suprema Meats activity is now subject to current performance standards in Oakland Planning Code (OPC) Chapter 17.120 because Suprema's activity has changed since its inception in early June 1996 and this has resulted in a greater degree of nonconformity with respect to noise and other applicable standards. Thus, the requirements of OPC Chapter 17.120, including section 17.120.050 regarding noise, now apply. This determination is appealable within ten (10) days of the date of this letter, which is March 11, 2016, by 4:00 p.m.

It is the City's understanding that the Suprema activity started in early June 1996, and pre-dated the adoption of Ordinance No. 11895 C.M.S. (June 11, 1996), which established noise (and other) performance standards, codified in OPC Chapter 17.120. As I stated in my January 19, 2016 letter to you, while the Suprema activity may have been grandfathered in, such that it was previously not subject to performance standards, the operation could not be changed to result in a greater degree of nonconformity.



In a letter dated December 24, 2015, and again in the aforementioned January 19, 2016 letter, the City requested information regarding Suprema's operations prior to the June 11, 1996 Performance Standards Ordinance going into effect. To date, the City has not received the requested operational information. Therefore, the City has evaluated the non-conforming status based upon available documentation. This includes, 1) Suprema revenue information previously provided by you, 2) other revenue information publically available on Suprema as a result of a lawsuit from 2004, 3) information submitted by Suprema in support of the current Zoning application for a Conditional Use Permit, Design Review, and Variance, 4) information submitted by neighbors in response to the current Zoning application, and 5) other relevant information.

Based on the evaluation of the above, the City hereby determines that the Suprema Meats activity is now subject to current performance standards in OPC Chapter 17.120. As I stated in my January 19, 2016 letter, such a determination is based on OPC section 17.114.080 (Nonconforming Activity – Allowed alterations and extensions), and specifically 17.114.080.C. This section states:

“any activity which is itself a permitted activity where it is located and which is nonconforming only as to off-street parking or loading requirement, performance standards, or other requirements applying to activities may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, in any way which does not result in a greater degree of nonconformity with respect to such requirements and which conforms to the requirements normally applying to uses where the activity is located.”

Of primary importance is the issue of whether any non-conformities exist related to Performance Standards (Planning Code Section 17.120). The Performance Standards Code Section 17.120.020 (Existing Activities), in turn, states:

“Activities existing on the effective date of the zoning regulations, or of a subsequent rezoning or other amendment thereto applying more restrictive performance standard to such activities, shall not be required to change their operation to comply with the performance standards. However, their operations shall not be so changed as to result in a greater degree of nonconformity with respect to such standards, except as otherwise authorized under the development agreement procedure in Chapter 17.138. For existing activities meeting the definition specified in Section 17.114.080.C, an expansion greater than twenty percent (20%) of production (e.g. non-administrative) floor area is *one example* [italics added] of a change in operations that shall be considered an increase in the degree of nonconformity.”

The City's position is that the Suprema activity has changed since its inception in early June 1996, which has resulted in a greater degree of nonconformity with respect to noise and other applicable standards. Hence, the requirements of OPC chapter 17.120, including section 17.120.050 regarding noise, now apply.

The determination that the facilities accommodating and/or serving Suprema's activity were altered or otherwise changed – resulting in a greater degree of nonconformity since the June, 1996 effective date of the current performance standards – is based on the following factors, each of which provides a separate and independent basis for the determination, and when viewed collectively provides an overall basis for the determination:

1. Significant business growth occurred up to at least the year 2002, including revenue growth from approximately \$12 million in 1998 to more than \$44 million in 2002, as evidenced in the Statements of Fact in the lawsuit between Mr. Jara and his father dating to 2004 (an almost 4-fold increase in revenue over 4 years), and including revenue growth from approximately \$41 million in 2001 to \$60 million in 2013, as evidenced by tax return data provided by you in May, 2015.
2. Physical improvements to the property including new rooftop refrigeration units, an additional canopy, and a new loading dock (currently unpermitted and subject to compliance action).
3. Since the Suprema activity is understood to have started in early June, 1996, it is unlikely that the business was operating at anywhere near its current activity level only 10 days later, on June 11, 1996, which again is the effective date of the current Performance Standards. Thus, the facilities accommodating and/or serving Suprema's activity have increased and been altered and/or otherwise changed.
4. Since about 2014, the City received an increased amount of neighbor complaints about Suprema's nuisance-related activity. Neighbors reported disturbances including, but not limited to, a high volume of traffic related to Suprema's business and constant noise and vibration from Suprema's equipment and operations, including without limitation increased truck traffic and forklift activity.

Pursuant to OPC section 17.132.02, if you, or any interested party, seeks to challenge this Administrative Determination/Interpretation, an **Appeal must be filed no later than** ten (10) days, from the date of this letter, which is **Friday, March 11, 2016, by 4:00 p.m.** An Appeal shall be on a form provided by the Zoning Division and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA, 94612, to the attention of Scott Miller, Zoning Manager. The Appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his decision is not supported by substantial evidence and must include payment of \$1,622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely file an Appeal will preclude you, or any interested party, from challenging the City's decision in court. The Appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the Appeal. Failure to

do so may preclude you, or any interested party, from raising such issues during the Appeal and/or in court.

Please do not hesitate to contact me at (510) 238-2235 or [smiller@oaklandnet.com](mailto:smiller@oaklandnet.com) should you want to discuss this determination, however, such communication does not substitute for timely filing of an appeal as described above.

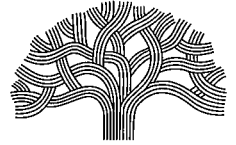
Sincerely,

A handwritten signature in cursive script that reads "Scott Miller". The signature is written in black ink and is positioned below the word "Sincerely,".

Scott Miller  
Zoning Manager

cc: Rachel Flynn, Director, Planning and Building Department  
Bill Quesada, Zoning Inspections Manager

# CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building  
Zoning Division

(510) 238-3911  
FAX (510) 238-4730  
TDD (510) 238-3254

## **SENT VIA U.S. AND ELECTRONIC MAIL**

October 19, 2017

Miguel Jara  
Suprema Meats  
955 57 Street, LLC  
955 57<sup>th</sup> Street  
Oakland, California 94608

Steven J. Hassing  
Law Offices of Steven J. Hassing  
425 Calabria Court  
Roseville, California 95747

RE: Revised Determination of Nonconforming Status - Suprema Meats, 955 57<sup>th</sup> Street

Dear Mr. Jara and Mr. Hassing:

As you are aware, on March 1, 2016, the City issued a formal "Determination of Nonconforming Status" to you (Formal Determination). The Formal Determination concluded that Suprema's operation had changed since inception in June 1996 such that new performance standards, including relating to noise, would now apply to Suprema pursuant to Oakland Planning Code Section 17.114.080 (New Noise Performance Standards). You appealed the Formal Determination on March 10, 2016, and provided supplemental materials which the City considered timely and thus reviewed (Appeal).

The Bureau of Planning has re-evaluated the Formal Determination, including a detailed review of your Appeal, and hereby rescinds and replaces the Formal Determination with this new Determination (New Determination), essentially concluding that Suprema is NOT subject to the New Noise Performance Standard.

The City has re-evaluated the relevant facts regarding the history of the Suprema activity in light of the information provided in the Appeal. It continues to be the City's understanding that the Suprema activity started in early June 1996 (essentially taking

over a facility that had been used for many years for meat and/or seafood warehousing and distribution), and pre-dated the adoption of Ordinance No. 11895 C.M.S. (effective June 11, 1996), which established the New Noise Performance Standards (and other performance standards (codified in Oakland Planning Code Chapter 17.120). Since the inception of the Suprema activity pre-dated the New Noise Performance Standards it was not subject to the New Noise Performance Standards unless the operation changed to result in a greater degree of nonconformity. As detailed below, we now believe there is not sufficient evidence in the record to support a finding that there was a “change in operations” that resulted in “an increase in the degree of nonconformity.”

The site was formerly zoned M-30, and is currently zoned HBX-1. In both the former and current zoning district designations, the current use (Warehousing, Storage and Distribution) is and was a permitted use in the zone. For such permitted activities, there are no conditions placed on the activity related to operations, including hours of operation, number of employees, number of employee shifts, number of truck movements, and other operational characteristics. There are also no requirements for businesses to provide sales volume or revenue information. Historically in the Zoning Division, such operational characteristics and revenue data are not reviewed as factors when determining nonconforming status of an activity or facility.

Therefore, any potential nonconforming characteristics are governed by Planning Code Section 17.114.080 (Nonconforming Activity – Allowed alterations and extensions), and specifically 17.114.080.C.

This section states:

“any activity which is itself a permitted activity where it is located and which is nonconforming only as to off-street parking or loading requirement, performance standards, or other requirements applying to activities may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, in any way which does not result in a greater degree of nonconformity with respect to such requirements and which conforms to the requirements normally applying to uses where the activity is located.”

Here, there are no nonconformities related to required off-street parking or loading facilities. As such, our Formal Determination primarily relates to evaluating the issue of whether any non-conformities exist related to the New Noise Performance Standards Performance Standards (Code Section 17.120).

The Performance Standards Code Section 17.120.020 (Existing Activities) states:

“Activities existing on the effective date of the zoning regulations, or of a subsequent rezoning or other amendment thereto applying more restrictive performance standard to such activities, shall not be required to change their operation to comply with the performance standards. However, their operations shall not be so changed as to result in a greater degree of nonconformity with

respect to such standards, except as otherwise authorized under the development agreement procedure in Chapter 17.138. For existing activities meeting the definition specified in Section 17.114.080.C, an expansion greater than twenty percent (20%) of production (e.g. non-administrative) floor area is one example of a change in operations that shall be considered an increase in the degree of nonconformity.”

This 20% floor area stipulation is the only specific example given for guidance in determining nonconforming status under this code section. It should be noted that in other sections of the nonconforming provisions (Code Chapter 17.114), similar references to floor area changes are also provided as thresholds for determining permissible changes to nonconforming activities and facilities. For example, for nonconforming Alcoholic Beverage Sales Commercial Activities, an increase of greater than 20% of floor area devoted to alcoholic beverage sales is considered a change requiring the application of new regulations, and for nonconforming residential activities, similarly an increase of more than 20% of added or reconstructed floor area is the allowed physical alteration to such nonconforming activity. There is no evidence in the record that there has been an increase of greater than 20% of applicable floor area since the year 1996.

Given that there are no other quantified thresholds provided for guidance in determining whether an increase in degree of nonconformity has occurred, staff considered other tangible factors in evaluating the nonconforming status.

Staff researched various improvements to the property, both permitted improvements and unpermitted improvements (which are subject to code compliance action not directly related to this Determination and which are subject to Application PLN14-303 for legalization). These improvements include expansion of the canopy covering the outdoor work area for transferring and loading product, alteration of the previous loading area to create a dock height loading platform, addition of a perimeter wall adjacent to the 57<sup>th</sup> Street loading area, and alteration of rooftop refrigeration units (including removing 3 older units and adding 2 new units for a total of 5 units on the roof). These alterations do not, in and of themselves, indicate a change in operations, as the operations were existing in the same location and for the same purpose prior to the alterations.

Staff also reviewed tax return data which Suprema provided for gross receipts for the years 2001 through 2013. These returns showed a fluctuation in gross receipts over the period, including increases from year to year as high as 19% and decreases from year to year as high as -17%. Over the 12 year, year-to-year comparison, the average gross receipts change was +5.5%. Having no other data to compare these figures to, staff looked at meat prices during this same period. According to USDA data, both beef and pork prices showed fluctuations from year to year, although over the same 12-year period, wholesale to retail pork prices increased by approximately 9.5% and wholesale to retail beef prices increased by approximately 90%. Without including specific time periods for the data, information submitted by Suprema in March 2016 (in conjunction with the Appeal) indicates an even larger increase in meat prices (greater than 180% to more than 220% for various meats, including goat and certain cuts of beef). The gross

receipts data also do not provide any breakdown of what amount may be attributable to direct sales of meat to retail food providers without being handled at the Suprema facility (i.e. phone sales handled by Suprema with product delivered direct from meat producer to retail food provider).

A neighbor has pointed to court documentation from 2004 which also listed revenue data for Suprema (from 1998 to 2002) which showed significant increases in revenue for Suprema on an annual basis. Collectively, this 15-year period of revenue data provides an indication of revenue growth over time (with some decreases evident on a year-to-year basis), staff is unable to directly correlate revenue growth with the degree of non-conformity, as summarized earlier in this memorandum and following.

Neither a more in-depth evaluation of specific meat prices purchased and then re-sold by Suprema, nor a detailed analysis of prices for other types of products potentially handled by Suprema (poultry and seafood, for example) has been factored in to the analysis of a potential increase in the non-conformity of the underlying activity. In the absence of such data and analysis there can be no definitive finding made based on gross receipts data that a change in the operations occurred that would cause a change in the evaluation criteria for performance standards. As mentioned earlier, such operational characteristics (and statistics) have not historically been used in making non-conforming determinations. This is, at least in part, due to the factors outside of the City's control and/or authority that affect such characteristics, such as meat prices.

Staff is aware of other anecdotal reports from surrounding neighbors of increases in truck activity as well as reports of increases in noise, but there are no quantifiable criteria nor base of data in which to compare such reports.

Given the fact that there has not been an increase in applicable floor area of greater than 20%, as well as the historical consideration that operational characteristics outside of the City's control, as listed earlier in this letter, have not been used in making determinations of nonconformities, it is the Zoning Manager's determination that there is *no definitive evidence of a change in operation triggering new performance standards that would apply to Suprema's current operation*. Hence, it is the Zoning Manager's position that the nonconforming status related to performance standards (pre-June 11, 1996 standards) remain in effect for Suprema Meats.

Pursuant to OPC section 17.132.020, if you, or any interested party, seeks to challenge this Administrative Determination/Interpretation, an **Appeal must be filed no later than** ten (10) days, from the date of this letter, which is **October 30, 2017, by 4:00 p.m.** An Appeal shall be on a form provided by the Zoning Division and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA, 94612, to the attention of Scott Miller, Zoning Manager. The Appeal shall specifically identify the bases and grounds of appeal, including a showing of error or abuse of discretion by the Zoning Manager or a lack of substantial evidence supporting this New Determination, and must include payment of \$1,622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely file an Appeal will preclude you, or any interested party, from challenging the City's decision in court.

The Appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the Appeal. Failure to do so may preclude you, or any interested party, from raising such issues during the Appeal and/or in court.

Please do not hesitate to contact me at (510) 238-2235 or [smiller@oaklandnet.com](mailto:smiller@oaklandnet.com) should you want to discuss this determination, however, such communication does not substitute for timely filing of an appeal as described above.

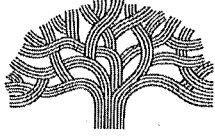
Sincerely,

A handwritten signature in cursive script that reads "Scott Miller". The signature is written in black ink and is positioned below the word "Sincerely,".

Scott Miller  
Zoning Manager

cc: Darin Ranelletti, Deputy Director, Planning and Building Department  
Bill Quesada, Zoning Inspections Manager  
Peter Spoerl, Deputy City Attorney  
Greg Minor, Assistant to the City Administrator  
Council Member Dan Kalb, District 1  
Neighbors commenting on Determination:  
Kim Lucas  
Angelo Gennino





## CITY OF OAKLAND

DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department  
Bureau of Planning

(510) 238-3941  
FAX (510) 238-6538  
TDD (510) 238-3254

Sent via U.S. Mail and Electronic Mail

February 7, 2018

Miguel Jara  
Suprema Meats  
955 57<sup>th</sup> Street, LLC  
955 57<sup>th</sup> Street  
Oakland, California 94608

Steven J. Hassing  
Law Offices of Steven J. Hassing  
425 Calabria Court  
Roseville, California 95747

Craig Miers, Architect  
1624 Santa Clara Drive, Suite 230  
Roseville, CA 95661

**RE: Case File No. PLN14-303; 955 57th, Street, Oakland, CA 94608 (APN: 015 129800900)**

Dear Messrs. Jara, Hassing, and Miers,

Your application, as described below, has been **APPROVED**, in part, and **DENIED**, in part, for the reasons stated in Attachment A, which contains the findings required to support these decisions. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed as explained below.

The following table summarizes the proposed project:

<b>Proposal:</b>	To legalize unpermitted canopy, unloading dock and entry sliding fence/gate on 57th Street; and to construct a loading dock with opening gates on Lowell Street, including making exterior building alterations to the existing transport and warehouse facility.
<b>Planning Permits Required:</b>	Minor Conditional Use permit for unpermitted canopies; Minor Variance to reduce side yard setback where 5 feet is required and 0 feet is proposed; and Regular Design Review for unpermitted canopies, loading dock, entry sliding gate/fence. It includes a new loading dock and exterior alterations to building.
<b>General Plan:</b>	Housing and Business Mix
<b>Zoning:</b>	HBX-1
<b>Environmental Determination:</b>	15301-Existing Facilities 15183-Projects Consistent with a Community Plan or Zoning
<b>Historic Status:</b>	OCHS Rating: Dc3
<b>Service Delivery District:</b>	2
<b>City Council District:</b>	1

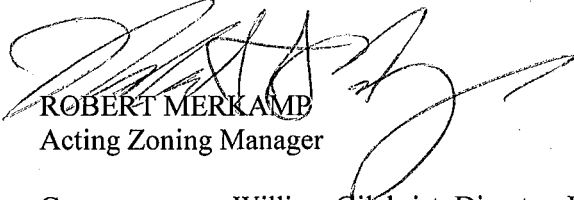
If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten calendar (10) days from the date of this letter, (by **4:00 pm on Feb 20<sup>th</sup>, 2018**). An appeal shall be on a form provided by the Bureau of Planning of the Planning and building Department, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of Heather Klein, Planner IV. The appeal shall identify the specific action or actions objected to, the action appellant requests City to take, the reason for the appeal; and must additionally provide evidence of a claim of error or abuse of discretion by the Zoning Manager or that his/her decision is not supported by substantial evidence. The appeal must include payment of **\$1,622.57** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of Heather Klein, Planner IV. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA.

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If you have any questions, please contact the Supervising District Planner, Heather Klein, at (510) 238-3659 or hklein@oaklandnet.com, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



ROBERT MERKAMP  
Acting Zoning Manager

Cc: William Gilchrist, Director, Planning and Building Department  
Darin Ranelletti, Deputy Director, Bureau of Planning  
Greg Minor, City Administrator's Office  
Peter Spoerl, Deputy City Attorney  
Elias Ferran, Deputy City Attorney  
Bill Quesada, Zoning Inspections Manager  
Chris Candell, Zoning Inspections

Neighbors Commenting on Zoning Permits:  
Interested Parties Distribution List (emails and mailing list)

Attachments:

- A. Findings
- B. Conditions of Approval, including Standard Conditions of Approvals

## ATTACHMENT A: FINDINGS

In order to be approved in its entirety, this proposal is required to satisfy all of the following Findings: I. Code Section 17.134.050 (General Use Permit Criteria) for canopy and loading docks, II. Code Section 17.136.050.B (Regular Design Review Criteria – Nonresidential Facilities) for a 1,000-sq. ft. increase of the canopy, and III., Code Section 17.148.050 (Variance – Findings required) for the canopy within the side setback. Subject to Conditions of Approval, staff has made the Findings in support of the Conditional Use Permit and Design Review, but was not able to make all the required Findings for the Variance (Canopy within the side setback).

Required findings are shown in **bold type**; reasons the proposal satisfies or does not satisfy each are shown in normal type.

### I. 17.134.050 GENERAL USE PERMIT CRITERIA.

Except as different criteria are prescribed elsewhere in the zoning regulations, a conditional use permit shall be granted only if the proposal conforms to all the following general use permit criteria, as well as to any and all other applicable use permit criteria:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The project includes minor modifications to an existing business which has operated for decades. The proposal to legalize an unpermitted canopy and the loading dock requires a Minor Conditional Use Permit as these facilities do not meet the definition of an accessory facility in Planning Code Section 17.10.70 because the facilities are unenclosed and considered an Open Non-Residential Facility. These elements provide shading for the temporary storage of refrigerated and frozen meat products as these products await loading into the facility or onto delivery trucks. As such, the canopy and loading is considered a Warehousing and Storage activity.

While the added roof area and other modifications listed will improve the operation and design of the facility, as a new non-residential activity and open facility, they will also result in more loading and unloading outside, potentially added noise, and visual intrusions. To address these issues, the City has imposed specific operational conditions of approval in conjunction with the approvals set forth under these findings detailing specific management and operational requirements for the continued use of the facility. Specifically, locating more deliveries to Lowell Street and inside, development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the improvements. These measures will also address existing nuisances. The City will ensure compliance with the management through enforcement and reporting measures.

With compliance with the Conditions of Approval, the location, size, and design of the improvements will not have an adverse effect on the livability or development of abutting properties. The freezer area addition encloses the operation, reduces noise, and is compatible in materials and scale with the surrounding neighborhood. The canopy will be relocated outside the side setback and away from the residential neighbor. However, the continued use of the under-canopy area, should not negatively

affect the livability or appropriate development of abutting properties and the surrounding neighborhood character because with the unloading area on Lowell Street, vehicle traffic and noise adjacent to residential properties will be minimized as well as perceived bulk and mass. Furthermore, current ongoing impacts will be reduced by the redesign and reduced in the future by proposed Conditions of Approval related to traffic, noise, air quality and shadowing.

**B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The project is convenient and functional to the area. It serves as an adjunct to restaurants in the region in that the facility provides meat and fish products to these businesses. The proposal does not change the overall site planning of the facility which has existed in roughly its current configuration for many years. The imposition of Conditions of Approval on business operations (which had previously been unregulated and unmonitored by the City) in association with the approvals supported by these findings will serve to improve both the business and the neighborhood nuisance complaints related to traffic, noise, air quality and shadowing will be reduced or resolved by the redesign of the facility and by implementation of Conditions of Approval included in this action.

**C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The essential function of the site is food distribution providing meat and fish products to businesses within Oakland and the region. The essential function of the surrounding area is residential. These properties will be enhanced through the implementation of the Conditions of Approval which will ensure active management of the food distribution operations, further control its impacts on neighbors, and retain a small business.

**D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050.**

This proposal is to add truck, traffic, noise and shade controlling elements to a warehousing facility which has existed in its present configuration for decades. The design modifications are primarily to shield the facility and neighbors from noise, sun, traffic and air quality effects. The modifications to the building involve less than one-quarter of the floor or building areas respectively, and meet the Design Review criteria for balanced design and efficient use of materials as described below.

**E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.**

The subject site is in the Housing and Business Mix (HBX) land use classification per the Land Use and Transportation Element (LUTE) of the Oakland General Plan. The HBX classification is intended to recognize the equal importance of both housing and business and intended to guide a transition from heavy industry to low impact light industrial and other businesses that can co-exist compatibly with residential development. Respect for environmental quality, coupled with opportunities for additional housing and neighborhood friendly businesses is desired, as well as the transition from industry that generates impacts detrimental for residences.

The HBX classification also notes that the desired character should include development of site specific buffers essential as specific conditions under which business and housing will co-exist. While the business and operations were previously considered “grandfathered”, construction of the canopy and loading dock are now considered a new principal facility and expansion of the overall use and footprint. As such, staff may impose Conditions of Approval related to the effects of these features and consistency with the intent (respect for environmental quality) and character (conditions to allow business and residential to co-exist). The delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the improvements as well as the existing nuisances and to move these activities to the more industrial façade along Lowell Street.

The proposed project, with the exception of the canopy structure in the side setback, conforms with the HBX classification. This business is existing and has located in the same location without restrictions. With implementation of the attached Conditions of Approval, impacts to residents related to traffic, noise and air quality and nuisances will be reduced. These Conditions are essential to the coexistence of the business and adjacent residential. Specifically, the project meets the following LUTE Objectives and Policies.

- Policy 1/C1.2 Retaining Existing Businesses- Existing businesses and jobs within Oakland which are consistent with long-range objectives of this plan should, whenever possible, be retained. *The existing business will be retained.*
- Objective 1/C4 Minimize land use compatibility conflicts in commercial and industrial areas through achieving a balance between economic development values and community values.
- Policy 1/C4.2 Minimizing Nuisances- The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls. *The project, with the Conditions of Approval, places restrictions on the business where none were previously and will reduce impacts on neighbors.*
- Objective T1.5 Reduce truck traffic impacts on residential neighborhoods. *Constructing new docks for loading and unloading along Lowell Street will reduce vehicle traffic impacts on 57<sup>th</sup> Street and locate impactful operations next to industrial activities and away from residential properties.*
- Policy N1.5 Designing Commercial Development – Commercial development should be designed in a manner that is sensitive to surrounding residential uses. *The project, with the relocation of the canopy out of the side setback, is designed to be more sensitive to surrounding residential properties. Specific features of the project include constructing new docks for unloading along Lowell Street to reduce vehicle traffic impacts on 57<sup>th</sup> Street and locate impactful operations next to industrial activities and away from residential, adding new traffic improvements, lighting and landscaping.*

The project is consistent with the HBX Design Guidelines as applicable. Specifically:

- **Design Objective #1:** Create a development pattern that encloses the street space by defining a street wall and street section while providing transitions from existing patterns and respecting the light and air of residential properties, if present. *The project does not involve new construction, only minor modifications to an existing commercial building. The street wall will*

remain the same. The freezer addition will be located on the interior of the property. The canopy will be moved away from the adjacent neighbor to reduce shadowing on that property.

- **Design Objective #2:** Site parking to maintain an attractive streetscape and preserve on-street parking. *The project does not involve new construction, only minor modifications to an existing commercial building. The unloading area off 57<sup>th</sup> Street will be screened by the new entry gate. Per the Conditions of Approval, no trucks owned or controlled by Suprema Meats Inc. shall park on 57<sup>th</sup> Street. The loading area off Lowell Street will ensure that truck parking and unloading activities are located near industrial activities and away from residential properties.*
- **Design Objective #3:** Integrate functional open space into the design of the site. *The project is not residential but includes minor modifications to an existing commercial business. This finding is not applicable.*
- **Design Objective #4:** Use design techniques to scale buildings appropriate to their location. *The project does not involve new construction, only minor modifications to an existing commercial building. The freezer addition is compatible in height and materials to the existing facility. The canopy will be reduced to the previous existing height, is appropriate to its location and will not increase overall building bulk or shadowing on the adjacent neighbor.*
- **Design Objective #5:** Consider a variety of architectural styles. *The project does not involve new construction, only minor modifications to an existing commercial building. The freezer addition is compatible in height and materials to the existing facility. The canopy will be compatible with the existing architecture.*
- **Design Objective #6:** Provide visual interest to street facing areas. *The project does not involve new construction, only minor modifications to an existing commercial building. The project will add a new entry and sliding gate which is appropriate to the context and the commercial building. The new windows will be compatible with what is existing. The new unloading zone will reduce vehicle traffic impacts on 57<sup>th</sup> Street and locate impactful operations next to industrial activities and away from residential properties.*
- **Design Objective #7:** Provide visual emphasis to buildings at street corners. *The project does not involve new construction, only minor modifications to an existing commercial building. No changes will occur at the street corner.*
- **Design Objective #8:** Provide well designed landscaping and buffering for street fronting yards, parking areas, nonresidential activities, and parking podiums. *The project, with implementation of the Conditions of Approval, will improve the streetscape with sidewalk, curb, gutter, catch basins, pavement grade adjustments, drainage improvements and appropriate landscaping.*

Finally, the project is not located within a district plan or other development control map.

**II. SECTION 17.136.050(B) - DESIGN REVIEW DISCRETIONARY CRITERIA:  
NONRESIDENTIAL FACILITIES AND SIGNS.**

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors,

**and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area.**

The proposal includes minor modifications to an existing building. The canopy and freezer additions have been designed to facilitate operation of the food distribution business with minimum overflow of noise and other effects onto adjacent buildings, subject to new Conditions of Approval. Specifically, staff has included Conditions related to truck traffic, unloading, parking, washing, and management as well as acoustic buffering and street improvements. The additions fit the pattern of pre-existing industrial and warehousing facilities in the Lowell Street area with regard to arrangement, texture, materials, and colors.

- 2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.**

The applicant proposes to legalize existing improvements and make related modifications, while preserving most of the existing facilities unchanged. It has been designed with efficient industrial materials compatible with existing facilities. The proposed project will preserve the design characteristics of the existing industrial/warehousing facilities in the area but with minor operational changes. The Conditions of Approval imposed in conjunction with the approvals supported by these findings, will reduce traffic, noise and air quality impacts and nuisances on neighbors and protect the value of these properties while also retaining an existing legal business.

- 3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.**

See the Conditional Use Permit findings above.

### **III. SECTION 17.148.050(a) - MINOR VARIANCE FINDINGS:**

The project involves canopies which are located closer than the Zoning standard of 5 feet from neighboring properties. A Minor Variance is required, which is **DENIED**, with findings for denial as follows from Oakland Planning Code Section 17.148.050(a). Since all the required Findings for Approval cannot be made, the Variance must be denied.

- 1. That strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

The project site has been used as a food distribution facility since the 1940s and previous buildings were built to the front and side property lines. However, the project site is a rectangular shape, approximately 23,000 sq. ft., flat and covered in either structure or parking/loading areas. There are no unique physical or topographical circumstances on site. No habitat, vegetation, or natural amenities exist onsite that should be avoided, and the site itself is sizeable. Staff could find no reason to support a finding of practical difficulty or unnecessary hardship.

Furthermore, the adjacent property is a residential dwelling unit, in a residential zone. The purpose of the Zoning regulations (Oakland Planning Code Section 17.07.030) is to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare." The purpose of the setback



regulations is to provide a buffer from activities occurring on adjacent properties and reduce potential nuisance issues. While retaining the canopy on the property line would provide operational efficiency for the business, it would not improve the livability for the neighbor or appearance or meet the intent of the regulation. Residential activities would not be buffered and open loading/ unloading would occur closer to the property line. However, removing the portion of the canopy that encroaches into the 5-foot setback area and the subsequent reduction of the screening wall to its original height (approximately 9 to 10 feet) will reduce potential impacts on the neighbor. It will move activities away open loading/unloading activities away from the neighbor, reduce the shadow from the canopy on the neighboring property and reduce the building bulk along the shared property.

- 3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;**

The variance, if granted, would adversely affect the character, livability, or appropriate development of abutting properties and would be detrimental to the public welfare or contrary to adopted plans or development policy. As noted above, retaining the canopy along the side property line would increase potential nuisance activities occurring closer to the property line. Furthermore, retaining the canopy structure as built within the setback area would increase shading and result in a closer building bulk to the immediately abutting residential neighbor.

- 6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.**

The canopy located within the side setback does not meet the desired intent or desired character of the HBX land use classification. The HBX classification notes that the desired character should include development of site specific buffers essential as specific conditions under which business and housing will co-exist. A canopy along the property line would not provide such a buffer or minimize potential impacts to neighbors.

### **CEQA FINDINGS**

The project includes the legalization of an unpermitted insulated panel canopy, loading dock and entry sliding fence/gate on 57th Street, construction of a dock with opening gates on Lowell Street, exterior building alterations (new and replaced windows, patching of plaster facade, height increase to freezer area), and landscaping and lighting.

Staff has evaluated the project pursuant to the California Environmental Quality Act (CEQA). Staff has denied the Minor Variance for the canopy in the side setback. This denial is exempt from environmental review per Statutory Exemption 15270 which states that CEQA does not apply to projects or portions of projects that are disapproved. Staff has also determined that the project, including construction of the canopy outside the setback and at a 9-10' height, is exempt from environmental review under Sections 15301, 15303, 15332 and 15183, each as a separate and independent basis, and when viewed collectively, as an overall basis for exemption from CEQA.

Section 15301 of the CEQA Guidelines exempts from CEQA review those facilities which are existing. This exemption includes projects and minor alterations that involve negligible or no expansion of use beyond that existing. The project site already contains a food distribution facility with no restriction on hours of operation, number of employees, number of shifts, noise control, and truck loading, parking,

washing, and management. As noted in the City's determination letter dated October 19, 2017, there was insufficient evidence to support a finding that there was a change or expansion of Suprema Meats operations in conjunction with the unpermitted work. Furthermore, the proposed changes, including the new docks and exterior changes, will also not result in an expansion of use with implementation of the Conditions of Approval. Specifically, the new dock for unloading will not increase truck trips but will relocate noise generating activities away from residential activities and along the property line adjacent to industrial activities. Additional restrictions regarding semi-truck and truck management will further restrict, as opposed to expand, operations at the site. Finally, accessory (appurtenant) structures such as garages, carports, patios and fencing (which are similar to canopies) and the entry gate/fence, landscaping, windows and façade changes are specifically described in the exemption.

Section 15303 of the CEQA Guidelines exempts from CEQA review the construction and location of a small facilities including buildings in urbanized areas that do not exceed 10,000 sf of floor area where facilities which are existing, do not involve hazardous waste substances and are in areas that are not environmentally sensitive; utilities and street improvements, and accessory (appurtenant) structures. The project includes a height increase to a 2,871-freezer area which would be under 10,000 sf floor area once constructed.

Section 15332 of the CEQA Guidelines exempts infill projects from CEQA review. While the food distribution facility is existing and no expansion will occur but rather will be restricted, the project is consistent with the General Plan and Zoning, is within city limits, is less than five acres in an urban area, and has no special studies species habitat. With implementation of the Conditions of Approval related to loading areas, truck parking, loading and unloading, and delivery management and traffic improvement, the project would not result in any significant traffic impacts. These Conditions, along with moving the canopy away from the side property side and acoustic noise and buffering, will reduce noise impacts and Conditions related to the loading areas, truck management, washing, and idling will reduce air quality impacts. Finally, the project site is already served by utilities and services.

This project doesn't trigger any of the exceptions in CEQA Section 15300.2 that would disqualify it for an exemption.

- The project is not located in a particularly sensitive environment. The project site has been used as distribution facility since the 1940s per the Oakland Cultural Heritage Survey. Also, according to this data and the City's Sanborn maps, the area has long been and continues to be a mix of industrial and single-family to small multi-family residential, and the building reflects food processing in 19<sup>th</sup> and 20<sup>th</sup> centuries.
- The project would not result in a cumulative impact of successive projects of the same type and the same place being significant. The site has been a food distribution since the 1940s with minor additions in 1950s prior to CEQA. Other improvements to the building have been made over the years which were ministerial building permits. The improvements are mainly to increase the efficiency of the operation. No expansion is anticipated and the improvements, with the Conditions of Approval, will restrict operations. No successive projects are anticipated.
- The project will not result the reasonable possibility that activity and changes will have a significant effect due to unusual circumstances. Again, the facility is existing and not proposed to expand operations. The surrounding area has not changed substantially regarding the land uses and remains both industrial and residential. Furthermore, with implementation of the Conditions of Approval, the use will be further restricted to alleviate impacts on neighbors.
- The project is not located near a scenic highway or on a hazardous waste site.
- The property is not a historic resource. The site was evaluated in 1994, and the City found in 1995 that the property was not a Potentially Designated Historic Property with a historic rating of Dc3.

Finally, as noted above, this project is also consistent with the City's General Plan and Zoning subject to Conditional Use Permit and Regular Design Review approval, consistent with CEQA Section 15183.

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## **Attachment B: Conditions of Approval**

This approval is subject to the following Conditions of Approval:

### **1. Approved Use**

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, letter, and plans dated March 31, 2015 and submitted on April 2, 2015, as amended by the following conditions of approval. Any additional use or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation for the approved plans, Conditions of Approval or use shall be require prior approval from the Director of Planning and Building or designee. This action by the Zoning Manager includes the following:

- I. **Denial** of a Minor Variance to reduce side yard setback where 5 feet is required and 0 feet is proposed under Oakland Municipal Code Chapter 17.148 for the unpermitted expansion of the canopy structure;
- II. **Approval** of a Minor Conditional Use permit for Open Non-Residential Facilities (unpermitted loading dock) under Oakland Municipal Code Chapter 17.134, and partial approval for the unpermitted expansion of the canopy (see I., above);
- III. **Approval** of a Regular Design Review permit for the unpermitted loading dock and entry sliding gate/fence. It also includes approval for a new dock along Lowell Street and exterior alterations to the building under Oakland Municipal Code Chapter 17.136.

### **2. Effective Date, Expiration, Extensions and Extinguishment**

This Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire in **one (1) calendar year** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

### **3. Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

### **4. Minor and Major Changes**

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.

- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

#### **5. Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City’s Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

#### **6. Signed Copy of the Approval/Conditions**

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

#### **7. Blight/Nuisances**

The project site shall be kept in a blight/nuisance-free condition on an ongoing basis. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

#### **8. Indemnification**

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called “City”) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul this Approval or implementation of this

Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

**9. Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

**10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

**11. Compliance Matrix**

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

**12. Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

**13. Graffiti Control****Requirement:**

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
  - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
  - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
  - iii. Use of paint with anti-graffiti coating.
  - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
  - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:
  - i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
  - ii. Covering with new paint to match the color of the surrounding surface.
  - iii. Replacing with new surfacing (with City permits if required).

**When Required:** Ongoing

**Initial Approval:** N/A

**Monitoring/Inspection:** Bureau of Building

**14. Lighting**

**Requirement:** Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

**When Required:** Prior to building permit final

**Initial Approval:** N/A

**Monitoring/Inspection:** Bureau of Building

**15. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)**

**Requirement:** The project applicant shall implement all of the following applicable air pollution control measures during construction of the project:

- a. Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

- d. Pave all roadways, driveways, sidewalks, etc. within one month of site grading or as soon as feasible. In addition, building pads should be laid within one month of grading or as soon as feasible unless seeding or soil binders are used.
- e. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- f. Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.
- h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations").
- i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- j. Portable equipment shall be powered by electricity if available. If electricity is not available, propane or natural gas shall be used if feasible. Diesel engines shall only be used if electricity is not available and it is not feasible to use propane or natural gas.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **16. Asbestos in Structures**

Requirement: The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.

When Required: Prior to approval of construction-related permit

Initial Approval: Applicable regulatory agency with jurisdiction

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

## **17. Archaeological and Paleontological Resources – Discovery During Construction**

Requirement: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the



find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.

In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.

In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **18. Human Remains – Discovery During Construction**

Requirement: Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **19. Construction-Related Permit(s)**

Requirement: The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

## **20. Hazardous Materials Related to Construction**

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following:

- a. Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction;
- b. Avoid overtopping construction equipment fuel gas tanks;
- c. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d. Properly dispose of discarded containers of fuels and other chemicals;
- e. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and
- f. If soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City and applicable regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **21. Erosion and Sedimentation Control Measures for Construction**

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **22. Site Design Measures to Reduce Stormwater Runoff**

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged

to incorporate appropriate site design measures into the project to reduce the amount of stormwater runoff. These measures may include, but are not limited to, the following:

- a. Minimize impervious surfaces, especially directly connected impervious surfaces and surface parking areas;
- b. Utilize permeable paving in place of impervious paving where appropriate;
- c. Cluster structures;
- d. Direct roof runoff to vegetated areas;
- e. Preserve quality open space; and
- f. Establish vegetated buffer areas.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

### **23. Source Control Measures to Limit Stormwater Pollution**

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged to incorporate appropriate source control measures to limit pollution in stormwater runoff. These measures may include, but are not limited to, the following:

- a. Stencil storm drain inlets "No Dumping – Drains to Bay;"
- b. Minimize the use of pesticides and fertilizers;
- c. Cover outdoor material storage areas, loading docks, repair/maintenance bays and fueling areas;
- d. Cover trash, food waste, and compactor enclosures; and
- e. Plumb the following discharges to the sanitary sewer system, subject to City approval:
- f. Discharges from indoor floor mats, equipment, hood filter, wash racks, and, covered outdoor wash racks for restaurants;
- g. Dumpster drips from covered trash, food waste, and compactor enclosures;
- h. Discharges from outdoor covered wash areas for vehicles, equipment, and accessories;
- i. Swimming pool water, if discharge to on-site vegetated areas is not feasible; and
- j. Fire sprinkler test water, if discharge to on-site vegetated areas is not feasible.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

### **24. Construction Days/Hours**

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.

c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **25. Construction Noise**

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**26. Extreme Construction Noise****a. *Construction Noise Management Plan Required***

**Requirement:** Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

**When Required:** Prior to approval of construction-related permit

**Initial Approval:** Bureau of Building

**Monitoring/Inspection:** Bureau of Building

**b. *Public Notification Required***

**Requirement:** The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.

**When Required:** During construction

**Initial Approval:** Bureau of Building

**Monitoring/Inspection:** Bureau of Building

**27. Construction Activity in the Public Right-of-Way****a. *Obstruction Permit Required***

**Requirement:** The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

**When Required:** Prior to approval of construction-related permit

**Initial Approval:** Bureau of Building

**Monitoring/Inspection:** Bureau of Building

**b. *Traffic Control Plan Required***

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. ***Repair of City Streets***

Requirement: The project applicant shall repair any damage to the public right-of-way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**28. Construction and Demolition Waste Reduction and Recycling**

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at [www.greenhalosystems.com](http://www.greenhalosystems.com) or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

**29. Underground Utilities**

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Building

### **PROJECT SPECIFIC CONDITIONS**

#### **30. Semi-truck Delivery Management Plan (operating hours)**

*Within 90-days of final Zoning Approval for unpermitted improvements (i.e. this permit)*

The applicant shall schedule appointments to unload big-rig (semi-truck) deliveries one at a time along the Lowell Street dock between 7 am and 5 pm. No big-rig trucks delivering to Suprema may arrive anywhere on Lowell Street or within the immediate area prior to 7:00 am. Additional or early-arrival trucks must be held in reserve outside the residential area until the dock is clear. Trucks that are not being unloaded must remain at a lawful off-site location such as designated truck stops near the Port or freeways. The applicant shall implement this delivery management plan with all delivery vendors.

When Required: Within 90 days of Approval of Zoning Permit (i.e. this permit) and Ongoing  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

#### **31. Transportation Improvements**

Requirement: The applicant shall submit a plan for a new sidewalk, curb and gutter and street trees on the west side of Lowell Street between 57<sup>th</sup> Street and Aileen Street adjacent to Suprema's building and shall install such improvements to City of Oakland standards pursuant to a public-improvements project, consistent with the following:

- a) 60 foot right of way, City improvements 2015-2017
- b) 42 foot right of way curb to curb; centerline to be adjusted by City
- c) 9-foot sidewalk to be installed with applicant assistance, including street trees
- d) Utility poles to be relocated at applicant cost, in concert with utilities and City Public Works, unless this condition (Condition 31d) is waived by Public Works
- e) Applicant to post signs, consistent with Condition 30, approved by City Public Works, regarding parking and unloading of trucks (time, place, manner) to minimize effects on neighbors; these signs are to be in the right-of-way on poles.

When Required: Plan submittal required prior to building permit issuance with completion of improvements within 90 days of building permit issuance;

Initial Approval: Bureau of Building; Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

#### **32. Washing of Trucks**

##### ***Ongoing***

No washing of trucks shall occur on Suprema property including the property currently owned by Suprema located across Lowell Street from the warehouse. Truck washing shall occur at commercial truck washing facilities.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**33. Streetscape Landscaping*****Prior to issuance of building permit (or other construction-related permit)***

The applicant shall coordinate with the Public Works Department as appropriate to determine suitable landscaping to be installed, such as street trees. As part of submittal of revised plans, the applicant shall also propose landscaping to be installed adjacent to the two-story portion of the building along Lowell Street.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**34. Gate Screening*****Prior to issuance of building permit (or other construction-related permit)***

As part of submittal of permit plans, the applicant shall propose screening material such as slats or solid materials with sound attenuating characteristics, behind the gate and fence system on 57<sup>th</sup> Street, and shall install screening material upon approval and as part of this permit.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**35. Street Improvements and Loading System*****Prior to issuance of building permit (or other construction-related permit) and ongoing***

Plans shall be revised within 30 days of approval of this permit to indicate a new dock facility for at least one delivery truck along Lowell Street (east elevation), and related public Right-of-Way improvements shall be made along the property's Lowell Street frontage (from 57<sup>th</sup> Street to Aileen Street) as needed to accommodate unloading of big rig trucks (semi-tractor trailer trucks). These public improvements shall be designed to City standards and shall include a sidewalk, curb, gutter, catch basins, pavement grade adjustments and any drainage improvements as needed per and to the satisfaction of the City Engineer (see COA #27). The construction of these improvements shall occur within 180 days of final zoning approval (or from the final decision under the City Appeal procedures, if applicable). Unloading of trucks on Lowell Street shall occur directly from the truck into the east side of the building. No unloading activity is allowed on 57<sup>th</sup> Street.

When Required: Ongoing

Initial Approval: Bureau of Planning and Bureau of Building

Monitoring/Inspection: Bureau of Building

**36. Truck Loading*****Ongoing***

The applicant shall not load/unload big rig trucks (semi-tractor trailer trucks) or any other trucks within the 57<sup>th</sup> Street right-of-way.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**37. Truck Parking*****Ongoing***

No trucks owned or controlled by Suprema Meats Inc. shall park on 57<sup>th</sup> Street.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building



**38. Truck Delivery Management*****Ongoing***

The applicant agrees to discontinue all delivery staging activities (i.e. movement of vehicles, equipment, and product into position for loading), vehicle loading and unloading activities, and vehicle & equipment maintenance activities at the 57th Street open loading facility between the hours of **8 pm and 7 am (daily)**. The foregoing sentence excludes the movement of pre-loaded vehicles leaving on delivery, which shall be limited as follows: Suprema shall limit all delivery activity noise generated from Suprema's 57th Street open loading facility between 8pm and 7 am (daily) to two 3-minute windows of time during which a maximum of 3 pre-loaded delivery trucks can be started and can exit the property during each of the said 3-minute windows (maximum of 6 delivery truck exits total). Said 3-minute windows shall not occur before 5:00 am.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**39. Modification of unpermitted portion of canopy structure within 5' setback area*****Prior to issuance of building permits***

Plans shall be revised within 30 days of approval of this permit to indicate the removal of the five-foot (5') section of canopy roof and any supporting appurtenances along the west perimeter of the property. Removal of the 5' section shall occur within 90 days of approval of this permit. Canopy and vertical wall elements may be constructed outside the 5' side setback and at the original 9-10' height.

When Required: Ongoing

Initial Approval: Bureau of Planning and Bureau of Building

Monitoring/Inspection: Bureau of Building

**40. Acoustical Buffering and Noise Prevention**

The applicant shall install, with permits, acoustical buffering and baffling below metal shade structures to limit the extent of noise which bounces off the structure toward residential properties. The applicant shall follow the recommendations of the 2015 Wilson and Ihrig noise study on file with the Zoning Manager which are incorporated herein by reference, including but not limited to:

- a. Sound barrier walls around all existing rooftop refrigeration units
- b. Seal gaps between sound barrier walls and roofs
- c. Provide airfoil fan blades on condensers
- d. Install mufflers on compressors

When Required: Prior to final inspections of building permits and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**41. Permit Binding on Successors**

Suprema hereby agrees that the conditions stated herein will be incorporated as terms of any agreement to lease, or sell the real property, any agreement to sell purchase and sale or transfer the business operating at the site that may be entered into between them and all potential lessee/purchaser for the Property or the business. Suprema further agree that their successors in interest, assigns, heirs and transferees will be bound by obligations herein, and they likewise will attach and incorporate all conditions stated herein into any lease or purchase and sale agreement for the Property or the business.

When Required: Ongoing

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Initial Approval: N/A  
Monitoring/Inspection: N/A

**42. Enforcement**

*Within 90-days of final Zoning Approval for unpermitted improvements (i.e. this permit)*

The project applicant shall install/maintain at least two (2) video cameras along Lowell Street and one (1) on 57<sup>th</sup> Street with specific locations to be approved by the Zoning Manager, to monitor truck movements as well as the other Conditions. The video tapes shall include date and time information and shall be made available to the Zoning Manager and Inspections Manager for review upon request. If the tapes disclose violations of this or other conditions, the Zoning Manager and/or Inspections Manager or designee shall require compliance and may begin revocation proceedings if more than three violations are verified in any 30-day period.

When Required: Within 90 days of Approval of Zoning Permit (i.e. this permit) and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

**43. Compliance Plan**

While this approval may address or supersede some measures within the Compliance Plan signed by the applicant on October 20, 2014, the Compliance Plan is a stand-alone document and compliance with the Plan shall still be required.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

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**Applicant Statement**

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

---

Name of Project Applicant

---

Signature of Project Applicant

---

Date

**City of Oakland**  
Community and Economic Development Agency  
Zoning Division  
250 Frank H. Ogawa Plaza, Suite 2114  
Oakland, CA 94612

**NOTICE OF EXEMPTION**

---

TO: Alameda County Clerk  
1106 Madison Street  
Oakland, CA 94612

**Project Title:** Suprema Meats-

**Case No.** PLN14-303

**Applicant:** Craig Miers, Architect

**Project Location:** 955 57<sup>th</sup> Street, Oakland, CA 94610

**Project Description:** Minor Conditional Use permit, Minor Variance, and Regular Design Review to legalize an unpermitted canopy at the rear and side of the property, rear loading dock and entry sliding fence/gate on 57th Street; and to construct a loading dock with opening gates on Lowell Street, including making exterior building alterations to the existing transport and warehouse facility.

**Exempt Status:**

**Statutory Exemptions**

**Categorical Exemptions**

- |  |   |
|--|---|
| <input type="checkbox"/> Ministerial {Sec.15268}                     | <input checked="" type="checkbox"/> Existing Facilities {Sec.15301} |
| <input type="checkbox"/> Feasibility/Planning Study {Sec.15262}      | <input type="checkbox"/> Replacement or Reconstruction {Sec.15302}  |
| <input type="checkbox"/> Emergency Project {Sec.15269}               | <input checked="" type="checkbox"/> Small Structures {Sec.15303}    |
| <input type="checkbox"/> Other: {Sec._____}                          | <input type="checkbox"/> Minor Alterations {Sec.15304}              |
| <input checked="" type="checkbox"/> Disapproved Projects {Sec.15270} | <input checked="" type="checkbox"/> Infill Projects {Sec. 15332}    |
|  | <input type="checkbox"/> General Rule {Sec.15061(b)(3)}             |

**Other**

- Projects consistent with a community plan, general plan or zoning {Sec. 15183(f)}
- \_\_\_\_\_ (Sec. \_\_\_\_\_)

**Reasons why project is exempt:** Staff has denied the Minor Variance for the canopy in the side setback. This denial is exempt from environmental review per Statutory Exemption 15270 which notes that CEQA does not apply to projects that are disapproved. Staff has also determined that the project, including construction of the canopy outside the setback, is exempt from environmental review under Sections 15301, 15303 and 15183, each as a separate and independent basis, and when viewed collectively, as an overall basis for CEQA clearance.

Section 15301 of the CEQA Guidelines exempts from CEQA review those facilities which are existing. This exemption includes projects and minor alterations that involve negligible or no expansion of use beyond that existing. The project site already contains a food distribution facility with no restrictions. The changes to be legalized and those proposed will not result in an expansion of use, truck trips, noise with implementation of the Conditions of Approval. In addition, accessory (appurtenant) structures such as garages, carports, patios and fencing and the entry gate/fence, landscaping, windows and façade changes are specifically described in the exemption.

Section 15303 of the CEQA Guidelines exempts from CEQA review the construction and location of a small facilities including buildings in urbanized areas that do not exceed 10,000 sf of floor area where facilities which are existing, do not involve hazardous waste substances and are in areas that are not environmentally sensitive; utilities

and street improvements, and accessory (appurtenant) structures. The project includes a height increase to a 2,871-freezer area which would be under 10,000 sf floor area once constructed.

This project doesn't trigger any of the exceptions in CEQA Section 15300.2 that would disqualify it for an exemption. The project is not located in a particularly sensitive environment and would not result in a cumulative impact of successive projects of the same type and the same place being significant. The project site has been used as distribution facility since the 1940's per the Oakland Cultural Heritage Survey. Minor additions were approved in the 1950's prior to CEQA and other later improvements have been made over the years which were ministerial building permits not subject to CEQA. No expansion is anticipated and the improvements with the Conditions of Approval will restrict the operations. No successive projects are anticipated. The project will not result the reasonable possibility that activity and changes will have a significant effect due to unusual circumstances. Again, the facility is existing and not proposed to expand operations. The surrounding area has not changed substantially regarding the uses in the area and remains both industrial and residential. Furthermore, with implementation of the Conditions of Approval, the use will be further restricted to alleviate noise, air quality and traffic impacts on neighbors. The project is not located near a scenic highway or on a hazardous waste site. The property is not a historic resource.

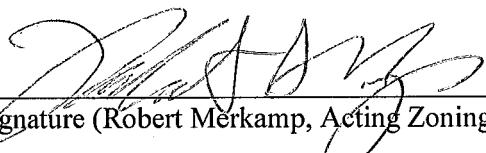
Section 15332 of the CEQA Guidelines exempts from CEQA review infill projects that are consistent with the General Plan and Zoning, are within city limits, are less than 5 acres in an urban area, have no special studies species habitat, would not result in any significant traffic, air quality or noise impacts, and are served by utilities and services.

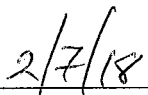
Finally, per Section 15183 of the CEQA Guidelines, the project is consistent with the City of Oakland's General Plan.

**Lead Agency:** City of Oakland, Community and Economic Development Agency, Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

**Department/Contact Person:** Heather Klein, Planner IV

**Phone:** 510-238-3659

  
\_\_\_\_\_  
Signature (Robert Merkamp, Acting Zoning Manager)

  
\_\_\_\_\_  
Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish and Game filing fees.

**\*ENVIRONMENTAL DECLARATION  
(CALIFORNIA FISH AND GAME CODE SECTION 711.4)**

: FOR COUNTY CLERK USE ONLY

LEAD AGENCY NAME AND ADDRESS:

CITY OF OAKLAND  
Bureau of Planning  
250 Frank H. Ogawa Plaza, Suite 2114  
Oakland, CA 94612

APPLICANT: Craig Miers  
1624 Santa Clara Drive, Suite 230  
Roseville, CA 95661

: FILE NO. \_\_\_\_\_

**CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:  
(PLEASE MARK ONLY ONE CLASSIFICATION)**

**1. NOTICE OF EXEMPTION / STATEMENT OF EXEMPTION**

A – STATUTORILY OR CATEGORICALLY EXEMPT

\$50.00 – COUNTY CLERK HANDLING FEE

**1. NOTICE OF DETERMINATION (NOD)**

A – NEGATIVE DECLARATION (OR MITIGATED NEG. DEC.)

\$2,280.75 - STATE FILING FEE

\$50.00 (Fifty Dollars) – COUNTY CLERK FILING FEE

B – ENVIRONMENTAL IMPACT REPORT

\$3,168.00 – STATE FILING FEE

\$50.00 (Fifty Dollars) – CLERK'S FEE

3.  **OTHER:** \_\_\_\_\_

**\*\*A COPY OF THIS FORM MUST BE COMPLETED AND SUBMITTED WITH EACH COPY OF AN ENVIRONMENTAL DECLARATION BEING FILED WITH THE ALAMEDA COUNTY CLERK.\*\***

**BY MAIL FILINGS:**

**PLEASE INCLUDE FIVE (5) COPIES OF ALL NECESSARY DOCUMENTS AND TWO (2) SELF-ADDRESSED ENVELOPES.**

**IN PERSON FILINGS:**

**PLEASE INCLUDE FIVE (5) COPIES OF ALL NECESSARY DOCUMENTS AND ONE (1) SELF-ADDRESSED ENVELOPE.**

**ALL APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING.**

FEES ARE EFFECTIVE JANUARY 1, 2018 MAKE CHECKS PAYABLE TO: ALAMEDA COUNTY CLERK

Record ID: PLN14303-A01

Menu Reports Help

**File Date:** [02/20/2018](#)

**Application Status:** [Filed](#)

**Application Detail:** [Detail](#)

**Application Type:** [Appeal](#)

**Address:** [955 57TH ST](#)

**Owner Name:** [955 57TH LLC](#)

**Owner Address:** [955 B 57TH ST, OAKLAND, CA 946082843](#)

**Application Name:** [To legalize canopy, loading dock, entry gate](#)

**Parcel No:** [015 129800900](#)

**Description of Work:** [Appeal of Zoning Administrator's decision to partially approve and partially deny Conditional Use of sliding fence/gate at 57th Street and exterior building alterations to existing transport and warehouse](#)

Contact Info:	Name	Organization Name	Contact Type	Rel
	<a href="#">Steven J Hassing</a>	<a href="#">Suprema Meats, ...</a>	Appellant	

**Job Value:** [\\$0.00](#)

**Total Fee Assessed:** [\\$1,622.57](#)

**Total Fee Invoiced:** [\\$1,622.57](#)

**Balance:** [\\$1,622.57](#)

Workflow Status:	Task	Assigned To	Status	Status D
	<a href="#">Application Intake</a>			
	Appeal Processing			
	Closure			

Condition Status:	Name	Short Comments	Status	Ap
	<a href="#">PARCEL COMMENT</a>	Owner information ve...	Complied	01/

**Custom Fields:**

APPEAL OF Administrative Decision	Zoning Adminis
Environmental Determination	Creek Determini
Billboard Amortization	

LEGISLATIVE ACTIONS

Action	Action Number	Action Date	Effective Date	Comments

**Initiated by Product:** AV360

OAKLAND

(Ord. No. 13172, § 3(Exh. A), 7-2-2013; Ord. No. 13064, § 2(Exh. A), 3-15-2011; Ord. 11892 § 18, 1996; prior planning code § 7549)

**17.116.300 Parking accommodation requirements for One- and Two-Family Residential Facilities.**

The provisions of this Section apply to lots containing One-Family Dwelling, One-Family Dwelling with Secondary Unit, and Two-Family Dwelling Residential Facilities. Exceptions to the provisions of this Section may be approved pursuant to the Regular Design Review procedure in Chapter 17.136.

**A. Required parking location**

- 1) This subsection applies to lots where both:
  - i. At least sixty percent (60%) of the buildings in the immediate context have required parking located to the rear or side at a depth of at least twenty-five (25) feet from the front lot line; and
  - ii. The difference in elevation of existing grade between the midpoint of the front lot line and the farthest opposite point of the lot depth is not twenty percent (20%) or greater.
- 2) For the lots described in Subsection 17.116.300(A)(1), the entirety of required garages, carports or any uncovered required parking spaces shall be located at one of the following locations:
  1. To the rear or side of any primary Residential Facility; or
  2. In the case of uncovered parking, closer to an interior side lot line than the principal facility.

The immediate context shall consist of the five (5) closest lots on each side of the project site plus the ten (10) closest lots on the opposite side of the street; however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any approval of any required garage, carport, or uncovered parking space. Lots with a front lot line width of less than thirty-five (35) feet are exempt from this Subsection if the garage, carport or uncovered parking space dimensions facing the front lot line equal less than fifty (50) percent of the building elevation facing the front lot line.

**B. Garage or Carport Recessed from Front of Residence in Certain Cases.** When an attached or detached garage or carport is not subject to Subsection A. of this Section and is located on lots with a street-to-setback gradient of twenty percent (20%) or less and where the face of the primary Residential Facility, including projections at least eight (8) feet in height and five (5) feet in width, such as covered porches and bay windows, is within twenty-five (25) feet of the front lot line, at least one of the following requirements shall apply:

1. The front of the garage or carport shall be set back a minimum of five (5) feet from such face; or
2. If the garage or carport is located below living space, either:
  - a. The front of the garage or carport shall be set back at least eighteen (18) inches from the upper level living space; or
  - b. The garage door shall be recessed at least six (6) inches from the surrounding exterior wall surfaces.



**CITY OF OAKLAND  
APPEAL FORM  
FOR DECISION TO PLANNING COMMISSION, CITY  
COUNCIL OR HEARING OFFICER**

**PROJECT INFORMATION**

Case No. of Appealed Project: PLN 14-303  
 Project Address of Appealed Project: 955 57<sup>th</sup> STREET, OAKLAND, CA  
 Assigned Case Planner/City Staff: Heather Klein

**APPELLANT INFORMATION:**

Printed Name: STEVEN J HASSING FOR SUPREMA MEATS, INC Phone Number: (916) 677-1776 office  
 Mailing Address: 955 57<sup>th</sup> LLC 425 CALABRIA COURT Alternate Contact Number: (916) 412-5847 cell  
 City/Zip Code Roseville, CA 95747 Representing: SUPREMA MEATS, INC and 955 57<sup>th</sup> LLC  
 Email: sjh@hassinglaw.com by Steven J. Hassing, Attorney

An appeal is hereby submitted on:

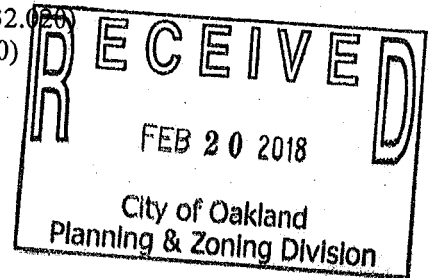
- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

**YOU MUST INDICATE ALL THAT APPLY:**

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) USE PERMIT / DESIGN REVIEW / CONDITIONS

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
  - Determination of General Plan Conformity (OPC Sec. 17.01.080)
  - Design Review (OPC Sec. 17.136.080)
  - Small Project Design Review (OPC Sec. 17.136.130)
  - Minor Conditional Use Permit (OPC Sec. 17.134.060)
  - Minor Variance (OPC Sec. 17.148.060)
  - Tentative Parcel Map (OMC Section 16.304.100)
  - Certain Environmental Determinations (OPC Sec. 17.158.220)
  - Creek Protection Permit (OMC Sec. 13.16.450)
  - Creek Determination (OMC Sec. 13.16.460)
  - City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
  - Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
  - Other (please specify) USE PERMIT (see attached)
- SR #11622 57 enclosed



(Continued on reverse)



(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**       Granting an application to:      OR     Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) \_\_\_\_\_

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**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

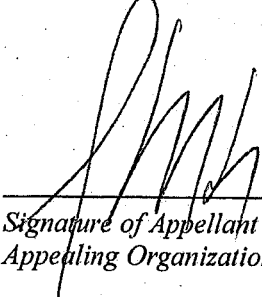
*See pages 1-11 with exhibits "A"-D" Attached*

*# 11622.57 enclosed by check # 6196*

**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

(Continued)

  
Signature of Appellant or Representative of  
Appealing Organization

*Att. For appellants*

Feb 19, 2018  
Date

**TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE**

APPEAL FEE: \$ \_\_\_\_\_

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

**CONTINUATION OF PAGE 2**  
**APPEAL FROM DECISIONS AND INTERPRETATIONS**  
**OF CITY OF OAKLAND PLANNING DEPARTMENT**

In approving and partially approving Appellant's applications with conditions City of Oakland Planning Department committed error and abuse of discretion and made decisions and determinations which are not supported by substantial evidence, and in many instances, not supported by any evidence.

**Introduction**

Although this introduction has no bearing on Appellant's assignment of error, abuse of discretion and failure to make findings supported by substantial evidence, it should clarify certain misconceptions held by City Planning.

Appellant is in the process of complying with that part of the Compliance Plan necessary to relieve it of further participation thereunder. There is also a separate law suit now pending in Alameda County Superior Court seeking determination of Appellant's and City's rights and responsibilities under the Compliance Plan aimed at having the Compliance Plan declared terminated.

Appellant entered into the Compliance Plan in good faith in October of 2014 but, to the prejudice of Appellant, City unreasonably and inexplicably delayed action on Appellant's applications until February 7, 2018. Further, City has unfairly used the Compliance Plan as weapon against Suprema in a wrongful attempt to aid and assist Kim Lucas in her quest to cause Appellant to move from City of Oakland. For example, in 2015, City cited Appellant for 22 instances of violation of the Compliance Plan via forklift movement and 11 instances of nuisance. After two and a half years of litigation, including review by the First District Court of Appeal which found partially in favor of Appellants, City has been shown to have improperly cited Appellant in 28 of those 33 instances. In short, appellant will likely not be constructing a loading dock along Lowell.

**THE FOLLOWING ARE FINDINGS, WHICH, UNLESS**  
**OTHERWISE NOTED, ARE APPEALED BECAUSE THEY**  
**ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE**  
**ERRONEOUS AND THEY CONSTITUTE ABUSE OF DISCRETION**

1. The proposal to legalize an unpermitted loading dock requires a Minor Conditional Use Permit. (§ I.A of Findings).
2. The loading dock is an unenclosed facility and therefore considered an Open Non-Residential Facility. (§ I.A of Findings).
3. The loading dock does not meet the definition of an accessory facility in Planning Code Section 17.10.70. (§ I.A of Findings).

4. All but the west 5 feet of the canopy will constitute a new non-residential activity and open facility. (§ I.A of Findings).
5. The canopy does not meet the definition of an accessory facility in Planning Code Section 17.10.70. (§ I.A of Findings).
6. Construction of the loading dock is considered a new principal facility. (§ I.E of Findings). Please see Exhibit "A" attached consisting of two pictures of the unpermitted loading dock.
7. Construction of the loading dock is considered an expansion of the overall use and footprint. (§ I.E of Findings).
8. The canopy and loading [dock] is considered a Warehousing and Storage activity. (§ I.A. of Findings).

#### **Evidence and Legal Argument No 1; Pertaining to 1-8 Above**

**"Accessory Facility"** means a facility, other than a sign, which is incidental to, and customarily associated with, a specified principal facility, and which meets the applicable conditions set forth in §17.10.070.

**"Accessory Structure"** means a building or facility, other than a sign, which is incidental to, and customarily associated with, a specified principal facility, and which meets the applicable regulations set forth in Title 17 of the Oakland Planning Code.

In addition to the principal facilities expressly included therein, each Nonresidential Facility type shall be deemed to include such facilities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal facility; are located on the same lot as such principal facility; and meet the further conditions set forth hereinafter. Such accessory facilities shall be controlled in the same manner as the principal facilities within such type except as otherwise expressly provided in the zoning regulations. They include but are not limited to off-street parking and **loading facilities** if they are reserved for employees or other persons utilizing the principal facility. (OPC § 17.10.70A).

Unenclosed storage and service areas other than those listed elsewhere in this section, (i.e. OPC § 17.10.70A), qualify as accessory to a principal only if they do not exceed two hundred square feet each and are used for the temporary storage of trash; (OPC §17.10.070 C). Appellant's loading dock, canopy and staging area are not storage areas.

**Warehousing, Storage and Distribution** activities are classified as "Industrial Activities". (OPC §17.10.030D) (OPC §17.10.540). They include the warehousing and storage, primarily within enclosed buildings, of commercial goods and the associated distribution activities that occur on-site prior to delivery of goods to wholesale and retail outlets or direct shipment to customers. These activities may also include ancillary truck parking and dispatching; and accessory outdoor

storage areas where outdoor storage, not including parking and loading areas, does not occupy more than thirty percent (30%) of the total site area. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. **(OPC §17.10.583A)**. No storage takes place in Appellant's open parking and loading area.

Appellant's loading area, dock and canopy qualify as accessory facilities because they are facilities as are customarily associated with, and are appropriate, incidental, and subordinate to, such its principal facility.

A "Facility" is defined by the Planning Code as a structure, open area, or other physical contrivance or object. **(OPC §17.09.040) (OPC §17.10.020)**.

A "Structure" is defined by the Planning Code as any facility which is constructed or erected, and which is located on the ground or is attached to something having location on the ground. **(OPC §17.09.040)**.

A "Footprint" is defined by the Planning Code as the total land area covered by all structures on a lot, measured from outside of all exterior walls and supporting columns, including residences, garages, covered carports, and accessory structures. **(OPC §17.09.040)**.

Any proposal which conforms to the General Plan and which is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations shall be processed in accordance with such code and/or regulations. **(OPC §17.01.100A)**. It is only if the proposal conforms with the General Plan but is not permitted by the Zoning Regulations that approval depends upon obtaining a conditional use permit pursuant to Chapter 17.134.

9. The canopy will result in more loading and unloading outside, potentially added noise, and visual intrusions. (§ I.A of Findings).
10. The loading dock will result in more loading and unloading outside, potentially added noise, and visual intrusions. (§ I.A of Findings).
11. Use of the canopy in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce nuisances. (§ II. #2 of Findings).
12. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce noise impacts. (§ II. #2 of Findings).
13. Use of the loading dock in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce traffic impacts. (§ II. #2 of Findings).

14. Use of the loading dock in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce nuisances. (§ II. #2 of Findings).
15. The specific operational conditions of approval the City is attempting to require, i.e., locating more deliveries to Lowell Street and inside, development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures will address the new and additional loading, unloading, added noise and visual intrusions caused by the loading dock and canopy. (§ I.A of Findings).
16. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the unpermitted loading dock and canopy. (§ I.A of Findings).
17. The loading dock is creating nuisances not existing before the dock was created. (§ I.A of Findings).
18. The canopy (except for the west 5 feet thereof) is creating nuisances not existing before it was built. (§ I.A of Findings).
19. The proposal is to add truck, traffic and noise elements to a warehouse facility. (§ I.D of Findings).
20. City staff may impose Conditions of Approval related to the effects of the loading dock. (§ I.D of Findings).
21. The delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize the potential impacts on residential neighbors associated with the loading dock and canopy. (§ I.D of Findings).
22. City found that its staff may impose Conditions of Approval related to the effects of the “these features” but failed to describe to what “feature” it was referring other than the loading dock. (§ I.D of Findings).
23. City found that its staff may impose Conditions of Approval related to the effects of the “these features” (loading dock and canopy?) but went on to find “and consistency with the intent (respect for environmental quality) and character (conditions to allow business and residential to co-exist)” which is unintelligible and makes no sense. (§ I.D of Findings).
24. Implementation of the Conditions of Approval reduces impacts on residents related to traffic. (§ I.D of Findings).
25. Implementation of the Conditions of Approval reduces impacts on residents related to noise. (§ I.D of Findings).

29. Neighborhood nuisance complaints related to air quality will be reduced or resolved by the redesign of the facility and by implementation of the imposed Conditions of Approval. (§ I.B of Findings).

30. The delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to minimize existing nuisances. (§ I.D of Findings).

31. Implementation of the Conditions of Approval will reduce nuisances. (§ I.D of Findings).

32. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce nuisances. (§ II. #2 of Findings).

33. Use of the loading dock in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce nuisances. (Sec II. #2 of Findings).

### **Evidence and Legal Argument No 3; Pertaining to 28-33 Above**

Appellant has never been found to have created a nuisance, private or public. In fact, the one time that City of Oakland cited Appellant for eleven separate instances of nuisance the City's own Hearing Examiner, on November 19, 2015, chided the City in his written findings and decision, writing;

*The City of Oakland has a noise control ordinance. This ordinance should have been used for any alleged noise complaint violations. The fact that it was not used was clear error and/or abuse of discretion.*

Even since, City has hired noise experts to try and catch Suprema violating noise ordinances. No noise nuisance citations or notices of violation have been issued. Accordingly, to cite to *nuisances* (instead of simply neighbor complaints) when there have been no finding of nuisance, is error and abuse of discretion. Moreover, the existing loading dock is exempt from design review pursuant to OPC 17.136.025 A 1-5 and B1g.

Any proposal which conforms to the General Plan and which is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations shall be processed in accordance with such code and/or regulations. (OPC §17.01.100A). It is only if the proposal conforms with the General Plan but is not permitted by the Zoning Regulations that approval depends upon obtaining a conditional use permit pursuant to Chapter 17.134.

34. Implementation of the Conditions of Approval reduces impacts on residents related to air quality. (§ I.D of Findings).

35. Use of the canopy (after the west five feet have been removed) in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce air quality impacts. (§ II. #2 of Findings).

36. Use of the loading dock in a manner which creates minimal impact on neighbors requires that The Conditions of Approval now imposed be implemented to reduce air quality impacts § II. #2 of Findings).

**Evidence and Legal Argument No 4; Pertaining to 34-36 Above**

There is no evidence to support the contention that the loading dock and canopy have in anyway impacted air quality, making it worse than it was before the loading dock and canopy were installed. Moreover, the existing loading dock is exempt from design review pursuant to OPC 17.136.025 A1-5 and B1g.

The purpose of the provisions of the *conditional use permit procedure* is to prescribe the procedure for the accommodation of uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary, the imposition of special conditions of approval. This procedure shall apply to all proposals for which a conditional use permit is *required* by the zoning regulations. (OPC 17.134.010)

37. The Conditions of Approval related to truck traffic, unloading, parking, washing, and management, acoustic buffering and street improvements are necessary to insure that the freezer addition will operate with minimum overflow of noise and other effects onto adjacent buildings. (§ II. #1 of Findings).

**Evidence and Legal Argument No 4; Pertaining to 37 Above**

There is no evidence to support the contention that modifications made to the freezer impact or are impacted by truck traffic, unloading, parking, washing and management, or street improvements.

The provisions of this Chapter shall be known as the design review procedure. The purpose of these provisions is to prescribe the procedure for the review of proposals located in areas or on sites, or involving uses, which require special design treatment and consideration of relationships to the physical surroundings. This procedure shall apply to all proposals for which design review is required by the zoning regulations. (OPC 17.136.010)

38. If the canopy is retained as it has been constructed, open loading/unloading would occur closer to the property line. (§ III. #2 of Findings).



26. The delivery management plan, transportation improvements, truck loading and parking and noise measures are necessary to move loading activities to the more industrial façade along Lowell Street. (§ I.D of Findings).

27. The Conditions of Approval are essential to the coexistence of the business and adjacent residential. (§ I.D of Findings).

**Evidence and Legal Argument No 2; Pertaining to 9-27 Above**

There is absolutely no evidence that the unpermitted loading dock or canopy has increased loading or unloading, increased noise or that the dock increased visual intrusions. With respect to the loading dock the exact opposite is true. Before the dock was put in it took three men fifteen minutes to load one truck. With the dock it takes two men five minutes. Before the dock a pallet jack removed a pallet of product from the freezer, driving it to the back of the truck and then dropping it.

Next a forklift picked the pallet up and placed it into the truck. Once in the truck, a man in the truck, using a hand jack, turned the load around and walked it back towards the front of the truck. The hand jacks are only made with metal wheels that make unwelcome noise when rolled on the aluminum bed of a truck. But with the dock, the pallet jack that removes the product from the freezer moves right into the truck on its polyurethane wheels and puts the load in place. Using the dock is much faster and much quieter than loading trucks without the dock.

Further, Suprema would be loading exactly the same number of trucks with or without the unpermitted dock or canopy which, incidentally, serves to keep a certain amount of noise from reaching the street.

Moreover, use of the dock enables Suprema to load one truck at a time and then park it for the night. Before the dock was built Suprema backed two trucks in for loading and loaded four on 57<sup>th</sup>. Accordingly, without the dock there is far more truck noise and traffic impacts than with it.

Finally, the existing loading dock is exempt from design review pursuant to OPC 17.136.025 A 1-5 and B1g.

Any proposal which conforms to the General Plan and which is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations shall be processed in accordance with such code and/or regulations. (OPC §17.01.100A). It is only if the proposal conforms with the General Plan but is not permitted by the Zoning Regulations that approval depends upon obtaining a conditional use permit pursuant to Chapter 17.134.

28. The development and implementation of a delivery management plan, transportation improvements, truck loading and parking and noise measures will address existing nuisances. (§ I.A of Findings).

39. Removing the portion of the canopy that encroaches into the 5 foot setback area and the reduction of the screening wall to its original height (approximately 9 to 10 feet) will move open loading/unloading activities away from the neighbor. (§ III. #2 of Findings).

40. Retaining the canopy along the side property line would increase potential nuisance activities occurring closer to the property line. (§ III. #3 of Findings).

**Evidence and Legal Argument No x; Pertaining to 38-40 Above**

There is absolutely no evidence, in fact it is totally false, that if the canopy and the loading dock were both to be removed that loading activities would not take place as close to the west property line as they now do. In fact, with the loading dock, each truck is loaded 20 feet east of Appellant's western property line and neighbor to the west. If the dock is removed, Appellant will pull three trucks in instead of one and load all three. The third truck would be right at the property line between Appellant and his neighbor to the west.

**CONDITIONS OF APPROVAL**

II. Approval of a Minor Conditional Use permit for Open Non-Residential Facilities (unpermitted loading dock) under OMC Chapter 17.134, and partial approval for the unpermitted expansion of the canopy.

III. Approval of a Regular Design Review permit for the unpermitted loading dock and entry sliding gate/fence under OMC Chapter 17.136.

The requirements imposed by the Conditions are totally unrelated to the unpermitted loading dock, canopy, new refrigeration equipment or the gate. Accordingly, imposition of the Conditions of Approval as a condition precedent to allowing the previously unpermitted loading dock and the canopy (except for the west five feet thereof) to remain, constitutes error, abuse of discretion and are not supported by substantial evidence.

**Conditions 30-32, 38 & 40**

Suprema will not be construction a loading lock on the east side of its building facing Lowell. Conditions 30-32, 38 & 40 therefore bear no relationship to the unpermitted refrigeration equipment, the unpermitted loading dock, the sliding gate or the unpermitted canopy and their requirement is error, abuse of discretion and unsupported by substantial evidence.

DATE this 19<sup>th</sup> day of February, 2018

  
\_\_\_\_\_  
Steven J. Hassing  
Attorney for Suprema Meats, Inc and 955 57 LLC

**DECLARATION OF MIGUEL JARA, JR**  
**IN SUPPORT OF FEBRUARY 19, 2018 APPEAL**

I, Miguel Jara, Jr., declare;

1. I am over 18 years of age, am president of Suprema Meats, Inc., and managing member of 955 57<sup>th</sup> LLC, (“Appellants”), have personal knowledge of each fact stated below and can and will testify to same in court should it become necessary.
2. Suprema has been operating from 955 57<sup>th</sup> since June of 1996.
3. The area which now serves as the unpermitted loading dock and the surrounding open area contiguous with the loading dock is shown on Exhibits “A”, “B” and “C”, attached hereto. The unpermitted canopy can be seen behind the black truck.
4. The area which now serves as the loading dock has continuously been used by Suprema for loading trucks since June of 1996. The only difference is that trucks being loaded in that area now sit lower than they did before the grade was reduced.
5. On information and belief, meat trucks used that same area for years prior to Suprema opening its business at that location.
6. The dock and open area around it are used for loading and parking.
7. The dock and open area around it are not used for storage.
8. The dock and open area around it are appropriate, incidental, and subordinate to, Appellant’s principal adjoining facility.
9. The dock is a facility which is constructed on the ground at 955 57<sup>th</sup>.
10. The area which is now the dock is, and always has been, part of the footprint of the facility at 955 57<sup>th</sup>.
11. The canopy bears no relationship to the amount of loading and unloading and noise at Appellants’ facility.
12. The loading dock has not and will not result in more loading and unloading. Loading is a direct function of orders and unloading, takes place on Lowell and is an indirect function of loading.

13. The loading dock has not added noise. It has done the opposite. Before the dock was put in it took three men fifteen minutes to load one truck. With the dock it takes two men five minutes. Before the dock a pallet jack removed a pallet of product from the freezer, driving it to the back of the truck and then dropping it.

Next a forklift picked the pallet up and placed it into the truck. Once in the truck, a man in the truck, using a hand jack, turned the load around and walked it back towards the front of the truck. The hand jacks are only made with metal wheels that make unwelcome noise when rolled on the aluminum bed of a truck. But with the dock, the pallet jack that removes the product from the freezer moves right into the truck on its polyurethane wheels and puts the load in place. Using the dock is much faster and much quieter than loading trucks without the dock.

Suprema would be loading exactly the same number of trucks with or without the unpermitted dock or canopy which, incidentally, serves to keep a certain amount of noise from reaching the street.

Moreover, use of the dock enables Suprema to load one truck at a time and then park it for the night. Before the dock was built Suprema backed two trucks in for loading and loaded four on 57<sup>th</sup> or pulled the loaded trucks out so it could load more trucks in the accessory area after which all of the loaded trucks had to be brought back into that area for the night creating additional truck noise.

Accordingly, without the dock there is far more truck noise and traffic impacts than with it.

14. Other than its proximity to the neighbor to the west, the canopy has no relationship to noise, loading, traffic or any other neighborhood impact.

15. The development and implementation of a delivery management plan, transportation improvements, and dock along Lowell all related to unloading, do absolutely nothing with regard to Appellant's uses of the loading dock which is used only to load its own trucks for delivery.

16. To my knowledge there have never been complaints from the neighbors regarding air quality. Because the loading dock lessens the time it takes to load trucks and the number of times trucks must be moved, the dock serves to increase, not decrease, air quality.

17. Appellant has never been found to have created a nuisance, private or public. In fact, the one time that City of Oakland cited Appellant for eleven separate instances of nuisance the City's own Hearing Examiner, on November 19, 2015, chided the City in his written findings and decision, writing;

***The City of Oakland has a noise control ordinance. This ordinance should have been used for any alleged noise complaint violations. The fact that it was not used was clear error and/or abuse of discretion.***

(see Ex "D" attached)

Even since, City has hired noise experts to try and catch Suprema violating noise ordinances. No noise nuisance citations or notices of violation have been issued.

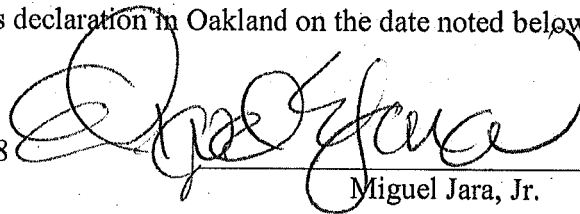
18. The canopy bears no relationship to open loading or unloading. Removal of any part of the canopy would have no impact on Appellants' operations at or near their west property line. The loading dock is approximately 20 feet east of Appellant's western property line and neighbor to the west. If the dock is removed, Appellant will pull two or three trucks in instead of one causing one truck to be loaded right at the property line between Appellant and his neighbor to the west.

19. Reduction of the screening wall to its original height would have absolutely no effect on Appellants' operations at or near their west property line.

20. The work performed in the freezer area and to the refrigeration equipment has no bearing on loading, noise or traffic which are strictly a function of orders and efficiency provided by the loading dock.

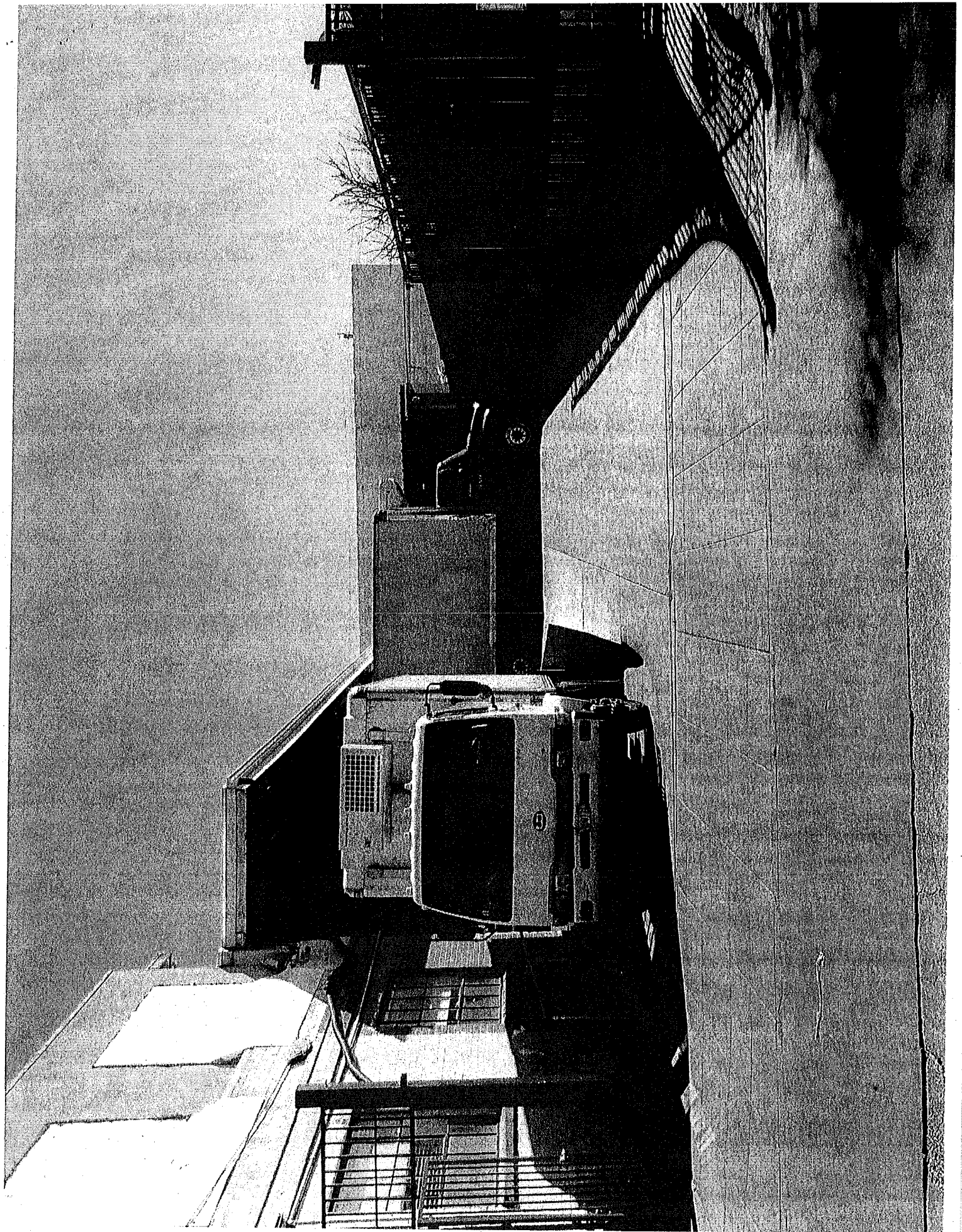
I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this declaration in Oakland on the date noted below.

DATED this 19<sup>th</sup> day of February, 2018



Miguel Jara, Jr.

# **EXHIBIT "A"**



# **EXHIBIT “B”**



13. The loading dock has not added noise. It has done the opposite. Before the dock was put in it took three men fifteen minutes to load one truck. With the dock it takes two men five minutes. Before the dock a pallet jack removed a pallet of product from the freezer, driving it to the back of the truck and then dropping it.

Next a forklift picked the pallet up and placed it into the truck. Once in the truck, a man in the truck, using a hand jack, turned the load around and walked it back towards the front of the truck. The hand jacks are only made with metal wheels that make unwelcome noise when rolled on the aluminum bed of a truck. But with the dock, the pallet jack that removes the product from the freezer moves right into the truck on its polyurethane wheels and puts the load in place. Using the dock is much faster and much quieter than loading trucks without the dock.

Suprema would be loading exactly the same number of trucks with or without the unpermitted dock or canopy which, incidentally, serves to keep a certain amount of noise from reaching the street.

Moreover, use of the dock enables Suprema to load one truck at a time and then park it for the night. Before the dock was built Suprema backed two trucks in for loading and loaded four on 57<sup>th</sup> or pulled the loaded trucks out so it could load more trucks in the accessory area after which all of the loaded trucks had to be brought back into that area for the night creating additional truck noise.

Accordingly, without the dock there is far more truck noise and traffic impacts than with it.

14. Other than its proximity to the neighbor to the west, the canopy has no relationship to noise, loading, traffic or any other neighborhood impact.

15. The development and implementation of a delivery management plan, transportation improvements, and dock along Lowell all related to unloading, do absolutely nothing with regard to Appellant's uses of the loading dock which is used only to load its own trucks for delivery.

16. To my knowledge there have never been complaints from the neighbors regarding air quality. Because the loading dock lessens the time it takes to load trucks and the number of times trucks must be moved, the dock serves to increase, not decrease, air quality.

17. Appellant has never been found to have created a nuisance, private or public. In fact, the one time that City of Oakland cited Appellant for eleven separate instances of nuisance the City's own Hearing Examiner, on November 19, 2015, chided the City in his written findings and decision, writing;

***The City of Oakland has a noise control ordinance. This ordinance should have been used for any alleged noise complaint violations. The fact that it was not used was clear error and/or abuse of discretion.***

(see Ex "D" attached)

Even since, City has hired noise experts to try and catch Suprema violating noise ordinances. No noise nuisance citations or notices of violation have been issued.

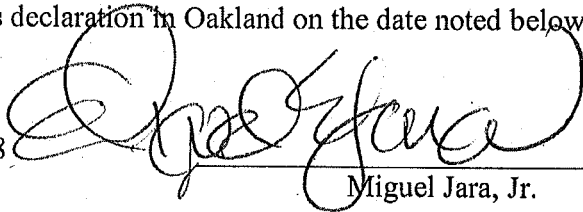
18. The canopy bears no relationship to open loading or unloading. Removal of any part of the canopy would have no impact on Appellants' operations at or near their west property line. The loading dock is approximately 20 feet east of Appellant's western property line and neighbor to the west. If the dock is removed, Appellant will pull two or three trucks in instead of one causing one truck to be loaded right at the property line between Appellant and his neighbor to the west.

19. Reduction of the screening wall to its original height would have absolutely no effect on Appellants' operations at or near their west property line.

20. The work performed in the freezer area and to the refrigeration equipment has no bearing on loading, noise or traffic which are strictly a function of orders and efficiency provided by the loading dock.

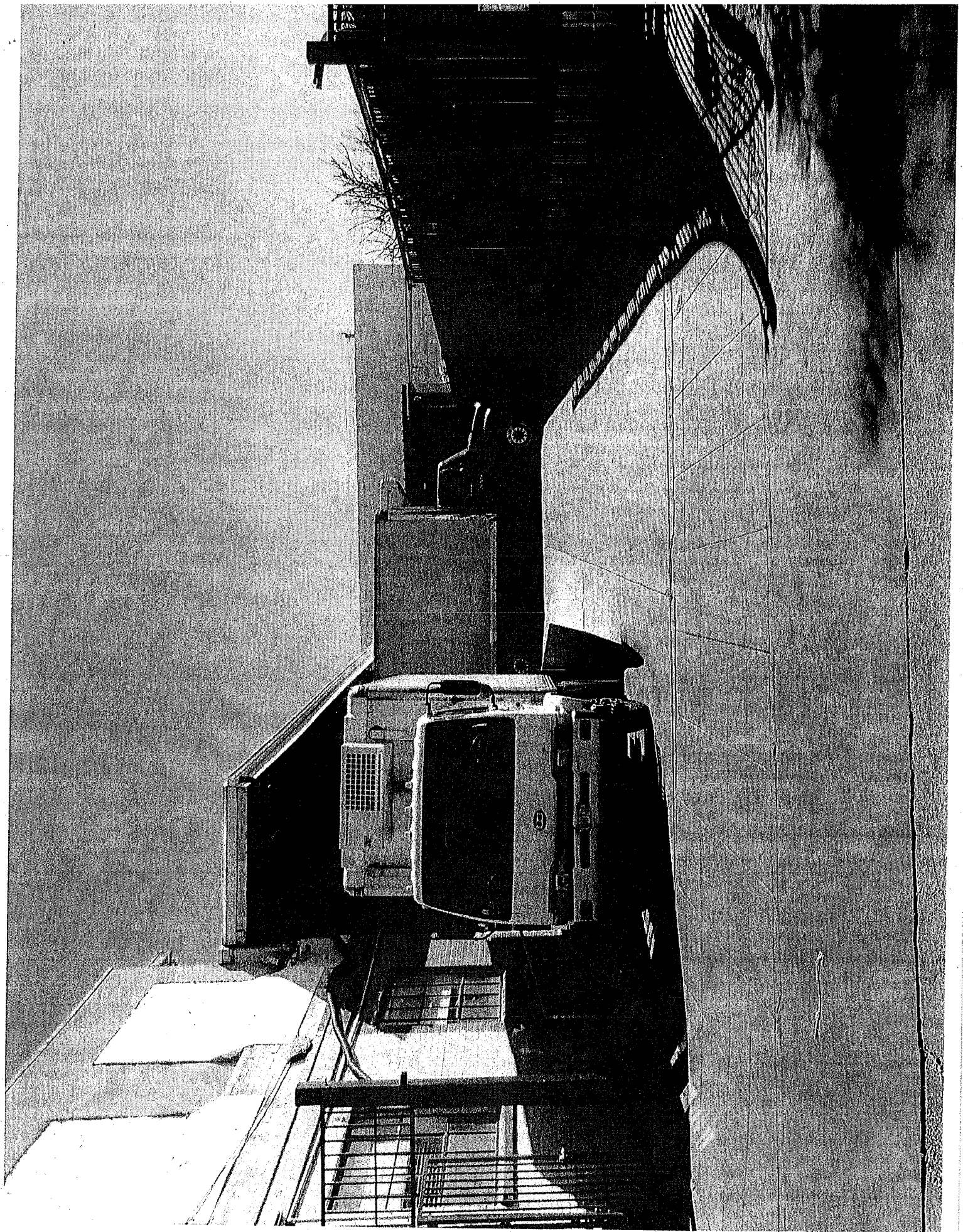
I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this declaration in Oakland on the date noted below.

DATED this 19<sup>th</sup> day of February, 2018

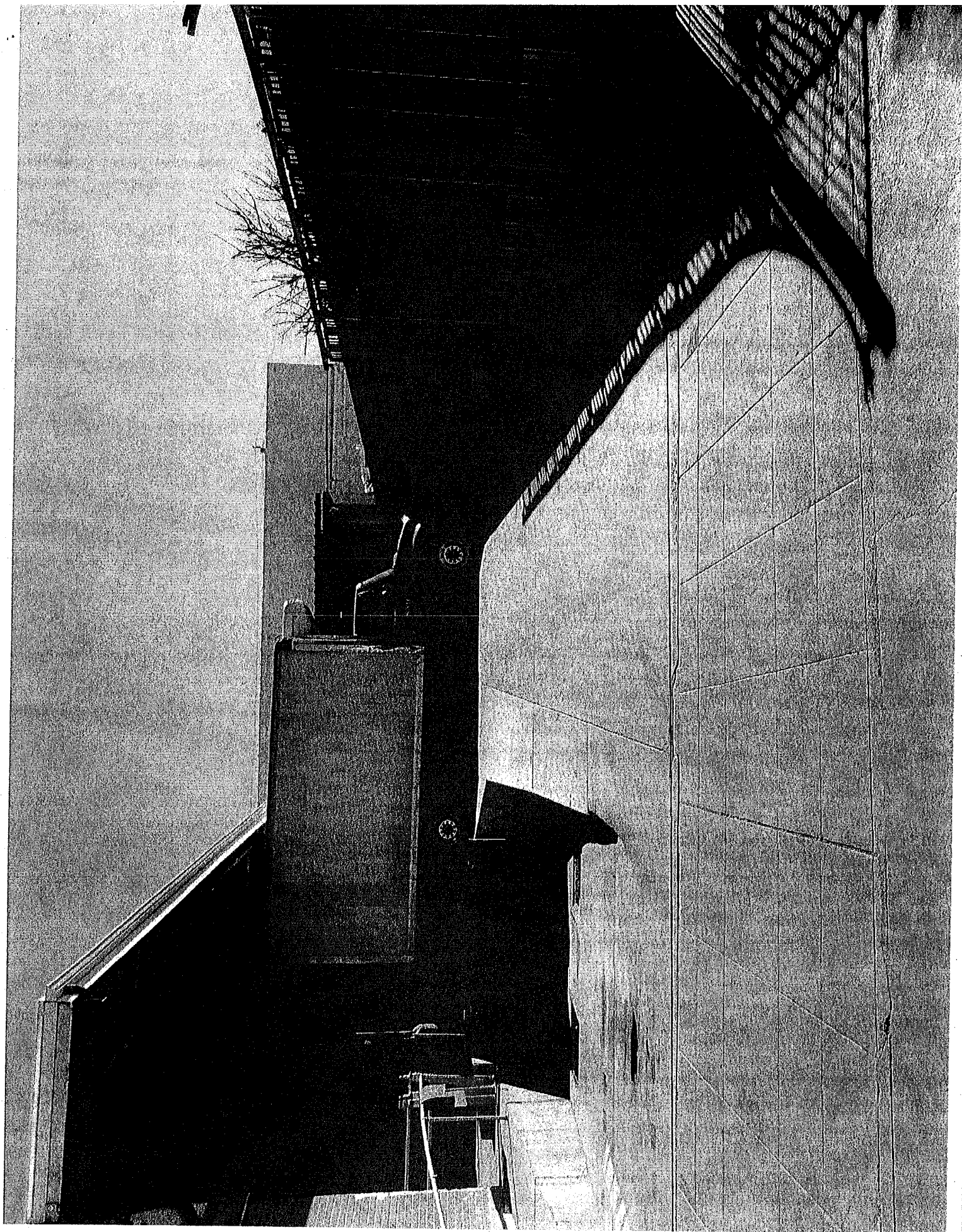


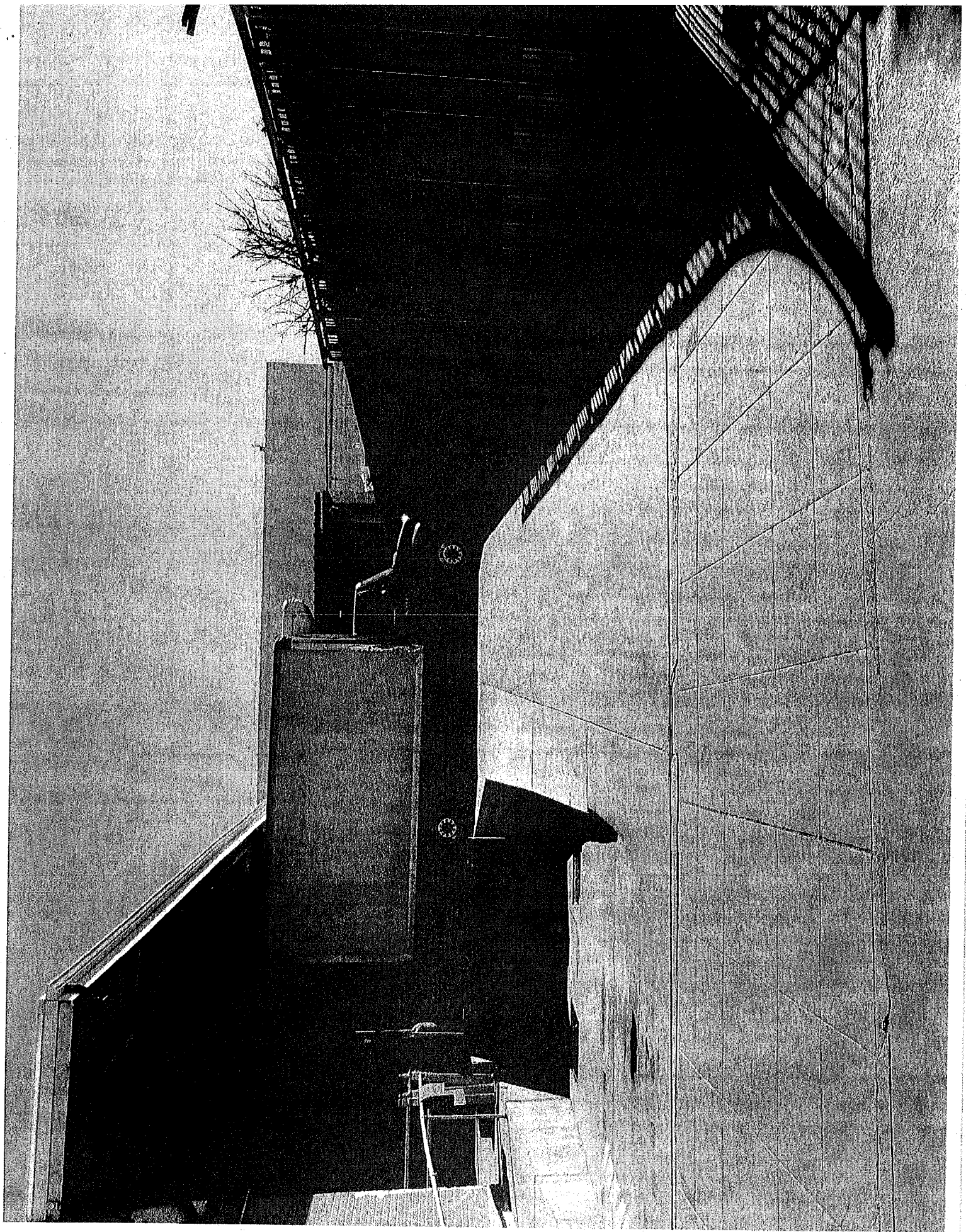
Miguel Jara, Jr.

# **EXHIBIT "A"**



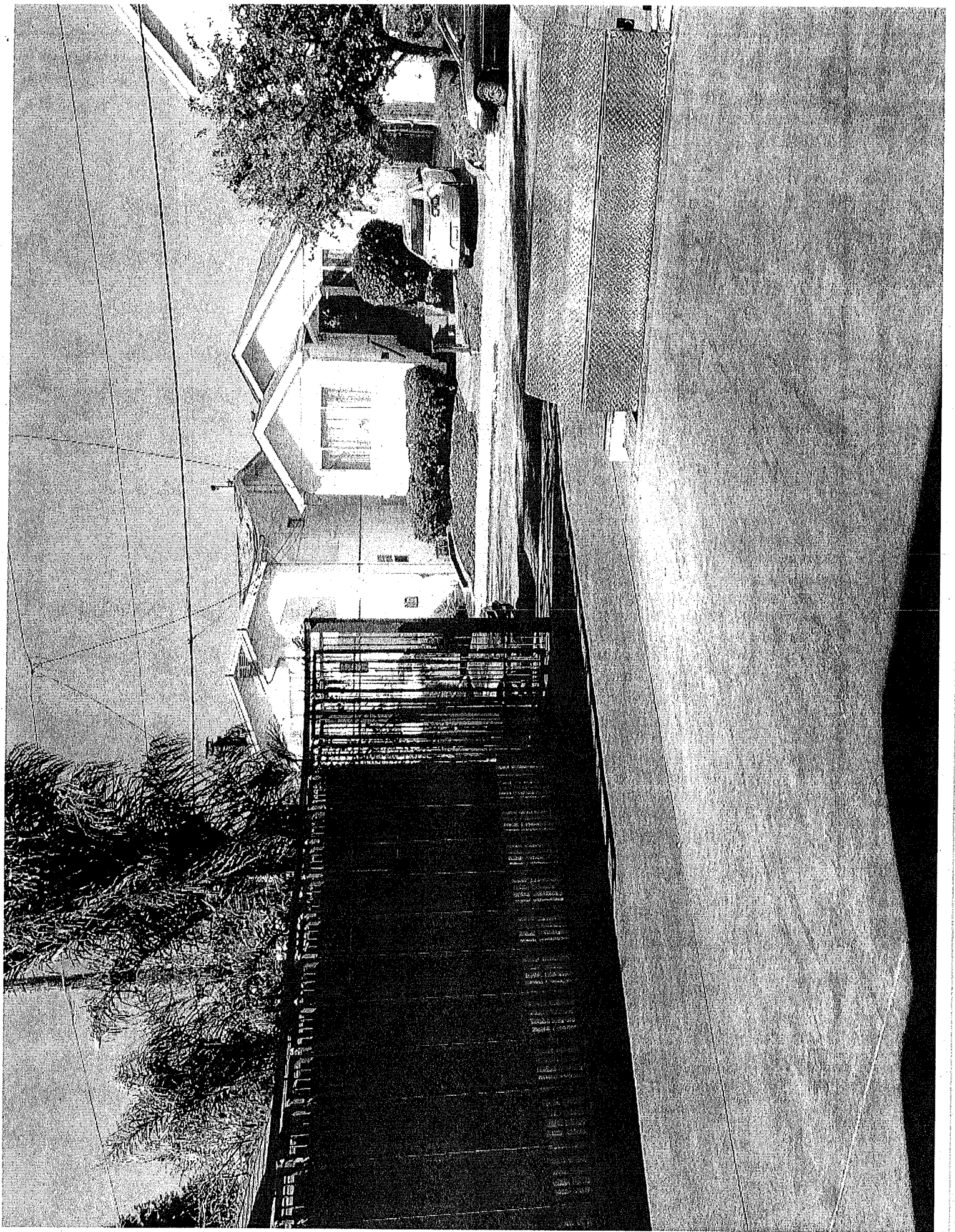
# **EXHIBIT “B”**





# **EXHIBIT “C”**





# **EXHIBIT “D”**

**Administrative Appeal Hearing,  
City of Oakland**

City of Oakland,

vs.

Suprema Meats, Inc.  
955 57<sup>th</sup> St.  
Oakland, CA 94608

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Building Services Complaint No.  
1303769

APN: 015 - 1298 - 009 - 00

Trial Date: August 12, 2015

**Order and Fine for  
Violation of Compliance Plan**

**Findings of Fact**

The City of Oakland requested exhibits A through J be entered into evidence. The defendant requested exhibits 1 through 12 be entered into evidence. These exhibits are documents, videotapes, and photographs which accurately reflected the conditions at Suprema Meats, Inc. All the exhibits were entered into evidence, although exhibits G 3-5 were entered for the limited purpose of supporting the city of Oakland's decision that there was probable cause to conclude that the defendant had violated the compliance plan.

Exhibit A is a Google map of 955 57<sup>th</sup> St., Oakland, CA 94608.

Exhibit B is a copy of the compliance plan entered into the defendant and the city of Oakland on or about October 20, 2014. Inter alia, it states:

“6. *Not later than one month from the execution date of this compliance plan*, Owner(s) agree to discontinue all delivery staging activities (i.e. movement of vehicles, equipment, and product it into position for loading), vehicle loading and unloading activities, and vehicle and equipment maintenance activities at Suprema's 57<sup>th</sup> Street open loading facility between the hours of 9 pm and 7 am (daily).

Exhibit C is a copy of a notice of compliance plan violation dated February 17, 2015. These alleged violations were not subject to the hearing because the defendant agreed to pay the \$8000.00 Fine, prior to the hearing.

Exhibit D is a copy of the notice of the compliance plan violation dated June 23, 2015. Parties stipulated that the \$500 fine for June 12 was no longer in issue. This letter assesses \$11,500.00 in penalties on various dates for “9 pm – 7 am Forklift Activity in violation of paragraph 6”

Exhibit E is a CD of videos "Suprema NOV, June 2015".

Exhibit F is the is a copy of the notice of the compliance plan violation dated July 23, 2015. This letter assesses \$11,500.00 in penalties on various dates for "9 pm – 7 am Forklift Activity in violation of paragraph 6 and O.M.C. 1.08".

Exhibit G1 is a CD of videos "Suprema NOV, July 2015"

Exhibit G2 are emails starting from Kim Lucas to Gregory Minor with the date of July 14, 2015

Exhibit G3 is a declaration of Mandip Dhillon

Exhibit G3 is a declaration of Mandeep Kaun

Exhibit G3 is a declaration of Gerald Herbert

Exhibit H are various emails from Gregory Minor to Michael Jara

Exhibit I is an email from Marcela Jara and Rachel Flynn

Exhibit 1 is defendant's copy of the compliance plan

Exhibit 2 is a August 25, 2014 email from the Quesada to Jara

Exhibit 3 is a letter from attorney Hassing to Quesada

Exhibit 4 is a September 16, 2014 email from the city to defendant

Exhibit 5 is an October 8, 2014 email from the city to defendant

Exhibit 6 is a copy of a May 10, 1955 application for permit

Exhibit 7 is a city account details report dated July 28, 2014 showing that defendant obtained its business license on or about June 1, 1996

Exhibit 8 are sound graphs prepared by defendant's sound expert

Exhibit 9 is the resume of defendant's sound expert

Exhibit 10 is a January 1, 2014 email from Gennino to Jamerson

Exhibit 11 is a January 17, 2014 email from Gennino to Jamerson

Exhibit 12 is an email from Candia to Jonsson

**Witnesses called by the City:**

Kim Lucas of 268 57<sup>th</sup> St., Oakland, CA testified that she was awoken almost every early morning by noises emanating from defendant's business. Her videotapes of forklift activity were helpful and entered into evidence. I found her to be a credible witness, although clearly not a disinterested one. She testified that she has owned her residence for a couple of years along with her husband. If defendant is forced to relocate; presumably, the Lucas property would go up in value.

Mandip Dhillon lives right next door to defendant's business. It cannot be over emphasized how close defendant's business and his residence are. He testified that he and his children have been awoken almost every early morning by noises emanating from defendant's business. He testified that along with his family, his brother and parents also live in the same house. I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would go up in value.

Mandeep Kaun, Mandip Dhillon's wife, lives right next door to

defendant's business. She testified that she and her children have been awoken almost every early morning by noises emanating from defendant's business. She also testified that her young children may be experiencing significantly poorer health because of being awoken in the early morning hours. She testified that she had lived there since approximately 2011. I found her to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would go up in value.

Gerald Herbert lives right across the street from defendant's business. It cannot be over emphasized how close defendant's business and his residence are. He testified that he is awoken almost every early morning by noises emanating from defendant's business. He testified that he is considering moving because the noise after his one-year lease expires. I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would be more desirable to rent.

Gregory Minor, is an assistant to the city administrator in charge of nuisance abatement. He testified, inter alia, regarding his decision to assess penalties against defendant for compliance plan violations along with violations of OMC 1.08. I found him to be a very credible witness.

**Witnesses called by the defendant:**

Miguel Jara Jr. testified on behalf of the defendant Corporation. He testified that he was the president and owner of the meat distributor and had been for some 20 years. (The business obtained a business license for the 9552 7<sup>th</sup> St. location on or about June 1, 1996.) He testified that he employed approximately 30 workers. He testified regarding his agreement to enter into the compliance plan. He also testified that on the dates cited, no product was moved.

I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, his business would suffer the expense of moving and possibly increased cost for the land used by the business.

Derek L. Watry testified as an expert witness on behalf of the defendant Corporation. He testified that he was the president and CEO of Wilson Ihrig and Associates, a firm of acoustic and vibration consultants. He testified that he tested the sound emitted by various activities of defendant. He further testified that at no time during his testing did defendant exceed the levels of noise prescribed by Oakland's noise code. I found him to be a credible expert witness, although clearly not a disinterested one. He was hired to testify for the defendant and it should be emphasized that he is not percipient witness on any of the dates the city wishes to enforce penalties for excessive noise.



Bradley Scott, B.A., M.A. testified as an expert witness on behalf of the defendant Corporation. He testified that he was professor of English for Golden Gate University for some 20 years. He testified as to how the compliance plan should be interpreted from the standpoint or normal use of the English language. I found him to be a credible expert witness, although clearly not a disinterested one. He was hired to testify for the defendant.

Chris Candell was called as a percipient witness by the defendant Corporation. He testified that he works for the city of Oakland in the area of noise readings. He testified that he tested the sound emitted by various activities of defendant, on August 27, 2014, April 21, 2015, and June 2, 2015 and at no time during his testing did defendant exceed the levels of noise prescribed by Oakland's noise code. On June 2, 2015 he recorded voice levels from 4:54 AM to 6:05 AM. During his testing, he recorded noise levels of 37 dB, 47.7 dB, 46 dB, and 48.2 dB. I found him to be a very credible percipient witness.

Bill Casada, zoning inspection supervisor for the city of Oakland was called as a witness by defendant Corporation. He testified that his understanding of the compliance agreement was that no forklift movement was to be allowed from 9 PM to 7 AM. He testified as to how the compliance plan had gone through through various drafts, until the final draft was agreed to. I found him to a very credible witness.

Record ID: PLN14303-A02

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Record # PLN14303-A02 Opened Date 02/20/2018

Status Under Review

Type Planning/Applications/Zoning/Appeal

Application Name Appeal # 2 on Suprema decision by neighbors

Assigned to Department Current Department Assigned to Staff Current User  
Zoning Review Zoning Review Ulla-Britt Jonsson Ulla-Britt Jonsson

Description  
Appeal # 2 on PLN14033 (Suprema Meats decision) submitted by neighbors

[check spelling](#)

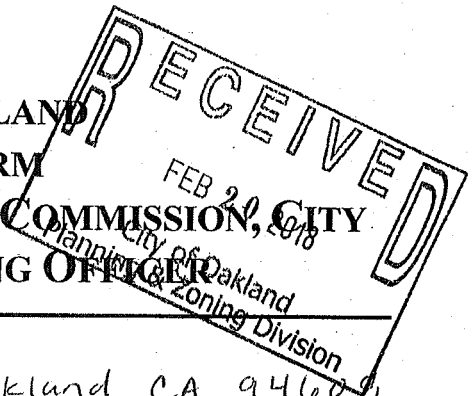
Total Invoiced	Total Paid	Balance
1,622.57	0.00	1,622.57

System ID  
18CAP-00000-05695



CITY OF OAKLAND  
APPEAL FORM

FOR DECISION TO PLANNING COMMISSION, CITY  
COUNCIL OR HEARING OFFICER



**PROJECT INFORMATION**

Case No. of Appealed Project: PLN14-303  
Project Address of Appealed Project: 955 57th St, Oakland CA 94608  
Assigned Case Planner/City Staff: Heather Klein, Planner

**APPELLANT INFORMATION: Golden Gate Community Association (GGCA)**

Contact: Printed Name: Kim Lucas Phone Number: 510-504-8744  
Mailing Address: 968 57th Street Alternate Contact Number: \_\_\_\_\_  
City/Zip Code Oakland CA 94608 Representing: See attached list  
Email: klucas111@gmail.com of supporters of this appeal

An appeal is hereby submitted on:

**AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

**YOU MUST INDICATE ALL THAT APPLY:**

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) Conditions of Approval

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) \_\_\_\_\_

(Continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)**       Granting an application to:      OR       Denying an application to:

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) \_\_\_\_\_

**FOR ANY APPEAL:** An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

**You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.**

**The appeal is based on the following:** *(Attach additional sheets as needed.)*

Please see attached.

**Supporting Evidence or Documents Attached.** *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

*(Continued on reverse)*

(Continued)

Angela Cennino

ACennino  
Signature of Appellant or Representative of  
Appealing Organization

2/20/2018  
Date

Contact: Kim Lucas [Signature] 2/20/2018

**TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE**

APPEAL FEE: \$ \_\_\_\_\_

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

**RECEIVED**  
FEB 20 2018  
City of Oakland  
Planning & Zoning Division

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## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

### Actions we object to:

- Approval of Minor Conditional Use Permit
- Approval of General Use Permits
- Inadequate Conditions of Approval

### Actions we request the City to take:

- Reevaluate City's claim that Suprema meets all the General Use Permit Criteria for the Conditional Use Permit and Design Review for the loading docks on 57<sup>th</sup> and Lowell Streets docks
- Require additional Conditions of Approval
- Implement adequate enforcement and hold City staff accountable for enforcement

### Reasons for the appeal:

Approval of Suprema's Minor Conditional Use Permit and other General Use Permits, especially without adequate Conditions of Use, will serve only to prolong and legalize a public nuisance. There is substantial documented evidence of Suprema's business operations resulting in an ongoing public nuisance and traffic safety issues impacting a growing number of residents in the surrounding neighborhood (Exhibits A and B). Nuisance impacts include extreme noise from truck loading, forklifts, and product staging in the 57<sup>th</sup> Street open facility abutting homes Sunday to Friday, semi-truck queuing and idling, blocking driveways all along Lowell Street from Stanford Avenue to Aileen Street, semi-trucks parking overnight with refrigeration engines running, use of the right-of-way north and south of 57<sup>th</sup> Street as a loading dock, and power spray washing of the delivery truck fleet adjacent to residential property. Over 20 neighbors have detailed Suprema's nuisance impacts in declaration letters submitted to the City Administrator's Office (Exhibit C). Frustrated by these nuisances, and following Suprema's construction of an unpermitted loading dock, steel canopy, cinderblock wall, and freezer expansion/elevation in the open facility immediately adjacent to residences, neighbors hired land use attorney Rena Rickles to advocate for a Compliance Plan for nuisance abatement (Exhibit D).

The City's findings that the project meets all the General Use Permit Criteria are an abuse of discretion, biased in favor of Suprema. These findings ignore evidence of the uniqueness of the Lowell Street corridor HBX-1 zone and the extreme proximity of residences on both sides, especially those immediately adjacent to the open facility on 57<sup>th</sup> Street where principal activities including truck loading and product staging occur up to 10 hours per day, Sunday through Friday (Exhibit E).

The City failed to mention a cinderblock wall built directly on the western residential property line and minimized the scale an impact of a freezer expansion including a significant increase in

## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

these two structures without permits in 2012 – 2013, depriving neighbors of an opportunity to comment or benefit from design review and inspections.

Based on substantial evidence, the Conditions of Approval will not adequately address the noise and other nuisances caused by Suprema's business operations given the physical realities (e.g., proximity to residential uses, open aspect of the 57<sup>th</sup> Street facility). In addition, Suprema's actions to date, including but not limited to the following, suggest the business owner, Miguel Jara, has little intention of working in good faith with the City and with his neighbors to mitigate the many nuisances and public safety issues through compliance with the Conditions of Approval:

- a. Ignoring a letter signed by nearly 30 neighbors requesting acknowledgment and relief from noise, nuisance activity, and blight, sent by certified mail (Exhibit H)
- b. Threatening neighbors who reported unpermitted industrial construction to the City with SLAPP lawsuits (Exhibit I)
- c. Repeated violations of several key provisions of the 2014 Compliance Plan for nuisance abatement (Exhibit J) for months after signing it, despite warnings from the Planning Department and the City Administrator's office
- d. Appealing nearly every Compliance Plan Violation or other Notices of Violation (NOV), fine, and zoning decision (Exhibit K)
- e. Filing two lawsuits against the City (Superior Court, Alameda, Cases RG15787127 and RG16803756), including one that seeks relief from their 2014 Compliance Plan
- f. Filing a SLAPP lawsuit (Superior Court, Alameda, Case RG15776121) against a neighbor who reported Compliance Plan violations only to withdraw the lawsuit at the last moment (Exhibit L)
- g. Submitting Records Act Requests for all emails and documented communications regarding Suprema targeting our City councilman, City Administrator, and Planning, Building, and Traffic Department officials, and all residents who submitted letters during Suprema's permit application public comment period (Exhibit M)
- h. Intimidation of neighbors, including ongoing verbal confrontation of residents who document violations and nuisance activities (e.g., photo, video, noise readings), using a forklift to remove a resident's personal vehicle from a location where it was legally parked on Lowell Street on or about the week before October 27, 2017, and driving a forklift to another resident's home to deliver insults and threats to use his money to "get at" her on December 27, 2016  
([https://www.youtube.com/watch?v=\\_dz-Xsu6PW4](https://www.youtube.com/watch?v=_dz-Xsu6PW4); Exhibit N).

The Conditions of Approval allow for years of additional delays through extensions, appeals, lawsuits while Suprema continues to operate out of unpermitted facilities forcing residents to wait for nuisance relief. Based on Suprema's years-long history of filing appeals and lawsuits we



## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

have no reason to expect that Suprema will pass on another opportunity to delay required improvements.

The burden of monitoring and reporting violations of the Compliance Plan and Conditions of Approval continues to fall on residents with little expectation of compliance by Suprema or effective enforcement by the City, given our experience over the last 20 years, in particular since the unpermitted construction took place and the Compliance Plan was signed.

### Contested issues, arguments, and evidence

(Bold text is from City's PLN14-303 Decision letter, Findings, and Conditions of Approval)

[p.2]

**Proposal: To legalize unpermitted canopy, unloading dock and entry sliding fence/gate on 57<sup>th</sup> Street, and to construct a loading dock with opening gates on Lowell Street, including making exterior building alterations to the existing transport and warehouse facility.**

**Planning Permits Required: Minor Conditional Use permit for unpermitted canopies; Minor Variance to reduce side yard setback where 5 feet is required and 0 feet is proposed; and Regular Design Review for unpermitted canopies, loading dock, entry sliding gate/fence. It includes a new loading dock and exterior alterations to building.**

In 2012 or 2013, Suprema significantly increased the height over approximately 2800 sq. ft. of existing warehouse on the west side of the facility to accommodate an industrial freezer and associated rooftop mechanical equipment. In 2013, Suprema built a cinderblock wall along the western residential property line. There is no mention of these significant construction projects in either the proposal or required permits. Suprema completed both construction projects without approved permits thereby depriving residents the right to comment and benefit from City design review. Both structures significantly impact the immediately adjacent residences as shown in Exhibits F and G.

[p.4-7]

### **I. 17.134.150 GENERAL USE PERMIT CRITERIA.**

...a conditional use permit shall be granted only if the proposal conforms to all the following general use permit criteria, ...

**A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the**

## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

**generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

Suprema's non-residential facility, including the canopy and loading dock built without permits, abuts RM-2 zoned residences along the western edge of the warehouse facility on 57<sup>th</sup> and Aileen Streets (Exhibit E). Given the proximity of the open facility where truck loading, forklift activity, and product staging occur 6 days per week within a few feet of homes, that independently measured noise from these activities that exceeds the maximum allowed levels during day and night compared with both the current and pre-1996 noise ordinances (Exhibits O – Q), and the undeniable public nuisance created by the industrial noise, vibration, and blight that severely impacts 57<sup>th</sup> Street neighbors (<https://www.youtube.com/watch?v=amNgnijdF4Y>; <https://www.youtube.com/watch?v=1fXvlpq53uU&t=24s>), the City cannot justify the Finding that the proposed development will be compatible with and not adversely affect the livability of neighboring homes.

The City has not adequately considered the generation of traffic and the capacity of the surrounding streets which were not designed to accommodate increasingly large semi-tractor trailers. Currently, the semi-trucks queue along Lowell Street taking up space in the traffic lanes, blocking residential and business driveways, obscuring the view of stop signs, and threatening the safety of pedestrians, cyclists and motorists (Exhibit R). It is unclear how an open air semi-truck unloading dock, sidewalk can be developed to be compatibly and safely co-exist with residential and pedestrian uses, including a planned bike lane along Lowell Street.

**B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The proposed development will not provide a convenient or functional civic environment for residents or a convenient or functional working environment for drivers of semi-trucks making deliveries to Suprema. By the City's own admission, conditions of approval on business operations have previously been unregulated and unmonitored. Residents endure excessive nuisance noise, business operations taking over the streets, and having their driveways blocked. Suprema has been unable or unwilling to control semi-truck queuing, idling, appointment arrival times, and parking overnight with refrigeration units running along Lowell Street. Semi-truck drivers have frequently become stuck on small streets in the area and been involved in numerous accidents involving motorists and a fire hydrant and have been inconvenienced by having to wait in long queues to unload (Exhibit S). The specific Conditions of Approval will not adequately address public safety concerns, noise, and other nuisances (discussed later in this Appeal).

## **GGCA / NEIGHBOR APPEAL**

**Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)**

**E. that the proposal conforms in all significant aspects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.**

The HBX-1 zone along the Lowell Street corridor is unique among other HBX-1 zones in that it is a narrow strip, just 2 – 3 parcels in either direction in the blocks north and south of Suprema, that is tightly surrounded by residences in RM-2 zones. This HBX-1 zone does not serve as a transition from heavy industry. Even if it did, there is not enough space for a transition in impactful uses. Suprema's business operations, even with the proposed Conditions of Approval, cannot compatibly co-exist with residential development, especially those residences that are immediately adjacent to Suprema's 57<sup>th</sup> Street open facility. The character of Lowell Street has become increasingly residential and family oriented with completed and planned residential units north and south of Suprema and the opening of Destiny Arts Center and the Santa Fe elementary school. We anticipate that the compatibility issues and conflicts between residential and industrial use will grow as residents increase their use of Lowell Street for parking, walking, and cycling.

**...Specifically, the project meets the following LUTE Objectives and Policies.**

**Policy 1/C4.2 Minimizing Nuisances- The potential for new or existing industrial or commercial uses, ... , to create nuisance impacts on the surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.**

Suprema is an existing industrial business that was not appropriately sited to begin with, and by the City's own admission, Suprema's operations have not been previously restricted or monitored despite being located within 400 feet of the closest residence in an M-30 zone. To our knowledge, the City did not try to minimize nuisance impacts through efficient implementation and enforcement of environmental and development controls around the time the business license was issued or in any significant way prior to the NOV's for rooftop cooling equipment noise in 2012 and nighttime loading noise in 2014, and the subsequent 2014 Compliance Plan. The proposed Conditions of Approval are not adequate for addressing current and future impacts on the surrounding residential uses (discussed later in this Appeal).

**Objective T1.5 Reduce truck traffic impact on residential neighborhoods.**

The new open air semi-truck unloading dock and second Suprema delivery truck loading dock on Lowell Street will shift some of the impactful activity from 57<sup>th</sup> Street to the industrial side of the facility. However, the impacts will continue to impact a significant number of close residential properties along the east side of Lowell Street.

## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

The project is consistent with the HBX Design Guidelines as applicable. Specifically:

**Design Objective #1: Create a development pattern that encloses the street space by defining a street wall and street section while providing transitions from existing patterns and respecting the light and air of residential properties, if present.**

The freezer addition nearly doubled the height of over 2800 sq. ft. of the existing warehouse directly above the residential property line (Exhibit G). A very high industrial cinderblock wall was also built directly on the residential property line (Exhibit F). These construction projects are not "minor modifications" to those residents who are impacted. Suprema, and now the City, have deprived residents the benefits of design review, restrictions on construction days and hours, and the opportunity to comment on or oppose the construction.

**Design Objective #4: Use design techniques to scale buildings appropriate to their location.**

The freezer addition elevation is of a similar height to the Suprema's office building on the east side of the property. Since the freezer elevation is directly on the residential property line and approximately doubled the height of the warehouse, it is not scaled appropriately to its location. The photos in Exhibit G clearly show that the freezer elevation increased the overall building bulk and shadowed the adjacent residential neighbor.

[p.7 – 8]

### II. SECTION 17.136.050(B) – DESIGN REVIEW DISCRETIONARY CRITERIA: NONRESIDENTIAL FACILITIES AND SIGNS.

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.

The freezer elevation, for the reasons given above under Design Objectives 1 and 4, did not result in a well-composed design with respect to bulk, height, and arrangement given the lack of setback or transition to the immediately adjacent residential use. The loading dock and canopy are a new principal facility and expansion of the overall use and impact on neighbors given the open aspect of these facilities. The open facility is not consistent with HBX-1 and does not harmonize with immediately adjacent residential property. The Conditions of Approval with respect to the open facility are not sufficient for the business and residential uses to compatibly co-exist.

## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

**3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission of City Council.**

We disagree that all the Conditional Use Permit criteria (17.134.150) or Design Review criteria (17.136.050(B)) have been met for all of the reasons given above.

[p.9-10]

### **CEQA FINDINGS**

**Section 15301 of the CEQA Guidelines exempt from CEQA review those facilities which are existing. The exemption includes projects and minor alterations that involve negligible or no expansion of use beyond that existing. ...**

The freezer elevation nearly doubled the height of a pre-existing warehouse built out to the residential property line. This is not a "minor alteration" to the immediately adjacent impacted neighbors. This alteration presumably significantly increased the freezer capacity given the increase in height that expanded the volume.

**... As noted in the City's determination letter dated October 19, 2017, there was insufficient evidence to support a finding that there was a change or expansion of Suprema Meats operations in conjunction with the unpermitted work. ...**

The City originally did find sufficient evidence that Suprema's business operations had expanded, as detailed in the City's determination letter dated March 1, 2016 (Exhibit T). It was only after Suprema appealed the determination to the Planning Commission that the City eventually succumbed to pressure from Suprema to rescind the original determination. Scott Miller (former Zoning Manager) and Heather Klein (Planner IV) stated during a meeting on September 12, 2017 with two concerned neighbors that after a year of discussions with the City Attorney's Office it was concluded that the determination of non-conforming status would likely not be defensible in court, and that Suprema would likely file yet another lawsuit if the City opted to defend the determination before the Planning Commission. Deciding to rescind the determination due to Suprema's litigious nature is not equivalent to there being insufficient evidence of expansion. Nearby residents who are most severely impacted by Suprema's business operations have noted a significant expansion since approximately 2012 when Suprema purchased the property that they previously leased, nearly doubled their fleet of delivery trucks, and embarked on their unpermitted construction projects. See Exhibit U for a sample of residents' letters to the City Planning Department and City Administrator's Office.

**... Furthermore, the proposed changes, including the new docks and exterior changes will also not result in an expansion of use with the implementation of the Conditions of Approval.**

## GGCA / NEIGHBOR APPEAL

Case File No. PLN14-303; 955 57<sup>th</sup> Street, Oakland, CA 94608 (APN: 015 129800900)

There is nothing in the Conditions of Approval that would prevent Suprema from expanding business operations even further. Expansion seems more likely than not given the additional loading docks on the Lowell Street side and within the warehouse that would allow more Suprema trucks to be loaded at one time unimpeded by forklifts that currently must pass through the open facility on 57<sup>th</sup> Street to unload semi-trucks.

**... The improvements are mainly to increase the efficiency of the operation. No expansion is anticipated and the improvements, with the Conditions of Approval, will restrict operations.**

Again, there is nothing in the Conditions of Approval to restrict business expansion and increased negative impacts on residential properties. In fact, the Conditions of Approval expand the hours of truck loading operations to 8 pm daily from the 5 pm closing time stated in Suprema's permit application.

**... The surrounding area has not changed substantially regarding the land uses and remains both industrial and residential.**

This is not true. Lowell Street is a stellar example of high-density development, which the City has been promoting across Oakland for years. Since 2013, warehouses and lots on both sides of Suprema, that were some of Oakland's most blight-ridden properties, have been transformed into 48 newly developed homes and live/work units. Another 36 live/work units are slated for completion in this year. *This means that Lowell St. alone has gone from 0 to 84 units within five years* and this does not even take into account the current boom in new Secondary Unit construction within the Lowell corridor.

The City, however, has not reconciled the growing incompatibility of largely unregulated industrial uses of Lowell with this high-density development and the dramatic demographic shifts on Lowell St. itself. The unprecedented influx of new families into the corridor has resulted in the community initiative to reopen the Santa Fe Elementary school (closed in 2012) while sending their children to Glenview Elementary (temporarily housed on the Santa Fe campus at 53<sup>rd</sup> and Adeline Streets.)

Each year, more children and their parents use Lowell St as a main route to school, not just to the Santa Fe campus, but to nearby Anna Yates and the North Oakland Community Charter School. More people from Berkeley and Golden Gate are using Lowell as a biking route to downtown or BART. The City recently completed a bike/pedestrian path across the Stanford median at Lowell to accommodate the growing foot and bike traffic on Lowell.

Moreover, Destiny Arts bought a newly converted warehouse space in the corridor to teach the performing arts to thousands of children and adults each year after school and on Saturdays. A popular new cafe, the Sideshow, has opened on Lowell St. and Stanford Ave. and draws large crowds from 9am-8pm.

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[p.12]

### Attachment B: Conditions of Approval

#### 2. Effective Date, Expiration, Extensions and Extinguishment

**... this Approval shall expire in one (1) calendar year from the Approval date, or from the date of the final decision in the event of an appeal, ... Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. ... If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.**

This is a set up for the City to allow Suprema to continue to delay the improvements and Conditions of Approval that are meant to provide residents long overdue relief from noise and nuisances for many years to come. Suprema is also expected to file an appeal of this Approval to the Planning Commission on February 20, 2018. While the Planning Commission must set a date for the hearing, there is no specified timeframe in OMC 17.134.060 in which the hearing must be scheduled. If the Planning Commission eventually rules in favor of the City or residents, we expect that Suprema will file a third lawsuit against the City, thereby enabling them to continue operating out of unpermitted facilities despite, OMC XXX prohibiting any such operations, since the City has a history of not enforcing that code.

It is not acceptable to residents along the Lowell Street corridor that we should be subjected to the public nuisance impacts of Suprema's operations which are expanding and monopolizing the surrounding public right of way. Given Suprema's appeals and lawsuits will likely drag out for years, interim relief is desperately needed for our neighborhood.

#### 5. Compliance with Conditions of Approval

**c. ... The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions in the Planning Code or Municipal Code, or the project operates as or causes a public nuisance.**

We have little expectation of enforcement of the Conditions of Approval, given the City's track record of enforcing Suprema's ongoing code and Compliance Plan violations. Formal resident complaints to the City of Suprema's blight and excessive noise day and night date back to at least 2001, with most cases closed with no reason given or claiming there was no violation found or that the issue was abated (Exhibit V). The City has rarely issued NOVs and fines for

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reported Compliance Plan violations, and by the City's own admission, for only a small subset of the violations for which residents submitted evidence (Exhibit J). The Compliance Plan violations are ongoing, yet the City has not issued a NOV or fined Suprema since May 2, 2017. The City opted to settle this last violation with Suprema rather than expend resources in hearings defending the City's actions against Suprema's appeals.

[p.23-26]

### PROJECT SPECIFIC CONDITIONS

#### **30. Semi-truck Delivery Management Plan (operating hours)**

... The applicant shall schedule appointments to unload big-rig (semi-truck) deliveries one at a time along the Lowell Street dock between 7 am and 5 pm. No big-rig trucks delivering to Suprema may arrive anywhere on Lowell Street or within the immediate area prior to 7:00 am. Additional or early-arrival trucks must be held in reserve outside of the residential area until the dock is clear. Trucks that are not being unloaded must remain at a lawful off-site location such as designated truck stops near the Port or freeways. The applicant shall implement this delivery management plan with all delivery vendors.

Currently, Suprema uses the public right of way north and south of 57<sup>th</sup> Street along Lowell street to unload two and even three semi-trucks at once causing a hazardous situation in the intersection. The Conditions of Approval need to specifically prohibit this use of our streets as an extension of their loading dock. If not explicitly stated, Suprema is likely to continue this activity and appeal any resulting NOVs.

It is our understanding that Suprema has previously attempted to provide all delivery vendors with instructions for arrival times and appropriate routes to take to Suprema to avoid driving on small side streets. By Miguel Jara's own admission (Exhibit W), early arrivals and overnighting of semi-trucks is beyond his ability to control for practical reasons. Semi-trucks are arriving from all over the United States and Canada and the same driver rarely returns given the large number of drivers. The truck management plan, based on our experience, is therefore inadequate. The Conditions of Approval should include additional controls, such as requiring Suprema to post security patrols at Suprema's facility as well as entry points to the Lowell Street corridor to prevent semi-trucks from arriving outside of receiving hours or more than one at a time, or parking overnight with their refrigeration engines running, disturbing residents' sleep.

#### **31. Transportation Improvements**

**Requirement:** The applicant shall submit a plan for a new sidewalk, curb and gutter and street trees on the west side of Lowell Street between 57<sup>th</sup> Street and Aileen Street adjacent to Suprema's building and shall install such improvements, ...



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Given the west sidewalk is planned between the warehouse wall and the semi-truck unloading dock in the right of way, with hundreds of forklift trips across the sidewalk per day, a second sidewalk on the east side of Lowell is needed for pedestrians to avoid walking between semi-trucks and Suprema's warehouse wall while trucks are being unloaded. Residents are also concerned about how a planned bike lane can be safely integrated with all uses in the 60-foot right of way.

### **32. Washing of Trucks**

**No washing of trucks shall occur on Suprema property including the property currently owned by Suprema located across Lowell Street from the warehouse. Truck washing shall occur at commercial truck washing facilities.**

We strongly support this decision. Video and noise measurements provide evidence clearly demonstrating that commercial truck washing on Suprema's property immediately adjacent to 7 residences along the eastern perimeter of the parking lot is a public nuisance, not to mention the fact that Suprema was paying another company to operate a mobile commercial truck wash in HBX-1 in which commercial truck washing is not permitted (<https://www.youtube.com/watch?v=TLca-nhAUPj>; [https://www.youtube.com/watch?v=Gkj7\\_DYj7xE](https://www.youtube.com/watch?v=Gkj7_DYj7xE); Exhibit X).

### **34. Gate Screening**

**... the applicant shall propose screening material such as slats or solid materials with sound attenuating characteristics, behind the gate and fence system on 57<sup>th</sup> Street, ...**

The gate itself screeches loudly as it moves in its track. To enhance the acoustical buffering and noise prevention measures described below, specifically to be consistent with the Wilson and Ihrig study recommendation to install a 12-foot high sound barrier along the western edge of the 57<sup>th</sup> Street loading dock, and to protect neighbors directly across the street, the gate should be replaced with a taller, quieter model with solid materials with sound attenuating characteristics, and the gate should be kept closed except to allow trucks to enter and exit.

### **35. Street Improvements and Loading System**

**... Plans shall be revised within 30 days of approval of this permit to indicate a new dock facility for at least one delivery truck along Lowell Street (east elevation), and related public Right-of-Way improvements shall be made along the property's Lowell Street frontage (from 57<sup>th</sup> Street to Aileen Street) as needed to accommodate unloading of big rig trucks (semi-tractor trailer trucks).**

It is not clear whether the "new dock facility for at least one delivery truck" refers to an enclosed or unenclosed loading dock. Soon after Suprema submitted their original permit

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application early in 2015, residents noted that the architectural drawings omitted a key requirement of the Compliance Plan: "3. ... (c) construction of a new loading facility for at least one delivery truck *inside* the existing warehouse building along Lowell Street (east elevation), ..." We request rewording to confirm that this Condition of Approval is consistent with the Compliance Plan requirements.

### **40. Acoustical Buffering and Noise Prevention**

The applicant shall install, with permits, acoustical buffering and baffling below metal shade structures to limit the extent of noise which bounces off the structure toward residential properties. The applicant shall follow the recommendations of the 2015 Wilson and Ihrig noise study ... which are incorporated herein by reference, including but not limited to:

- a. Sound barrier walls around all existing rooftop refrigeration units
- b. Seal gaps between sound barrier walls and roofs
- c. Provide airfoil fan blades on condensers
- d. Install mufflers on compressors

These measures do not adequately mitigate noise from truck loading which exceeds maximum allowable levels and is the primary source of disruptive nuisance noise from the open facility. According to Wilson and Ihrig, an "excellent noise control provision would involve complete enclosure of the entire loading dock area, extending to the western edge of the property, and provision of a rollup door at the drive entrance and roof. The ceiling of the enclosure and walls would be treated with acoustical absorption" (Exhibit O).

If enclosing the loading dock is not feasible, at a minimum, the following Wilson and Ihrig noise control recommendations should be required in addition to the controls for the canopies and roof top refrigeration equipment, so that a public nuisance is not legalized along with the unpermitted structures:

- a. To reduce noise from positioning loaded pallets inside the trucks with pallet jacks or forklifts, equip the delivery trucks with a 1/2" thick 60 durometer rubber or neoprene mat, 1/8" thick steel plates over the top, and hang blankets around the sides.
- b. To reduce loading noise radiation from the truck box floor and ceiling, construct a 12-foot high sound barrier along the western edge of the loading dock pit.
- c. To absorb sound radiated from underneath the bottom of the truck box, treat the walls of the loading dock with acoustical treatment.

### **42. Enforcement**

The project applicant shall install/maintain at least two (2) video cameras along Lowell Street and one (1) on 57<sup>th</sup> Street with specific locations to be approved by the Zoning Manager, to monitor truck movements as well as the other Conditions. The video tapes shall include date

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**and time information and shall be made available to the Zoning Manager and Inspections Manager for review upon request.**

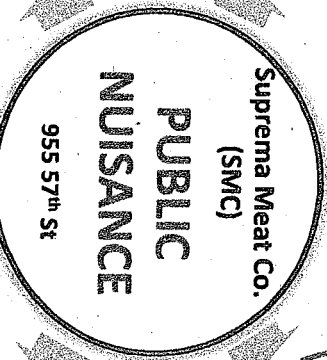
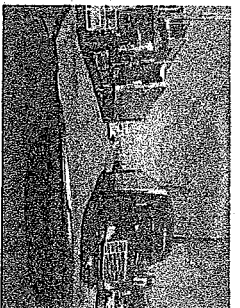
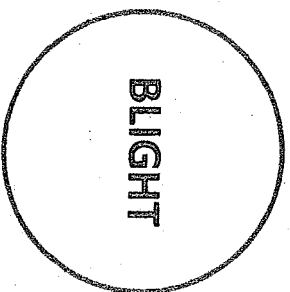
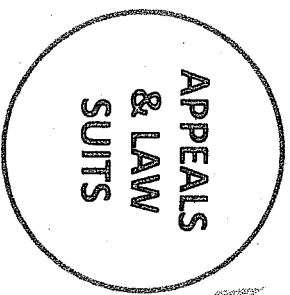
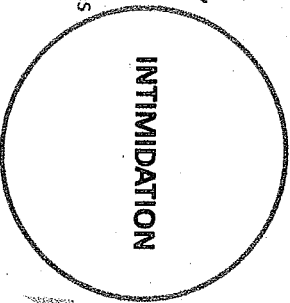
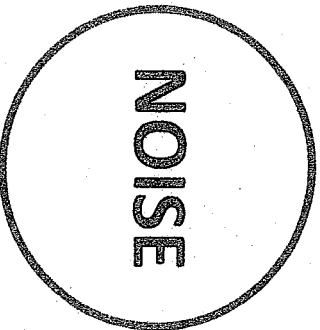
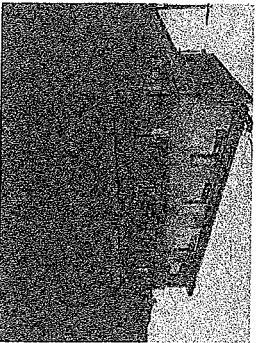
We are concerned that the burden of monitoring and reporting will continue to be placed unfairly on residents since no specific details are provided regarding the circumstances under which the City would request to review video or whether the duration of any recording to be reviewed would be adequate to reliably capture any violations. Enforcement of the Compliance Plan relies mainly on residents reporting violations and providing photo and video evidence, which the Building Services code enforcement staff refused to issue NOVs for, stating that they could only use evidence collected during their own inspections for enforcement, which require overtime given many of the violations were occurring before 7 am.

# EXHIBIT A

- Loading and forklift noise (80 to 90 decibels) in open yard right next to residential property line, in violation of OMC 17.020.050, severely impacting residents' health and peaceful enjoyment of homes, Sunday through Friday
- SMC signed Compliance Plan October 2014 agreeing to stop loading trucks between 4 and 7 am, but continued through July 2015 despite warnings and fines from City Administrator
- Noise, vibration, & fumes from SMC's diesel trucks and big rigs running refrigeration engines overnight
- 24/7 industrial refrigeration hum from unpermitted cold storage

- SMC owner and manager have a history of intimidating neighbors who document or complain of noise, traffic, and property issues
- Two residents threatened with SLAPP law suits after speaking out about SMC building & code violations
- Multiple FOIA requests targeting communications between top City officials and residents
- Resident observing 5 am truck loading confronted and followed by SMC owner, advised to get better job, move to Berkeley
- SMC manager tells resident documenting illegal truck washing that in some countries he'd be shot for taking pictures

- SMC filed SLAPP suit against residential neighbor who reported forklifts loading trucks at 4 am violating Compliance Plan
- SMC filed two law suits against City to get out of Compliance Plan and fines for violating the Plan
- SMC appeals nearly every City notice of violation and zoning decision



- SMC uses 57<sup>th</sup> St and Lowell as an extension of their company yard, Sunday through Friday
  - Big rigs queue along Lowell between 57<sup>th</sup> & Stanford blocking view of stop signs, intersections
  - 2 to 3 big rigs unloaded at once from multiple spots on Lowell
  - Forklifts carry tall stacks of product from big rigs on Lowell through the intersection and up center of 57<sup>th</sup> St
  - Multiple accidents involving big rigs, SMC trucks and forklifts
  - SMC trucks block sidewalk while loaded in 57<sup>th</sup> St loading dock
  - Discharges of contaminated liquid from under loading dock flow into street & storm drain
  - Fire hydrant at 57<sup>th</sup> and Lowell taken out by big rig delivering to SMC, not replaced for months
- October 2013 to January 2014:
- Loading dock in open yard abutting residential property & side walk
  - 2800 square foot freezer and rooftop mechanical equipment
  - 1600 square foot canopy & 8 foot tall cinder block "sound wall" built on residential property line
  - Work continued for months despite 4 stop work orders, fines
- Early 2013: Satellite images show before and after 3 warehouses joined and previously open yard space enclosed. Major unpermitted work unreported and/or not investigated.
- Boarded up 2<sup>nd</sup> story windows since July 2013
  - Dirt mound covered in broken glass along Lowell perimeter
  - Harsh industrial lights flood neighboring residential property

## **EXHIBIT B: TIMELINE OF KEY EVENTS**

- March 2013 – Suprema Meat Company (SMC) purchased 955 57<sup>th</sup> St and the parking lot on the other side of Lowell St at 949 57<sup>th</sup> after leasing since June of 1996.
- Early 2013 – Major unpermitted construction to join what appear to have been three separate warehouses, enclosing significant square footage between them, and constructing a 2800 square foot elevation containing a new industrial freezer and associated rooftop mechanical equipment.
- July 2013 – All 2<sup>nd</sup> story windows knocked out and boarded with plywood and black plastic, later obtained permit, but abandoned work.
- October 2013 into 2014 – Major industrial construction in open facility right next to residential property on 57<sup>th</sup> St despite at least four stop work orders: loading dock abutting sidewalk, 1600 square foot steel work canopy and 10 foot tall cinderblock wall built on residential property line, new concrete graded drive throughout.
- November 2013 – Residents filed complaint for 4 to 7 am truck loading in open facility adjacent to homes. City measured noise January 2014 and issued NOV February 2014. No further enforcement.
- January 2014 – SMC's attorney, Steve Hassing, sent two residential neighbors cease and desist SLAPP law suit threat letters.
- January 2014 – 24/7 70 decibel noise from SMC's new freezer equipment started up and continued for over a year.
- July 2014 – 28 residents sent certified letter to SMC owner detailing noise, nuisance, and other code violations, asking for acknowledgment and mitigation efforts, but received no response.
- Spring/Summer 2014 – After residents escalated complaints of 4 to 7 am truck loading, industrial construction without permits, blight, and other code violations to Rebecca Kaplan's office, Planning Department staff began meeting with SMC and drafting Compliance Plan.
- June 2014 – At City's request, SMC hired an acoustical engineering firm (Wilson & Ihrig) to conduct a noise survey of 4 to 7 am truck loading activity. The report detailed violations and made a recommendation to enclose the open facility to ensure compliance with noise ordinance.
- September 2014 – Residents hired zoning attorney Rena Rickles to advocate for meaningful interim and long-term measures within the Compliance Plan to mitigate noise and traffic impacts within a 2 to 3 block radius of SMC. Residents were forced to discontinue legal advisement after Rena Rickle's representation at one meeting with the Planning Department cost residents \$4,800.

- October 2014 – City gave in to demands of SMC attorney Steve Hassing, resulting in signing of a weak Compliance Plan that did not include the most important noise and nuisance mitigation measures recommended by Wilson & Ihrig and by Rena Rickles. Key provisions of the Compliance Plan include discontinuing the 4 to 7 am loading and forklift activity, management of big rig traffic, opening warehouse wall on Lowell to accept big rig deliveries, enclosing at least one loading dock for SMC owned delivery trucks, CUP, variance, and permit applications, and sidewalks on Lowell.
- November 2014 – SMC violated Compliance Plan by continuing daily 4 to 7 am truck loading and forklift activity. Despite extensive photo and video evidence submitted by residents, code enforcement staff declined to take action, stating they cannot accept the evidence, and referring residents to the City Administrator's nuisance abatement coordinator, Greg Minor.
- February 2015 – Greg Minor issued \$8,000 in fines for small sub-sample of 4 to 7 am forklift loading violations, based on resident submitted video evidence. SMC paid the fines and continued the loading unabated for several months.
- March 2015 – Planning Department issued public notice of SMC's permit applications. One hundred five residents submitted letters of opposition, the majority with detailed personal accounts of the impact SMC's business operations and how much worse they will become if allowed to expand.
- April 2015 – 30 to 40 residents attended at a public comment meeting hosted by the Planning Department. SMC's architect and lawyer presented their permit application and plans. Residents expressed their opposition and gave accounts of the severe nuisance impacts and concerns about how those impacts would expand to both 57<sup>th</sup> and Lowell if the permits are approved.
- May 2015 – Neighbors pointed out to the Planning Department that the architectural plans presented at the April 2015 public comment meeting did not meet requirements of the Compliance Plan to include an enclosed loading dock for at least one SMC owned truck and sidewalks on Lowell. Neighbors urged the Planning Department to require a revised application and plans, conduct a determination of business expansion to settle which noise laws and other performance standards apply, and conduct a noise study to determine whether the open facility and loading docks (already built without permits and proposed) would be in compliance with performance standards.
- June and July 2015 – Greg Minor issued an additional \$22,500 in fines for Compliance Plan violations and public nuisance resulting from 4 to 7 am forklift / loading activity.
- July 2015 – SMC appealed all fines and filed a SLAPP lawsuit against next door neighbor who submitted most of the video evidence for the June/July Compliance Plan violations. On March 1, 2016, just two days before the

- scheduled case management hearing with the Judge, SMC withdrew their lawsuit. (Superior Court, Alameda, Case No. RG15776121).
- July 2015 – SMC filed five FOIA requests targeting high-ranking City officials and neighbors. The FOIA requests targeted Greg Minor, Rachel Flynn, Scott Miller, Dan Kalb, and two named residents of 57<sup>th</sup> St (who received SLAPP threats from SMC in January 2014. Numerous City staff spent at least six months months compiling, redacting, and distributing hundreds of pages of emails for these requests.
  - July 2015 – Planning Department finally decided to move forward on neighbors and attorney Rena Rickles urging to conduct an independent noise study and to do a determination of business expansion before making final CUP and permit decisions.
  - September 2015 – SMC filed a “breach of contract” lawsuit against City seeking “relief” from the Compliance Plan. (Superior Court, Alameda, Case No. RG15787127).
  - September 2015 – Planning Department contracted with independent acoustical engineering firm (Pappadimo’s Group) to complete week long round-the-clock noise surveys from multiple locations around Suprema’s open facility on 57<sup>th</sup> St and parking lot on Lowell St. Unfortunately, the report does not include any interpretation of whether the noise ordinance is being violated, although the graphs appear to show a consistent pattern of noise exceeding maximum levels.
  - November 2015 – City’s hearing officer upheld \$9500 of the June/July 2015 fines for Compliance Plan violations based on several days of testimony by residents, City staff, and attorneys for both sides.
  - December 2015 / January 2016 – Planning Department sent two letters to SMC requesting information on current business compared with 1996, including hours of operation, number of employees, trucks, big rig deliveries received, outbound deliveries, freezers, and site plans showing layout and use, for the purpose of determining whether the business has expanded to the point of “non-conforming status”. SMC did not respond to the City’s requests.
  - February 2016 – SMC resumed illegal washing of their entire commercial truck fleet in parking lot right next to seven residences in defiance of City warnings. Truck washing occurred most Sunday mornings for many years until SMC agreed to stop during the April 2015 public comment meeting.
  - February 2016 – SMC filed a “writ of mandate” lawsuit against the City’s hearing officer for upholding some of the Compliance Plan violations for which Greg Minor issued fines in June and July of 2014. The writ of mandate was denied on December 7, 2016. Suprema filed an appeal on January 3, 2017. (Superior Court, Alameda, Case No. RG16803756).

- March 2016 – Planning Department issued a determination of “non-conforming status” due to SMC’s significant business expansion, establishing that SMC is subject to the noise ordinance and other performance standards. The determination was based on publicly available information since SMC was non-responsive to two formal requests from the Planning Department. SMC appealed the determination. The case will be heard by the Planning Commission at the November 16, 2016 meeting, open to the public.
- May, June, and August 2016 – SMC washed their fleet of approximately 11 commercial delivery trucks on at least tee Saturdays in the parking lot adjacent to 7 residences in defiance of City warnings that this activity is not permitted in the HBX-1 zone.
- August 2016 – Planning Department issued a Notice of Violation (NOV) for the truck washing and for outdoor storage of an overflowing shipping container and multiple stacks of pallets and debris blocking the windows of neighboring residential property. SMC immediately appealed.
- December 2016, the City’s hearing officer for the truck washing NOV appeal ruled in Suprema’s favor in terms zoning but noted that the activity may violate other City noise and nuisance codes.
- April 2017 – Suprema resumed loading trucks in the open facility next to homes before 7 am and increased the number of trucks exiting before 7 am to seven or eight, in violation of the Compliance Plan.
- May 2017 – Greg Minor issued \$7,000 in fines for Compliance Plan violations. The City later settled with Suprema to avoid another appeal process.
- October 2017 – The Planning Department rescinded the Determination of Non-Conforming Status
- February 2018 – The Planning Department issued Minor Conditional Use Permit and General Use Permit decisions and Conditions of Approval, approving all permits except for the canopy setback Variance.



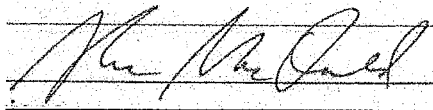
## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF ALEC MACDONALD

I, Alec MacDonald, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 939 57<sup>th</sup> Street, which is about 300 feet from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here with my wife since spring of 2010, and with our son since his birth in early 2012.
2. I have concerns about the diesel exhaust produced by the constant stream of semi-trailer trucks that make deliveries to Suprema. Diesel exhaust exposure has been linked to elevated cancer risk and assorted serious respiratory ailments. To mitigate these effects, the California Air Resources Board mandates that the drivers of such trucks cannot allow their engines to idle for more than 5 minutes, but I strongly suspect that not all the trucks that visit Suprema are complying with this regulation. For the health and safety of my family and neighbors, I would respectfully ask that Suprema work with its business partners to reduce emissions of diesel exhaust, and that truck drivers who make deliveries to the facility in question adhere to state law.

Executed on this 26th day of August 2014 in Oakland, California.

A handwritten signature in black ink, appearing to read 'Alec MacDonald', is written over a horizontal line. The signature is cursive and somewhat stylized.

Alec MacDonald

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF ANGELA M. GENNINO

I, Angela M. Gennino, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 980 57<sup>th</sup> Street, which is about 65 yards from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. My family and I have lived here for 12 .5 years.
2. [as detailed as possible, describe how Suprema meats' operation has affected your health and safety, e.g. wakes me up in early in morning, can't have conversations with people in my backyard; the lack of sleep has led to...].
3. [as detailed as possible, describe how suprema meats' operations have obstructed public streets or interfered with your use of public streets, e.g. can't walk or drive across street at certain times].
4. [any recent incidents in which suprema has impacted your health/safety/interfered with your use of public streets].

#### **2-A Excessive Daily Loading Noise**

The loading noise starts at 4:00 am, six days a week with the loading of Suprema's large trucks in their open yard. Afterward, one big rig at a time backs up on 57<sup>th</sup> St. to the entrance of that yard while other big rigs line up on Lowell St. for staggered unloading until evening.

This noise reaches residents living on blocks beyond 57<sup>th</sup> (Arlington & Aileen). But the greatest impacts are felt by those of us on 57<sup>th</sup> St, in direct proximity to the slamming truck doors, pallet stacking, forklifts blocking neighbors' driveways, Suprema's vehicles using those same driveways to make U turns, in addition to the workers shouting, listening to a radio, and sometimes singing excessively loud at 8 am (OPD was called two weeks ago for that).

#### **3-A Personal Experience**

The noise wakes me up at around 4:30 am when I keep my windows open, which I must do for ventilation. The chronic lack of sleep and continuous noise make it impossible to work the entire morning in my home office, which is located in the front room of my house. Since the noise intensified last October, my work productivity has dropped significantly. As a freelance writer, this nuisance has negatively impacted my earning potential.

#### **2-B. Excessive Construction Noise**

October 2013, loud pounding, drilling, and sawing suddenly started shaking the neighborhood when Suprema proceeded, without permits, to demolish most of its yard enclosure in order to build an unpermitted loading dock, a large metal canopy over the rear yard section, and an additional cold storage facility. The staggering construction noise over the next few months continued completely unabated several days a week including several days in June 2014, despite the Stop Work Orders and Notices of Violation from the City. In fact, Suprema continues to use the unpermitted structures and build even more.

## EXHIBIT C: NUISANCE DECLARATIONS

### **3-B. Personal Experience**

My front and back yards and our front rooms are unusable whenever construction at 955 occurs. The disturbance can erupt suddenly and last all day on a weekend and late weekday afternoons. The intensity of the vibrations and pounding inside homes closest to Suprema can feel like their foundations are being bulldozed out from under them. During one of the worst disturbances, a neighbor and I had to walk to the far end of the block just to call the police. But the noise always stopped when OPD arrived and then started back up as soon as they left. Nothing was done to protect the public.

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### **2-C Noise from Big Rigs Parked Overnight**

Big rigs often arrive the day before loading and park overnight on 57<sup>th</sup> St. or Lowell St, less than 100 feet of the nearest residence. These trucks emit a constant idling and freezer noise that ricochets down Lowell Street and up residential cross streets. The drivers of these rigs sleep in the truck, in violation of Municipal Code 8.24.020. G.2

### **3-C. Personal Experience:**

Each time this happens, I cannot peacefully work in my front garden or sit on my front porch.

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### **2-D 24 x 7 Noise from Rooftop Freezer Unit**

After many years of unsuccessful complaints about the disturbing 24x7 hum from Suprema's rooftop freezer units, residents submitted their own noise measurements to the City in 2012 that proved the freezer noise did exceed the maximum allowable levels. The silencing of freezer noise after Suprema was compelled to install sound muffling devices, however, was short lived.

### **3-D. Personal Experience:**

After Suprema installed an additional freezer storage around January 2014, neighbors closest to the business told me they were hearing the dread freezer hum again. I concurred after listening from their homes and agreeing that the noise levels should once again get checked for code compliance.

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### **2-E Noise from Commercial Truck Cleaning**

Suprema uses excessively loud, industrial sprayers to wash the outside and inside of the company's fleet of large meat distribution trucks each week in their open parking lot. The east side of this one-block-long lot runs adjacent to seven residential units.

### **3-E Personal Experience**

I was visiting a resident in one of those units (945 57<sup>th</sup>) in last month while truck washing was in progress. The power spraying just a few feet away was so loud we had to wait until it stopped to have a conversation. She said this nuisance has been occurring for many years but now that there are more trucks, it's getting much worse.

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### **2-F Transported Matter from Commercial Truck Cleaning**

In relation to 2-E, it is unclear what substances are in the spray solution or the effluent rinsed from the truck's meat storage compartments. It certain, however, that wind can blow the spray on to the adjacent properties and sidewalks, while the run-off ends up in our drainage system.

## EXHIBIT C: NUISANCE DECLARATIONS

### **3-F Personal Experience**

While leaving 945 57<sup>th</sup> that day last month, the wind was gently blowing some of the washing spray to where I stood, which caused me to jump out of the way quickly. I also saw a couple of kids stomping around in the run-off, which I advised against. Luckily they left and I headed home to shower immediately.

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### **2-G Big Rig Use of Narrow Residential Streets**

Instead of using the industrially zoned and highly accessible Lowell St., 18-wheelers on route to Suprema, routinely turn onto Los Angeles – our most narrow residential street – from Stanford Ave. Rigs traveling westbound on Stanford tend to drive right over the end of the Stanford median to enter Los Angeles at just right angle, only to get stuck after two short blocks trying to make another exceptionally tight turn east on 57<sup>th</sup> St. The situation often requires Suprema staff to down the block from the other end of the block to assist drivers and direct traffic (which I believe is illegal.) This problem also exists as far east as Martin Luther King Jr. Way, where big rigs also turn on 57<sup>th</sup> St.

### **3-G Personal Experience**

Because I live on 57<sup>th</sup> just five houses away from corner of Los Angeles, I often witness the enormous rigs in the intersection of four or, bungalow-lined blocks, rocking back and forth, loudly grinding gears, and running over corners to free itself without clipping parked cars. When this situation occurs, I sometimes can't get through the intersections on either end of block until Suprema staff direct the truckers and traffic (which I believe is illegal.)

**Please note:** Lowell St. was built 100 years ago to accommodate the railroad, which traveled in a straight line from warehouse to warehouse. Although relatively wider than most of our residential streets, Lowell is by *no* means wide enough to accommodate modern big rigs especially three or four at one time in one location. These enormous trucks all have to use residentially zoned parts of the surrounding blocks to queue up and make the multi-point turns to position for unloading.

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### **2-G Intersection Blockage Hazards**

Time-consuming, multi-point turns by big rigs at the 57<sup>th</sup> & Lowell completely block through traffic for 10 to 20 minutes per each. As a result, neighborhood commuters on tight schedules will shift into reverse in search of driveway to turn around and take another route. But this quick maneuver increases the risk of hitting another vehicle or pedestrian.

### **2-G Personal Experience**

Last week one such commuter suddenly backed up without warning not realizing I had just driven out of my driveway. When I hit my horn, he was able to break several inches from my vehicle. This occurrence has become more common the longer Suprema blocks the intersection.

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### **2-H Intersection View Obstruction**

Obstruction of the four-way STOP intersection at 57<sup>th</sup> & Lowell forces commuters and pedestrians to inch out blindly past the big rigs into the middle of the intersection which puts those people at great risk for a cross traffic collision.

## EXHIBIT C: NUISANCE DECLARATIONS

### **3-H Personal Experience**

I was involved in such an accident at 9am one morning several years ago when a driver I couldn't see coming drove at high speed straight through at the cross street (a frequent occurrence on Lowell St.) and ripped off the front end of my vehicle. After hitting me, that vehicle swerved into the telephone pole and was totaled. Luckily my young son and I were not physically hurt. But one of the three passengers in the other car was very seriously injured. Since that accident, the intersection has been blocked more extensively by a growing number of big rigs and forklifts operating for longer and longer periods of time.

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### **2-I Blighted & Hazardous Conditions on Lowell St.**

The entire, block-long "sidewalk" along Suprema's wall from 57<sup>th</sup> to Aileen streets, is one long, uneven dirt mound embedded with broken concrete and shattered glass. The boys in the area ride bikes on that mound to avoid the trucks parked in the street and on the other side of Lowell.

### **3-I Personal Experience**

One day three years ago, my son had a bike accident after hitting one of large pieces of broken concrete, which tore a three-inch wide cut in his leg. When I cleaned the wound I found several small shards of glass. I reported these blight conditions to the City several times but remain just as dangerous.

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### **2-J Excessive Building Blight**

The highly visible, entire second story of 955 57<sup>th</sup> St. is excessively blighted. The process of replacing all the second-story windows halted one year ago, leaving windows on both Lowell & 57<sup>th</sup> street walls boarded up and the stucco in profound decrepitude ever since. To say that visage has detracted from the neighborhood aesthetic and property values is an understatement.

Executed on this 25<sup>th</sup> day of August, 2014 in Oakland, California.



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Angela Gennino

## EXHIBIT C: NUISANCE DECLARATIONS

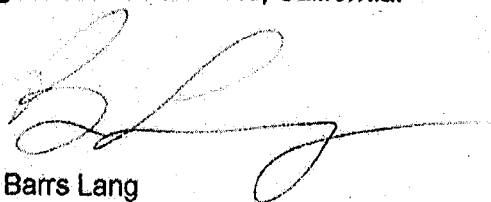
### DECLARATION OF BARRS LANG

I, Barrs Lang, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

- I live on 976 57th street, which is about 50 yards from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here for roughly 11 months.
- I need to keep my windows shut at night as the noise from the constant loading and unloading of trucks and forklifts causes enough noise to wake me up in early morning hours. This results in a very hot and uncomfortable temperature in my bedroom which is located upstairs during the summer months. In addition to Suprema's daily business operations, they performed extremely loud construction for many weeks last fall/winter beginning early in the morning. In general, Suprema has affected my sleep on many occasions.
- Everyday I leave for work, there is a semi truck parked on 57th facing Lowell. There is obviously a red painted area marking "no parking" in front of Suprema which is completely ignored. Everyday, I need to drive on the wrong side of the road facing oncoming traffic in order to navigate around the parked semis. The parked semis block visibility of the stop sign on the corner for 57th and Lowell. Many of the semis are running their engines while stopped which causes heavy exhaust emissions. I've had multiple near misses with forklifts carrying cargo which are constantly operating on the corner of 57th and Lowell as if they were in a enclosed warehouse and not a public residential street.
- The upper level of the Suprema building has been a "work in progress" since I moved to the neighborhood in September 2013. The windows are boarded with plywood and black plastic bags which a detriment to the aesthetic of the neighborhood.

Executed on this 11 day of August 2014 in Oakland, California.

Barrs Lang



## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF DOMINIQUE PICCININO AND JON FREEMAN

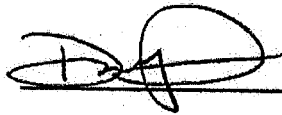
I, Dominique Piccinino, and Jon Freeman, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. We live on 960 57<sup>th</sup> street, which is about 75 ft. door to door, from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. We have lived here for roughly 4 months
2. As one of the closest neighbors to Suprema Meats, these are our issues with the business operations:
  - a) The noise created by the loading and unloading of the trucks (owned by Suprema) and Big-Rigs (owned by other companies that work with Suprema). Noises around their activities include, beeping from forklifts, pallets being loaded and unloaded into the trucks and big rigs, and the loud hum of the big rigs as they wait to be loaded. Additional disruptive noise includes the volume of the employee's hand-held receivers and general work banter that often includes very loud yelling.
  - b) The hours at which the big-rigs are loaded. Starting as early as 4:00 AM and ending as late as 6pm, from what we have observed. This disrupts our sleep leading to more stress and exhaustion during the day due to lack of sleep and broken sleep patterns. The consistency of the noise created makes it difficult to go back to sleep once woken up.
  - c) They park their semi-trucks and load on 955 57th St, which disrupts the use of our driveway.
3. The daily noise created by the loading of the trucks and big-rigs reverberates so loudly that a rumble can be felt within our house. Additional to the rumbling of their unloading and loading procedures, there are other noises that are disruptive to our sleep and daily life and these are, beeping from forklifts, the volume of the their hand-held receivers, the idling noise of big rigs, and the occasional yelling that comes from the employees; all noises we can hear very clearly when we are inside of our house, including all the way to our bedroom which is located at the back of the house, approximately 110 feet from where they load on the street. The reverberation of pallets being slammed into an empty semi-truck and employee yelling are the most disruptive sounds to us.

## EXHIBIT C: NUISANCE DECLARATIONS

4. The noises are most disruptive during the early morning when we are still sleeping and they wake us up. There have been many instances that Suprema Meats begins their operations and have woken us as early as 4:00AM. This includes the noise from the Big-Rigs idling directly in front of our house and any other noises we have stated above.
5. Both their trucks and the big-rigs park in front of our for their loading and unloading procedures and they block the entire south lane of the street and make it almost impossible for our cars to back out of our driveway. We have occasionally asked the drivers of the Big-Rigs to move their vehicles so that we can pull out of our driveway. It is inconvenient when this happens. Additionally, these big-rigs create traffic when there are more than two cars driving in opposite directions.
6. In conclusion, the invasive and excessive noise from Suprema Meats has continuously disrupted our sleep leading to an increase in stress and exhaustion.

Executed on this 8/11 day of August 2014 in Oakland, California.



Dominique Piccinino



Jon Freeman



## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF Deborah Yaffe and Gregory Henricks

#### Co-residents and Owners of 975 Arlington avenue

We, Deborah Yaffe, and Gregory Henricks declare under penalty of perjury under the laws of the State of California that the following is true and correct. We have personal knowledge of each fact stated in this declaration and we are competent to testify to these facts if sworn as a witnesses:

We live at 975 Arlington Avenue, which is about 150 yards from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. We have lived here for almost ten years, since October 2004.

1. When we first purchased our home we noticed a constant buzzing sound, audible from the backyard and kitchen. We soon learned it was the refrigerator units from the Suprema company. Although that sound is not always present what we do hear on a constant basis are the following sounds; loud noises from trucks being unloaded, idling big rigs, and construction projects. The noises from the Suprema Company are an intrusion on our living environment both in the kitchen and outside and are audible from the early morning hours Monday through Friday and on Sundays usually lasting till 4:00pm. We have a large garden in the backyard, a feature which attracted us to this property. The constant noise is an intrusion and disrupts any activities such as gardening or eating outside, which we use as way to relax and de-stress from work. If we entertain on Sunday, we can hear the sounds of trucks unloading a block away. There is only one day per week, Saturday when the noise from the Suprema company does not intrude into our living space.

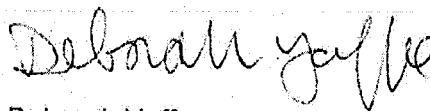
2. When we are driving to work during the week we take a right on Lowell Street from Arlington. Often times there are several trucks, big rigs waiting to unload at Suprema, blocking our view down Lowell so that we need to inch our way into the middle of the street to see if a car is coming. This is a common occurrence, trucks blocking the left hand lane going south on Lowell Avenue. There is no way to safely drive down the street with a line of trucks blocking the road.

## EXHIBIT C: NUISANCE DECLARATIONS

3. Many times we are forced to wait at the corner of 57<sup>th</sup> Street and Lowell while a truck is pulling out from Suprema or trying to make a left from 57<sup>th</sup> onto Lowell. Having big rigs blocking the road is unsafe.
4. We are also concerned with idling diesel fueled trucks in a residential neighborhood and feel this is a safety hazard and exposes residents including children to dangerous levels of exhaust.

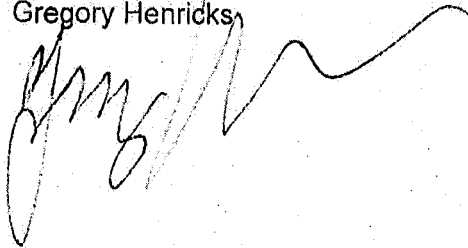
The presence of this business in a growing residential neighborhood has had a negative impact on the quality of our life in terms of street safety, exposure to high levels of noise and exhaust fumes from trucks.

Executed on this 12<sup>th</sup> day of August 2014 in Oakland, California.



Deborah Yaffe

Gregory Henricks



## EXHIBIT C: NUISANCE DECLARATIONS

August 11, 2014

I, Ernee Jamerson, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

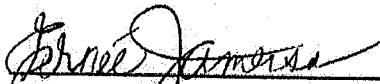
I moved to 969 57th street in August of 2003. I noticed my first week living there the noise level early in the mornings coming from the Suprema Company located at 955 57th street, two doors down. The noise occurred mainly between 3 - 5 am, like motors or refrigerators running continually. There would be the sound of forklifts, pallets being slammed and stacked and loud voices. There would sometimes be 18 wheelers idling in front of the business waiting for it to open. I called the police many times for them to come out to ask the trucking to stop their engines from idling. The police would eventually come out but once they left, the engines would start up again especially when the business opened. Sometimes around 6 am the employees would be in the yard playing soccer and they would be very noisy, cheering each other on. The employees would often turn around in my driveway shining their headlights in my bedroom window. Sometimes I would come outside at 4 in the morning and ask them to not turn around in the driveway because it disturbs my family. They always kept walking but they also kept turning around in driveway. It got so bad I put signs in my windows but they kept doing it. I did call the police several times and it finally stopped.

The noise from the trucks and forklifts affected my sleeping for years and years. I finally went to the doctor in 2013 because I was sleep deprived and I was sent for a sleep study and now I am on a CPAP machines to help me sleep because I was having approximately 85 sleep interruption per hour.

I have seen trucks back up in front of Suprema and then pull forward and hit the stop sign and knock it down and it not being repaired for days. The trucks always block the stop sign when it's there and you have to go out into the street blindly to get around the trucks. There have been accidents inching out into the street.

I finally was able to move next door to 975 57th street late in December 2011. Even with my windows facing the opposite direction I still hear the refrigerator noise early in the morning and the trucks going down 57th Street and I feel the vibration of the trucks throughout my house. My daughter's windows now face the building and now she receives the brunt of the noise.

In July of 2013 Suprema meat company was doing some construction, removing and installing windows, they were busting out old windows and glass falling and crashing. There was water and cement rolling down the street from the installation and when it dried next to the curb it created an uneven space by the curb and when I stepped off the curb on July 24, 2013, I fell and bruised my knees. I called the City of Oakland building Inspectors office of John Stewart and he send a Rafael Campos out to investigate. Mr. Campos issued a notice of abatement to the owner of Suprema Meat Company, Mario Jara and they had to clean the curb area from their company to my house at 975.



Ernee Jamerson  
975 57th Street  
Oakland, CA 94608

Suprema Meats Company - Declaration of Ernee Jamerson

# EXHIBIT C: NUISANCE DECLARATIONS

## DECLARATION OF GLORY STYLES

I, Glory Styles, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 965 Aileen St., which is about 15 yards from Suprema Meats Co. located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here for 13 years.
2. Describe how Suprema Meats' operation has affected your health and safety,
  - A.) The 24x7 hum from the Suprema's rooftop freezer units has been occurring since I occupied my home in 2001. There was a brief respite from this particular hum in 2012, when Suprema was forced to comply with the City's code requirement to abate this excessive noise by installing sound muffling equipment. However, after Suprema purchased the property in 2013, the hum resumed when it installed additional cold storage equipment without permits or adequate noise abatement devices.
    - I. This hum prevents me from enjoying my front yard and indoors it forces me to keep all my windows and doors closed at all times. This has also negatively impacted family members, who are not generally sensitive to noise.
  - B.) A constant vibration accompanies the freezer hum, which I feel throughout the house and yard and which permeates the property along its east side, from the driveway.
    - I. This vibration is viscerally felt as it comes up through the floor. It causes a level of anxiety in me that is not healthy. I have to stay enclosed in my house to avoid the hum but then I am subject to the vibration. There is no escape from these nuisances.
  - C.) Illegal dumping on the Aileen Street side of Suprema's property is a major health and safety issue. Frequently, there is so much trash (including mattresses, appliances, abandoned vehicles, furniture, toxic materials, etc.) that traffic is reduced to using only one lane.
    - I. The trash attracts rodents and other scavengers. I've seen dead rats among the trash. It also a big danger to neighbor pets. The company has posted no signage prohibiting dumping, does not call Public Works for trash pickups, or maintain any of this part of the property. Graffiti on this side of the building will often stay up for weeks before it is removed.
  - D.) The aesthetic and economic values of my property and others in this area have been negatively impacted by conditions listed above and below.
3. Describe how Suprema Meats' operations have obstructed public streets or interfered with your use of public streets.
  - A.) Truck idling and air quality: Truckers for Suprema will park on Lowell St at Aileen (just 30-40 yards from my house) often idle their big rigs for hours at a time. Truckers parked overnight have idled their engines the entire time, emitting noxious fumes that are noticeable in the air when I open my front door in the morning.

I once asked a trucker to please turn off her big rig engine after six hours of idling and explained that she was breaking the law by idling for more than five minutes. She refused, saying that she wanted to keep the air

## EXHIBIT C: NUISANCE DECLARATIONS

conditioning on in the truck's cab for her own comfort. I called OPD, and only after an officer spoke to her, did she turn off her engine.

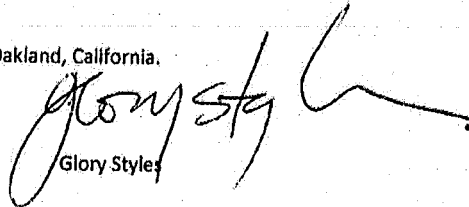
- I. I can't walk down the street while and just after big rigs have been idling because of the air quality problems.
- II. I have developed asthma since I moved here and worry constantly about other health impacts of engine idling. Also of great concern are the two child care centers: one directly across the street from Suprema, and another just behind it on 56<sup>th</sup> St. As a school teacher, I am very aware that young children are particularly susceptible to lung damage from diesel fumes.

B.) Traffic blockage is also an issue, when I commute to work each morning. I am often delayed by big rigs and fork lifts monopolizing and blocking Lowell from Stanford to 57<sup>th</sup> streets.

#### 4. Recent Incidences:

- A.) All the above health/safety and environmental issues occur daily.
- B.) Suprema's truck washing occurring every Sunday in its open parking lot on Lowell St. between 57<sup>th</sup> & Alleen streets. Today is Sunday, and as I walked down Lowell St., I was severely impacted by the excessive noise of the power washers and had to avoid contact with the spray, which has a noticeable chemical odor.

Executed on this 7<sup>th</sup> day of September 2014 in Oakland, California.

  
Glory Styles

## EXHIBIT C: NUISANCE DECLARATIONS

Oakland, 18<sup>th</sup> Jan. 2014

I am a friend of the owners of 968 57<sup>th</sup> Street. I have stayed at their house as a guest between Nov. 2<sup>nd</sup> to Dec. 16 and again in Jan. since the 15<sup>th</sup>. I am writing this to express my bafflement at the intolerable noise pollution in their neighborhood by the Suprema Meat facility across the street.

During my time as guest here I am occupying the street facing guest room. Almost on a daily bases I have been woken up before 6am, often as early as 4am by loud forklift and maneuvering truck operations from the Suprema Meat facility. In addition to the weekday disturbance of my sleep I have been woken up almost every Saturday and often on Sundays, as early as 7am, by loud construction noise from Suprema Meat. The constructions were going on continuously during my stay in Nov./Dec. and are still underway today. Today (01/18/14) I got woken up at 7:50am by loud grinder noise.

I am grateful for my friends to let me stay at their house, but can not understand how such a outrageous noise disturbance can be the status quo in any neighborhood where people have their residence.

01/18/14  
  
HEIKO GREB

## EXHIBIT C: NUISANCE DECLARATIONS

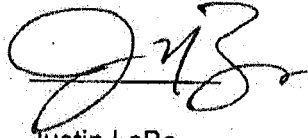
### DECLARATION OF JUSTIN LABO

I, Justin LaBo, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 56<sup>th</sup> street, which is about 600 ft. from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. My family and I have lived here for roughly 5 years.
2. Excessive noise after hours. Suprema continuously has large big rig delivery trucks arrive on-site after hours. These big rigs are left idling all night spewing diesel exhaust in to the surrounding residential areas. In addition, these big rigs are equipped with large refrigeration units that run throughout the night in order to keep their cargo cold. Depending on where the trucks park, this sound echoes throughout the neighborhood. This constant idling is audible within my house and extremely disruptive to a generally quiet neighborhood.
3. A) Traffic obstruction on a daily basis. Each morning the traffic on Lowell Street is either blocked and /or restricted by the numerous big rigs trying to unload at Suprema. Traffic is consistently blocked at the intersection of Aileen and Lowell as these big rigs try to backup down a narrow residential street to access the Suprema loading area. There are also numerous disruptions further away from the Suprema office as big rigs are forced to attempt a u-turn on 55<sup>th</sup> or 56<sup>th</sup> street to get their truck orientated in the right direction. These residential streets are extremely narrow and pose many safety challenges for both the big rig drivers and residents. I have witnessed countless events where trucks are stuck trying a u-turn which has blocked traffic in both directions for up to 15 minutes as the big rig painstakingly tries to turn around.  
B) The Suprema building is blighted. IN our 5 years of living on Lowell Street, the building that Suprema occupies has always been in some state of disrepair. There is constant dumping along the building on Lowell Street which they do not take responsibility for. They have numerous uncompleted construction projects which add to the blighted look of the exterior.

**EXHIBIT C: NUISANCE DECLARATIONS**

Executed on this 21<sup>st</sup> day of August 2014 in Oakland, California.

A handwritten signature in black ink, appearing to read 'Justin LaBo', written in a cursive style.

Justin LaBo



## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF KARIN BETTS

I, Karin Betts, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I own and live at 972 57<sup>th</sup> Street, which is about 100 feet from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here for one year and nine months, since January 2013.
2. Suprema Meat Company's operations negatively affect my health, safety and welfare as follows:
  - a. Business activity (moving, loading and unloading of trucks) begins every morning between 3:30 and 4:30 a.m. and is disturbingly noisy. This requires that I keep all my windows closed. The noises (reverse beeping, clanging and banging, engine noises) often wake me despite the windows being closed, and make me feel agitated and anxious. During the summer months if the windows are open, I am woken daily around 4 a.m., which impacts my health and is impacting my performance at work.
  - b. Loading and unloading continues throughout the day, and is audible in every room of my house and in my back yard. This disrupts my ability to work from home, and is an intrusion on what should be a peaceful home environment.
  - c. On a daily basis, there are idling semi-trucks (18-wheelers) parked both on 57<sup>th</sup> Street in front of Suprema and along Lowell Street in both directions from 57<sup>th</sup> Street. I can hear the rumbling of these idling trucks, and believe that the exhaust emissions contribute to air pollution and oily grime on my porch. I am concerned about my respiratory health because of the harmful effects of diesel exhaust.
  - d. Suprema's properties on Lowell Street do not have sidewalks. I feel unsafe walking on that stretch of Lowell because I am forced to walk in the street with cars and semi-trucks.
  - e. Suprema engaged in major construction at the property for several months starting in October, 2013. This work was so loud that I could not have a

## EXHIBIT C: NUISANCE DECLARATIONS

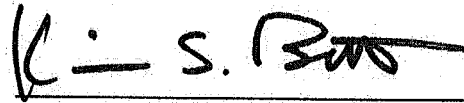
telephone conversation in any of the street-facing rooms in my house, even with doors and windows closed, while they were jack-hammering.

3. Suprema Meat Company' operations also interfere with my use of the streets in my neighborhood.
  - a. Both 57<sup>th</sup> Street and Lowell Street are often lined with semi-trucks associated with Suprema. These trucks make it dangerous to bike and drive on both Lowell and 57<sup>th</sup> streets. Semis parked on 57<sup>th</sup> in front of Suprema block the red "no-parking" strip near the corner and often jut into the street. When I am driving north on Lowell and turning left on to my street (57<sup>th</sup>), the view is entirely blocked and on several occasions I have nearly hit oncoming traffic on 57<sup>th</sup> that is forced to drive on the wrong side of the road because the semi-truck is blocking the street.
  - b. Semi-trucks drive up and down 57<sup>th</sup> Street, which is a narrow residential street, to access Suprema. They line up down the street while waiting for other trucks to pull out of the Suprema lot. On occasion, I am unable to pull out from a parking spot because a semi-truck is double-parked blocking my car.
  - c. On several occasions, guests and visitors to my home have not been able to access it from Lowell and 57<sup>th</sup> because the trucks are completely blocking the intersection.
  
4. Suprema Meat Company contributes to blight in the neighborhood.
  - a. The upper level of the Suprema building was boarded up in the summer of 2013 and has remained that way since. This is a detriment to the aesthetics of the neighborhood and, honestly, an embarrassment.
  - b. Trash is frequently dumped on Lowell Street next to Suprema's property. The trash sits for days or weeks before it is cleaned up, I believe by the city. This contributes to blight in the neighborhood, which makes the area seem less safe and affects my enjoyment of the neighborhood.

## EXHIBIT C: NUISANCE DECLARATIONS

The presence of Suprema Meat Company in our growing residential neighborhood has a negative impact on the quality of life in terms of noise, street safety, air quality/pollution and streetscapes.

Executed on the 10<sup>th</sup> day of October 2014 in Oakland, California.

A handwritten signature in black ink, appearing to read "K. S. Betts", written over a horizontal line.

[KARIN BETTS]

10/6/14

## EXHIBIT C: NUISANCE DECLARATIONS

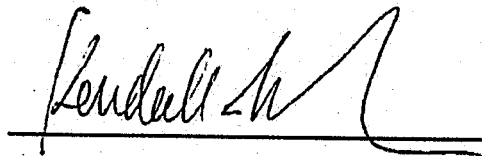
### DECLARATION OF Kendall Moalem

I, Kendall Moalem, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 60<sup>th</sup> Street, which is about 5 blocks from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here for roughly 13 years.
2. Half a dozen times I've had to speak with truckers who've parked along Stanford on the southeast corner of Lowell/Stanford Intersection, in the evenings when they expect to stay overnight with their refrigeration units on, and tell them that this isn't allowed. Some are difficult with me, resistant or angry, and I hesitate to approach them anymore because it feels it could be unsafe to do so. I can hear the refrigeration units all the way from that location on Stanford in my back bedroom and in my backyard, so I shudder to know that southward neighbors deal with this nightly and directly adjacent to their residences.
3. Trucks from Suprema routinely use our short 60<sup>th</sup> Street block as a cutoff to turn their trucks and move them westward toward the freeway. This is most notable to me on Sunday mornings between 8:30-10:30 since I'm home then, and I've seen up to three on a single morning. They barely fit around the three lefts then a right turn, and have had to ask people to move their cars to accommodate their turns. This means they stop traffic or sometimes block the intersection along a fast-moving Stanford St. westbound, causing a potentially-dangerous traffic hazard. The noise of the brakes and movement is heard inside my house and is what usually alerts me to this occurring.

4.

Executed on this 25th day of August 2014 in Oakland, California.



Kendall Moalem

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF KIM LUCAS

I, Kim Lucas, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live with my husband, Chris Bray, at 968 57<sup>th</sup> Street, Oakland, CA, which is across the street and two doors west (about 80 feet) from Suprema Meats Company, located at 955 57<sup>th</sup> Street, Oakland, CA. We have lived here since June 1, 2013.
2. Between October and December 2013, Suprema completed several major unpermitted construction projects, including a new cold storage facility, concrete loading dock on 57<sup>th</sup> Street, and a large outdoor work canopy in the company yard.
3. Since around October 2013, our perception is that the business is expanding, with earlier and later hours of operation, and intensified use of the surrounding public streets for their activities, six days per week. When we first moved in, we barely noticed the 4 to 7 am delivery truck loading which seemed to occur only once or twice per week. Likewise, initially the 18-wheel semi-tractor trailer truck unloading on 57<sup>th</sup> St seemed to occur mainly on Sundays and sometimes again mid-week. Since the new facilities were built, we are woken Monday through Friday as early as 4 am by extremely loud delivery truck loading in the open yard. On Sundays and now most days throughout the week, the number of semis unloaded has increased from fewer than five per day starting at 8 or 9 am to easily eight to ten semis per day starting at 7 am or even earlier.
4. Monday through Friday, we are subjected to extremely loud loading of delivery trucks in the open yard and the new loading dock on 57<sup>th</sup> Street, starting between 4 and 4:30 am for approximately two hours. We sleep in the bedroom at the back of the house, furthest from Suprema Meats, with the windows and doors closed but are still woken every morning with the noise and low frequency vibrations from the delivery truck engines, and the clanging, scraping, and beeping sounds of forklifts. The slamming of stacks of pallets into the backs of the trucks is especially stressful and disruptive to our sleep. In addition to the loading activity, the trucks create excessive and unnecessarily prolonged noise as they conduct three to five point turns on 57<sup>th</sup> Street, which is very narrow, to get in and out of the yard. I have taken several decibel readings of the 4 – 6 am loading, forklift, and truck movement noises from inside our home with the windows closed and with a window open a few inches and found them to consistently exceed the maximum decibel levels allowed by the noise ordinance of Oakland.
5. The early morning loading, diesel engine noise, and movement of the forklifts and delivery trucks every morning, Monday through Friday, has personally resulted in chronic fatigue, as I'm typically getting only five to six hours of sleep

## EXHIBIT C: NUISANCE DECLARATIONS

before work. I am woken most mornings between 4 and 5 am and rarely can get another 30 minutes or so of sleep between 6 and 7 am before having to get up for work. Every Tuesday and Thursday I must travel 90 miles each way to my Sacramento area office, struggling at times to remain alert and awake while driving. While driving west on Powell Street toward the I-80 freeway around 9 am on January 24, 2014, I rear-ended a car while approaching a stop light. I believe that lack of sleep may have contributed to this accident, in which thankfully no one was hurt, but for which my insurance company had to pay out.

6. I am a public health epidemiologist / research scientist, working in a fast-paced environment, tracking communicable diseases and outbreaks with the medical division of the CA state prison system. Increasingly, I am having trouble concentrating on my work and have had to call in sick due to exhaustion several times, including as recently as mid-June. I have tried many types of ear plugs but they were uncomfortable and I had trouble hearing my alarm clock. My doctor prescribed me sleep medication in February 2014, urging me to take it just two or three nights per week to try to break the sleep deprivation cycle while minimizing the risk of becoming addicted, but I have so far been unable to bring myself to take medication in order to be able to sleep in my own home.
7. We have had a few house guests stay in our front bedroom and all of them have been woken with the 4 – 6 am loading. We no longer feel comfortable having friends or family stay with us knowing they will be subjected to unlawful levels of noise. Of our two bedrooms, the one in in the back of the house is difficult to sleep in, and the guest room in the front of the house is definitely not suitable for sleeping.
8. Sunday through Thursday or Friday, 18-wheel semi-tractor trailer trucks begin arriving as early as 5 or 6 am to be unloaded at the yellow curb on 57<sup>th</sup> Street, or from around the corner north and south on Lowell Street, by forklifts that operate in the center of the street and intersection, across the sidewalk, and through the gate on 57<sup>th</sup> St. This activity occurs starting around 7 am every morning except Saturday, including Sundays and holidays, and continues throughout much of the day, usually until 5 pm. I have taken sound readings at various locations inside our house and in the back yard and found the noise to be well in excess of the allowable levels. The noise is mainly from the unloading of semis, but also from the engines as they perform multiple-point turns in the intersection of 57<sup>th</sup> and Lowell Streets, which can barely accommodate their size. On Sundays, there are easily four or five semis unloaded by mid-day and a few more unloaded during the afternoon. Since each semi takes about 20 to 30 minutes to unload, the activity and noise is ongoing much of the day. Between and during the unloading of semis, the occasional delivery truck is loaded and leaves the yard, and there is additional noise in the yard from the pallets being shifted around on forklifts into cold storage, loud voices and radio communications, and occasional blaring of music.

## EXHIBIT C: NUISANCE DECLARATIONS

9. The regular operational noise and truck traffic is preventing us from peacefully enjoying our home. The unloading of semis on 57<sup>th</sup> Street, with the open rear of the trucks aimed west on 57<sup>th</sup> Street, essentially directing noise toward our house is extremely disruptive even though we have double-paned windows, which we now keep closed most of the time, even when it's hot outside. Sunday through Friday, we are unable to enjoy sitting or gardening in our back yard during the daytime due to the echoing and amplification of loading noises, radio transmissions, shouting, and diesel engines disturbing the peace, and interfering with normal conversation. We never have guests over for gatherings or barbeques on Sunday due to the noise.
10. Starting early in January 2014, there has been a near constant 24/7 industrial humming sound that persists up to about 5 houses away, west on 57<sup>th</sup> Street. We believe this is coming from the rooftop refrigeration units. Along with the noise I am sensing a vibration and oscillating pressure in my ears, most notably when the humming sound becomes louder in the evening and early morning hours. The humming and vibrations are causing me anxiety and usually wake me before the loading noise begins. This 24/7 noise started, coincidentally, around the time that the new cold storage facility was completed and/or other equipment installed in late December of 2013. The humming is most intense at about eight to ten feet off the ground where our living space is. The sound is most disruptive in the evening, as we can hear it inside through closed windows, and in the back yard where it carries as efficiently as the loading noise does. I have measured the sound late at night and found it to be well above both the allowable levels and the ambient noise in the neighborhood previously.
11. There are major pedestrian and traffic safety issues due to Suprema's operations having taken over the public streets. The yellow loading zone on 57<sup>th</sup> is too small to accommodate semis without occupying the red curb at the corner and blocking the view of the stop sign and visibility through the intersection. We often witness two semis being unloaded simultaneously, one on 57<sup>th</sup> Street and another on Lowell Street, sometimes multiple times in a day, with forklifts carrying tall stacks that the driver can barely see around, moving blindly through the intersection and up the center of 57<sup>th</sup> Street. When a semi is being unloaded on 57<sup>th</sup> Street, taking up most of the eastbound lane, forklifts unloading semis parked on Lowell Street are forced to drive east on 57<sup>th</sup> Street on the wrong side of the street. On several occasions, I have seen semis take up to 5 or 10 minutes to maneuver through multiple-point turns blocking the intersection, riding over curbs, and revving their engines while they try repeatedly to back into the yellow loading zone on 57<sup>th</sup> Street. I generally avoid the intersection of 57<sup>th</sup> and Lowell Streets due to frequent delays and because it is impossible to see around the semis to safely make a turn.
12. Around July 20, 2014 in the early afternoon, I drove east on 57<sup>th</sup> Street past a semi in the yellow zone and inched around the front of the semi to turn right on Lowell Street. As I came around the corner a forklift was backing up into the

## EXHIBIT C: NUISANCE DECLARATIONS

- crosswalk with a stack of product he had just taken off a second semi parked to the south on Lowell Street. The driver indicated by motioning that it was clear for me to go around him. I proceeded to drive around him but had to swerve to avoid a car coming north on Lowell Street. I went a block and then decided I should go back to let the forklift driver know that he needs to be more careful not to send people into oncoming traffic. As I turned west on 57<sup>th</sup> Street past the semi being unloaded in the yellow zone, the same forklift driver came out of the yard from behind the semi, unable to see if any cars were on the road, and nearly ran into the front left of my car with the prongs of his forklift extended about 8 inches off the ground.
13. Our street is increasingly and inappropriately occupied by semis, delivery trucks, personal vehicles, and forklifts, blocking or delaying traffic or otherwise creating hazardous conditions for pedestrians, cyclists, and drivers. In addition to the semis, many personal vehicles are also arriving throughout the day to pick up small loads. Since the yard is almost always occupied with forklifts and temporarily stored stacks of product, these vehicles often park in front of residences on 57<sup>th</sup> Street within half a block of Suprema's gate, or double-park if no curb space is free, while workers transport small stacks on forklifts or pallet jacks out to them. On August 8, 2014, a semi was being unloaded around 8 am on 57<sup>th</sup> Street when a large stack of product being positioned at the end of the cargo hold to be picked up by a forklift fell out of the truck, spilling boxes in the street. The same thing happened approximately two weeks earlier. That same week, a semi being unloaded on 57<sup>th</sup> Street had what appeared to be a steel lining of the cargo hold door that was folded facing the warehouse become unhinged and fall to the street at the edge of the sidewalk. On July 3, 2014, around 9 am, a forklift appeared in front of our driveway and loaded meat into a pickup truck that was parked in front of our house. On December 21, 2013, I was delayed for 15 minutes trying to leave for work in the morning due to an unoccupied seafood delivery truck that was double parked and blocking our driveway.
14. Since the intersection of 57<sup>th</sup> and Lowell Streets is too small to accommodate semis trying to get into position for unloading, there have been incidents that have caused damage to city property or otherwise caused unsafe conditions. Around January 2014 the stop sign on the southwest corner was knocked upside down and not repaired until February. On September 9, 2014 a semi backed up into the telephone pole on the northwest corner causing it to sway back and forth. On September 29, 2014 a semi trying to make an impossible turn around the northwest corner broke the fire hydrant off completely. A flood swelled west on 57<sup>th</sup> Street and up over sidewalks carrying debris more than a block away. During the 20 minutes it took for the fire department to shut off the water, Suprema staff continued to operate their forklift in the flooded roadway and proceeded to unload another semi parked on 57<sup>th</sup> Street.



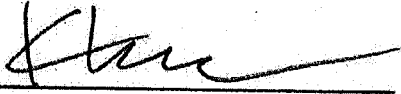
## EXHIBIT C: NUISANCE DECLARATIONS

15. There are other miscellaneous issues which are adding to the growing nuisance for the neighborhood. On July 12, 2014, a semi arrived at about 7 pm and parked in the yellow loading zone on 57<sup>th</sup> Street with its refrigeration diesel engine running continuously until 7 am the next morning while waiting to unload within about 20 feet of the closest residences. We could clearly hear and feel the engine vibrations all night in our back bedroom. Various construction projects, including concrete work on the loading dock, have continued to cause excessive noise, as recently as June 19, 2014 and again all day on Sunday June 22 in spite of at least four stop work orders since November 2013. Construction occurs on any day of the week without warning to residents and without precautions to protect the neighbors and public right of way from dangerous equipment and debris. The long-standing overall blight worsened in July 2013 when all of the second story windows were knocked out. To this day the windows remain boarded up with plywood and black plastic. Workers or semi drivers are frequently seen smoking on the sidewalk and on the street within 20 feet of residents' doors and windows and throwing their butts to the pavement.
16. I have been the target of intimidation and harassment by an individual who I believe to be the owner of Suprema. The first time I met him was around 5 am on October 23, 2013, as I was standing on private property across the street from Suprema's gate observing the activity that awoke me. A man came swiftly across the street demanding to know what I was doing there. Upset and in shock, I responded that I was there to see what was waking me every morning. He proceeded to inform me that I have no right to complain, that he was there first, and that I should get a better job so I can make more money and move to Berkeley where I belong. Since he refused to identify himself, I said that I didn't wish to speak with him. I turned to go home and he followed closely, continuing to yell at me. Walking backwards to keep an eye on him, I asked him again who he was and he refused. As I neared my front steps, I looked at my phone to note the time and considered calling the police. He said that if I call 911 he'll tell the police that I've been harassing him. I panicked and ran inside my house. In January 2014, I received a letter from Suprema's lawyer, Mr. Hassing, saying that he would be filing a lawsuit against me for "tortious interference in business relations, defamation, and conspiracy", in what appears to be a SLAPP (strategic lawsuit against public participation) threat. On June 19, 2014 I called the City to report continued construction on the loading dock after numerous stop work orders. An inspector came out and I could see him speaking with the same man who confronted me in October. He waved at me from across the street and gave me the thumbs up. Later that afternoon, he drove a white Mercedes SUV past my house twice, very slowly, while leaning over and staring in at me through my front window.
17. We are saddened and stressed that our health and safety during the first year (and counting) in our home has been increasingly impacted by excessive and disruptive noise, both day and night, dangerous conditions around the

**EXHIBIT C: NUISANCE DECLARATIONS**

**intersection and on our street, inability to have guests stay in our front bedroom,  
and only being able to have company on Saturdays or in the evenings.**

**Executed on this 6<sup>th</sup> day of October 2014 in Oakland, California.**



**Kim Lucas**

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF Lisa Claxton

I, Lisa Claxton declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. My family lives on 55<sup>th</sup> street, which is about 2 blocks from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have lived here for roughly six years.
2. I drive by this business every morning. I have had several experiences where Suprema drivers drove recklessly then yelled and screamed at me while I had my small child in the car. They usually stack their trucks along Lowell st in the morning making normal driving impossible. Additionally, every morning they park their semi-trucks on 57<sup>th</sup> right at the stop sign, blocking one side of the road making the 4-way stop very confusing.
3. The dilapidated condition of the upper floor of the building promotes dumping and blight. The windows have been boarded up for over a year making the building appear to be abandoned outside of business hours. As someone who is working to have our street feel safer this business does the opposite. Lowell Street is prone to illegal dumping and a building in this kind of disrepair only incites continued dumping.
4. I do not hear noise from the business while in my home. However, I avoid walking past this business during my morning walks and on the weekends as the trucks and machinery are extremely and surprisingly loud.
5. The ground alongside of the building facing Lowell Street is completely littered with broken glass shards. This is completely unacceptable as the area is accessible to children, animals and anyone walking down the street.
- 6.
7. Executed on this 10th day of August 2014 in Oakland, California.



Lisa Claxton

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF Lilla Nikolics and Mauricio Melchor

We, Lilla Nikolics and Mauricio Melchor, declare under penalty of perjury under the laws of the State of California that the following is true and correct. We have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. We lived at 972 57<sup>th</sup> Street – which is about 100 feet from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA – for 10 and 15 months respectively. Mauricio Melchor lived there for 15 months, from March, 2013, until June, 2014. Lilla Nikolics lived there for 10 months, from August, 2013, until June, 2014.
2. Almost every morning (between 5-6 days a week) we were woken up around 4:00am when large refrigerated trucks arrived and started being loaded in front of their main building, 955 57th Street. The early morning loading started between 3:30 and 4:30 am, loud truck engines were running, fork-lifts were beeping as they maneuvered and loud crate-banging sounds are heard for at least one hour or more. Usually the loading restarted again from 7am onward, every morning except Saturday. The other disturbing and ongoing sound came from the construction, this as well included weekdays and weekends from 7am sometimes until 7pm.

Executed on this 10<sup>th</sup> day of October, 2014, in Oakland, California.



Mauricio Melchor



Lilla Nikolics

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF MANNY

We Manny Dhillon and Mandeep Kaur, declare under penalty of perjury under the laws of the State of California that the following is true and correct. We have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. We live on 963 and 965 57<sup>th</sup> street, which is a duplex right next door to Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. We live with our parents and Mandeep's husband and three children (2, 3 and 5 years old). We have lived here for roughly 2.5 years.
2. Two and a half years ago when we bought the property the work schedule started at 4 or 4:30 am but now they open at 3 or 3:00. Before they stopped at 3:30 or 4 in the afternoon but now they work until 6. Since the construction started last year many times they are working inside with the doors closed on Saturdays which is normally closed for business. Before they had only about 4 or 5 trucks and now we have counted around ten trucks and some of them are new.
3. I (Mandeep) sleep in my living room with all of the doors and windows closed because I can't sleep in my bedroom because of the light from the factory yard and the very loud noise. All three bedrooms are on the side by Suprema.
4. There is a 24 hour every day humming noise that is the worst at night. There is too much noise at night and you can feel it. We hear everything through our sound proof windows.
5. The children get up in the morning because they're crying because of the noise in the yard from trucks and radios and men shouting. The horns and noise scare my two year old son especially and wake him up. Sometimes he cries for half an hour. Many sounds scare him now like when trucks start and forklifts and even the television. All three are going to school and they fall asleep in school. My daughter is disturbed around 3 and doesn't want to get up at 6 to go to school because she didn't sleep enough.
6. I (Manny) am in and out all day as a cab driver and get blocked by trucks. The trucks park all the way from 57<sup>th</sup> street to the stop sign on Lowell street and we can't see when we go around the corner. Sometimes the big trucks come in and block my driveway. The people from outside who come to buy the meat come and back up in my driveway all the time. My parents have almost been hit by forklifts when they go out to walk.

## EXHIBIT C: NUISANCE DECLARATIONS

7. We built a fence in the front yard to stop the children from running into the street because it is not safe. Sometimes my son wants to play outside in the yard but it is too scary because of the noise and the traffic is unsafe and workers are smoking by our yard.
8. We have trouble finding parking because the buyers are always coming in the street and taking the parking. They don't use the Suprema property for loading.
9. When they built the wall on the property line I showed him my survey with the property line and said if you want to make the wall make it on your side. When he built the shed I complained that he is blocking the sunlight to my home but he said no more nice neighbor, go from my property. After that I don't talk to him.
10. The wall on our property line is too short to stop the noise because you can still see the top parts of the trucks they're loading so the noise still comes over.
11. We think the vibrations from the trucks and construction projects made more cracks in the foundation and walls of our house.
12. The big trucks make the house and windows rattle when they drive by. Sometimes they come early at midnight or 1 or 2 and park on Lowell or 57<sup>th</sup> and run the refer behind the truck on the trailer until they unload the next morning.

Executed on this 8<sup>th</sup> day of October 2014 in Oakland, California.



Manny Dhillon



Mandeep Kaur

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF Maurice Hamilton

I, the owner of the property, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I am the landlord at 960 57<sup>th</sup> street and in recent years have spent months during the day and night hours at the property where I personally perform unit renovation work and along with the tenants have personal knowledge of the environmental issues by the neighboring Suprema Meat Company. My property is about 35ft away and directly across the street from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. I have owned the property for roughly 15 years and have spent at least 4 of those years renovating the property on and off.
2. I have direct experience and previous tenants have informed me of the big rig delivery truck noise that occurs when they idle continuously during the day or night hours and which can be heard even with the tenant windows closed. The tight street conditions on 57<sup>th</sup> are also an issue as well as being difficult to back out of the driveway when trucks are off loading in front across from the house. The truck fumes and noise have limited the number of potential tenants that would even rent the property. The building is in a state of disrepair as the partial renovation works of the exterior façade has stopped. The exterior façade now seems to be inadequate for weather protection.
3. The Suprema internal single body delivery trucks which are parking within the property footprint across from my property cause damage to street trees and curb on our side of the street as they back into their fenced area. The off loading trucks occur very early in the morning, are noisy and create a lot of street trash. The big rigs trucks seem to park overnight most times on Lowell St. as they what

## EXHIBIT C: NUISANCE DECLARATIONS

for Suprema to open. Suprema should conduct their business in accordance with state and local environmental restrictions and all City of Oakland zoning codes and regulations.

Executed on the 26th day of August 2014 in Oakland, California.

A large, bold, handwritten signature in black ink, consisting of several thick, sweeping strokes.



## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF Peter Russo and Christine Fry

We, Peter Russo and Christine Fry, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. We live at 931 Aileen Street, which is about 200 feet from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. We have lived here for two years and four months.
2. Suprema Meat Company's operations affect our health, safety, and welfare.
  - a. The company has a rooftop freezer that runs nearly continuously. We can hear this freezer noise in our home when we have our windows closed. This noise makes us feel anxious and agitated, and it interferes with the peaceful enjoyment of our home.
  - b. On a nearly weekly basis, semi-trucks will arrive at Suprema Meat Company at night or before the business is open. They will leave their engines and freezer units idling, which we can hear in our home with the windows closed. This noise makes us feel anxious and agitated, and it interferes with the peaceful enjoyment of our home. We also fear for our respiratory health because of the harmful effects of diesel exhaust.
  - c. Trash is frequently dumped on Lowell Street next to Suprema Meat Company's property. There is broken glass immediately adjacent to their property, which threatens our safety and may harm our dog as we walk on Lowell Street. The trash often sits for days or weeks before it is cleaned up, and we believe that it is cleaned up by the city, not Suprema Meat Company. This trash contributes to blight in the neighborhood, which generally makes the neighborhood feel less safe and affects our enjoyment of the neighborhood.
3. Suprema Meat Company regularly interferes with our use of the streets.
  - a. Lowell Street is often lined with semi-trucks associated with Suprema Meat Company. These trucks make it dangerous for us to walk, bike, and

## EXHIBIT C: NUISANCE DECLARATIONS

drive on Lowell Street. We are thankful that we have not had any close calls involving these trucks, but we have observed pedestrians (including an elderly man) and bicyclists nearly being hit by these trucks moving on Lowell Street.

- b. Semi-trucks regularly drive down our narrow residential street coming from and traveling to Suprema Meat Company. This makes us feel unsafe when crossing our street and backing out of our driveway. We also fear that our dog may bolt into the street in front of one of these trucks. While walking our dog recently, we observed a semi-truck turning from Aileen onto Lowell while a man (we presume to be affiliated with Suprema Meat Company) directed traffic and directed the truck in the turn. This threatened our safety as pedestrians.
- c. Suprema Meat Company's properties on the east and west sides of Lowell Street do not have sidewalks. We frequently need to walk up Lowell Street to visit neighbors or the local farmers market. The lack of a sidewalk forces us to walk in the street with cars and semi-trucks, which threatens our safety.

Executed on this 13th day of August 2014 in Oakland, California.

---

Peter Russo and Christine Fry

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF RONALD WASHINGTON

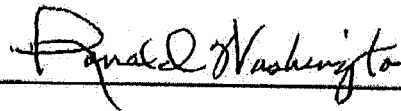
I, Ronald Washington, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 945 Apt. A 57<sup>th</sup> Street, which is about 20 ft from Suprema Meats Company's parking lot located at 947 57<sup>th</sup> Street and about 300 feet from their warehouse at 955 57<sup>th</sup> Street, Oakland, CA. My wife and I have lived here for roughly 7 years.
2. Suprema opens the gate in the parking lot next to my house at ~~3:30~~<sup>4:00 AM</sup> in the morning and they slam it. They take the chain off and that's when the employees start arriving. From then on my sleep is interrupted. The trucks start leaving between 4:40 and 5:00 am to the north, south, east and west and I can't get back to sleep. I can hear the trucks moving from both sides of Lowell Street. They're shifting the trucks around to get ready to start loading them and to make room for the employees to park. All of this activity happens between about 4:40 and 5:30 and I can't get back to sleep after that.
3. Big rigs arrive all night to deliver the next morning. They come early because they want to get in line. Suprema isn't open on Saturday so if they start arriving then, they're parked all night. They run their refrigeration engines and the noise bounces off the buildings on Lowell Street and it keeps me up all night. I call the police three or four times and they don't come. The dispatcher says a couple hours is the fastest the police can make it.
4. The big rig drivers a lot of times don't know the right way in and go the wrong way or tear up the curbs and streets. Once they come the wrong way going north on Lowell toward Stanford they have to try to turn around to get unloaded. Sometimes they don't want to turn around so they get unloaded from the wrong side of the street instead of on Suprema's side of the street. And if they do turn around they cause a nuisance doing that. They've hit the fire hydrant twice since I've lived here and it took them six to eight months to replace it.

## EXHIBIT C: NUISANCE DECLARATIONS

5. You have joggers and bicyclists up and down Lowell day and night. The big rigs block the stop signs and someone can easily be hit especially if they don't know the area. If a big rig parks within ten feet of a stop sign you can't see it. On Sundays Lowell is blocked by big rigs on both sides of the street all day long. Some of them arrive on Saturday and stay all night depending on how far they come from to be first in line.
6. The employees used to smoke on the sidewalk by my house and eat in the parking lot and leave the trash for days. The trash blows down the street. Rats come and take food out of the trash. We complained so now they smoke on the other side of Lowell Street.
7. The reality is this company is a nuisance and the business is too large for a neighborhood like this. You have too many children and too many seniors for this to be going on. My neighbor has children they have to have them picked up to drive to school. They have bicycles and they can't even ride them.
8. My wife is having serious health issues and I'm a Vietnam vet. The noise from Suprema's trucks and the big rigs is costing us our sleep and causing stress that's hurting our health. It's getting much worse lately so the VA is looking for another apartment for us to move to.

Executed on this 26th day of October 2016 in Oakland, California.



Ronald Washington

## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF STEPHEN ABREU

I, Stephen Abreu, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

935 57<sup>th</sup>

1. I live on ~~57<sup>th</sup>~~ street, about 75 yards from Suprema Meats Company located at 955 57<sup>th</sup> Street, Oakland, CA. My family and I have lived here for 3 years.
2. **Summary:**
  - a. The Suprema Meats operation has been a blight on the neighborhood for as long as I have lived in my home.
  - b. The business excessively uses big-rig trucks, driving them illegally down streets where driving such trucks is prohibited.
  - c. The trucks are often illegally idling, pumping exhaust into a residential neighborhood.
  - d. Excessive construction and operation noise constantly erupts from the business at unreasonable hours, as early as 4 a.m.
  - e. Suprema trucks are also often parked directly in front of stop signs, obstructing the view of drivers and resulting in several traffic accidents and near accidents.
  - f. There is no effort by the business to upkeep its location or building, resulting in a blighted corner in a residential community.
  - g. When approached by members of the community to address these issues, the business owners are openly hostile and refuse to moderate or change their behavior.
  - h. Below I will describe these issues in more detail.
3. **Big-Rig Truck Use:**
  - a. Big-rig trucks often drive by my house on 57<sup>th</sup> street, ignoring the signs stating that driving such trucks down 57<sup>th</sup> is illegal. Trucks then often end up stuck as they cannot travel down the street, and prohibit morning commuters from moving their cars for up to an hour. The trucks perform

## EXHIBIT C: NUISANCE DECLARATIONS

time-consuming, multi-point turns at the 57th & Lowell and completely block traffic for 10 to 20 minutes per each. Suprema is openly disregarding the law in using these big-rigs.

- b. The big-rigs are always parked in a manner that obstructs the stop signs on the street. As a result, I have witnesses several near accidents, nearly been involved in several accidents myself, and have spoken to neighbors involved in accidents due to the obstruction by the trucks.
- c. Big-rigs often arrive the day before loading and park overnight on 57th St. or Lowell St, less than 100 feet of the nearest residence. These trucks emit a constant idling and freezer noise that ricochets down Lowell Street and up residential cross streets. The drivers of these rigs sleep in the truck, in violation of Municipal Code 8.24.020. G.2.

#### 4. Blighted Conditions

- a. This neighborhood has been rapidly transitioning to a family-friendly safe and diverse neighborhood. The exception is Suprema. This business is a blight on the neighborhood. The entire, block-long "sidewalk" along Suprema's wall from 57th to Alleen streets, is one long, uneven dirt mound embedded with broken concrete and shattered glass.
- b. The building itself appears nearly abandoned with gaping openings in the second floor, and the business makes no effort to clean or maintain the street on which it resides.
- c. As a result, dumpers are encouraged to dump trash and mattresses all around the business.

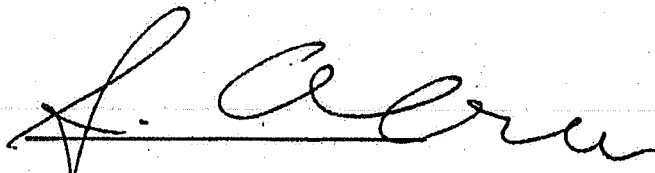
#### 5. Panel truck washing.

- a. The business uses a gated empty lot across the street from it that is a few houses down from my home to power wash its fleet of panel trucks (at least ten trucks). The noise from the power sprayers is considerable and disrupts what is a peaceful, quiet residential neighborhood. This occurs at least twice a week.
- b. Most alarming, the effluent from this cleaning drains into a street sewage drain that goes directly to the bay and is not treated at a sewage facility. It

## EXHIBIT C: NUISANCE DECLARATIONS

Is unclear what types of chemicals are used to clean the trucks, and what refuse is being cleaned out of the trucks. On days that cleaning occurs, there are literally gallons of foamy, foul-smelling effluent that run off of the lot into the sewage drain that leads to the bay.

Executed on this 18<sup>th</sup> day of August 2014 in Oakland, California.



Stephen Abreu

EXHIBIT C: NUISANCE DECLARATIONS

Hello Mr. /Mrs.

City of Oakland.

California

Good Morning

Letter writing Date:-17/01/2014.Time:-11:00Am

**Complaint Letter Near Factory Disturbances.**

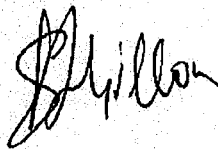
I am living House Number:-965 , 57<sup>th</sup> Street, Oakland CA.  
My house near one factory located he is disturbed every morning starting forklifts daily early morning 3:00 o'clock .Than he started trucks 4:00 O'clock. Whole night he don't switch of light's my windows this side so I am disturbed to sleeping.

My child's are disturbed and he get up and carrying to the reason for noise. He working on weekends and talking to each other very loudly.

Please take a action.

Thanks for

Sandip S Dhillon





## EXHIBIT C: NUISANCE DECLARATIONS

### DECLARATION OF RONALD WASHINGTON

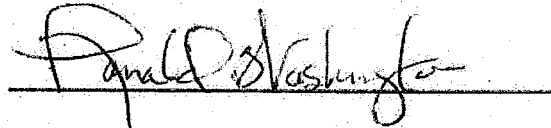
I, Ronald Washington, declare under penalty of perjury under the laws of the State of California that the following is true and correct. I have personal knowledge of each fact stated in this declaration and am competent to testify to these facts if sworn as a witness:

1. I live on 945 Apt. A 57<sup>th</sup> Street, which is about 20 ft from Suprema Meats Company's parking lot located at 947 57<sup>th</sup> Street and about 300 feet from their warehouse at 955 57<sup>th</sup> Street, Oakland, CA. My wife and I have lived here for roughly 7 years.
2. Suprema opens the gate in the parking lot next to my house at 3:30 in the morning and they slam it. They take the chain off and that's when the employees start arriving. From then on my sleep is interrupted. The trucks start leaving between 4:40 and 5:00 am to the north, south, east and west and I can't get back to sleep. I can hear the trucks moving from both sides of Lowell Street. They're shifting the trucks around to get ready to start loading them and to make room for the employees to park. All of this activity happens between about 4:40 and 5:30 and I can't get back to sleep after that.
3. Big rigs arrive all night to deliver the next morning. They come early because they want to get in line. Suprema isn't open on Saturday so if they start arriving then, they're parked all night. They run their refrigeration engines and the noise bounces off the buildings on Lowell Street and it keeps me up all night. I call the police three or four times and they don't come. The dispatcher says a couple hours is the fastest the police can make it.
4. The big rig drivers a lot of times don't know the right way in and go the wrong way or tear up the curbs and streets. Once they come the wrong way going north on Lowell toward Stanford they have to try to turn around to get unloaded. Sometimes they don't want to turn around so they get unloaded from the wrong side of the street instead of on Suprema's side of the street. And if they do turn around they cause a nuisance doing that. They've hit the fire hydrant twice since I've lived here and it took them six to eight months to replace it.

## EXHIBIT C: NUISANCE DECLARATIONS

5. You have joggers and bicyclists up and down Lowell day and night. The big rigs block the stop signs and someone can easily be hit especially if they don't know the area. If a big rig parks within ten feet of a stop sign you can't see it. On Sundays Lowell is blocked by big rigs on both sides of the street all day long. Some of them arrive on Saturday and stay all night depending on how far they come from to be first in line.
6. The employees used to smoke on the sidewalk by my house and eat in the parking lot and leave the trash for days. The trash blows down the street. Rats come and take food out of the trash. We complained so now they smoke on the other side of Lowell Street.
7. The reality is this company is a nuisance and the business is too large for a neighborhood like this. You have too many children and too many seniors for this to be going on. My neighbor has children they have to have them picked up to drive to school. They have bicycles and they can't even ride them.

Executed on this 26th day of October 2016 in Oakland, California.

A handwritten signature in black ink, appearing to read "Ronald Washington", is written over a horizontal line.

Ronald Washington



EXHIBIT D

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning & Building Department

Bureau of Building

Inspections, Permits and Code Enforcement Services

www.oaklandnet.com

(510) 238-6402

FAX: (510) 238-2959

TDD: (510) 238-3254

COMPLIANCE PLAN

Property Address: 955 57th Street, Oakland, CA 94608 (Suprema Meats) Complaint# 1303769 & 1305560

Abatement Action: OHC-Substandard [ ] OMC-Injurious [ ] OPC-Nuisance [x] OBC-HAZARDOUS [ ]

Parcel# 015-1298-009-00 Station CZ-INSP District Inspector: Chris Candell

955 57th LLC (Miguel Jara, Manager) Property Owner

Suprema Meats Inc (Miguel Jara, President) Business Owner

955 B 57th Street Address

Oakland, CA 94608-2843 City/State/Zip

(510) 654-9282 Telephone

Buyer/Owner

Buyer/Owner

Address

City/State/Zip

Telephone

PERMIT ISSUANCE

OAKLAND MUNICIPAL CODE SECTION 15.08.370 PROVIDES FOR EXPEDITIOUS COMPLETION OF CORRECTIVE WORK ASSOCIATED WITH PRIOR ABATEMENT ACTIONS BY THE CITY. THE REHABILITATION SCHEDULE ATTACHED HERETO IS SUPPLEMENTAL AND IN ADDITION TO ANY OTHER CONDITIONS, RESTRICTIONS, OR REQUIREMENTS FOR PERMIT ISSUANCE. OWNERS AND BUYER ACKNOWLEDGE THAT FAILURE TO ADHERE FULLY AND IN ALL MANNERS TO ALL PERMIT ENCUMBRANCES MAY RESULT IN IMMEDIATE REVOCATION OF PERMITS, FORFEITURE OF ALL FEES, AND CONTINUATION OF ABATEMENT ACTIONS.

COMPLIANCE PLAN TYPE (Check One): Not Substandard [x] \$396.00\* OR Substandard [ ] \$1,485.00\*

Fee Applied: Yes [ ] No [x] 3-R Report \$198.00\*

Fee Applied: Yes [ ] No [x] Substandard Termination \$297.00\*

3-R Report#

Permit# B1303653, B1304577, B1304583, and TBD (i.e. DR, V, CUP) Permit Expired (No Extensions)

Permit Released For Issuance: [ ] Yes [x] No Date:

City Abatement Charges Due: \$ N/A

Transferred County Fees: \$ N/A

Performance Bond \$ 40,000.00

Performance Bond Processing Fee: \$297.00\*

Monitoring Inspection Fees:

[x] Monthly Completion [ ] Phased Work

[ ] Bi-Monthly \$99.00\* X 10 Inspections = \$990.00 Schedule Continuous

\*Certificate of Occupancy \$693.00\* + \$99.00\* X (N/A) Units = \$ (N/A)

\*Indicated Fees Do Not Include: 9.5% Records Management Fee (\$159.89) + 5.25% Technology Enhancement Fee (\$88.36) ALL FEES NON-REFUNDABLE

TOTAL Compliance Plan Fees owed: \$396 + \$297 + \$990 + \$159.89 + \$88.36 = \$1931.25

Signature of Miguel Jara

10/20/14 DATE

Signature of Chris Candell

10/20/14 DATE

PERMIT RELEASED FOR ISSUANCE: [Signature] DATE 10/20/14

PRINCIPAL INSPECTION SUPERVISOR

Check #478758  
PAY TO THE ORDER OF CHASE BANK FOR DEPOSIT ONLY CITY OF OAKLAND PLANNING & BUILDING #63326128

\*IF CHANGE OF OCCUPANCY, CERTIFICATE OF OCCUPANCY APPLICATION NEEDED AT DATE OF PERMIT ISSUANCE.



CITY OF OAKLAND

## EXHIBIT D

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department

[www.oaklandnet.com](http://www.oaklandnet.com)

(510) 238-6402

FAX: (510) 238-2959

TDD: (510) 238-3254

### REHABILITATION SCHEDULE - WORK PLAN

Site Address 955 57<sup>th</sup> Street, Oakland, CA 94608-2843 Parcel# 015-1298-009-00

Building Description meat storage & distribution warehouse Complaint # 1303769 & 1305560

The purpose of this Compliance Plan – Work Plan is to mitigate Suprema Meats' ("Suprema") impact on nearby properties, specifically with regard to:

- 1) Noise coming from Suprema's 57<sup>th</sup> Street open facility between the hours of 9pm and 7am due to loading & unloading activities, vehicular & equipment maintenance, and the movement of delivery trucks;
- 2) Noise and traffic impacts due to unloading & loading of refrigerated semi-tractor trucks on 57<sup>th</sup> Street; and
- 3) Unpermitted property improvements.

On the date(s) and by the signature(s) affixed below, the Owner(s) of this property and this business, whether singularly or jointly, agree(s) to perform faithfully each part and all terms of this Work Plan as enumerated herein and to rehabilitate fully the property described above:

1. Concurrent with execution of this Compliance Plan, Owner(s) shall submit a performance security in a form and format approved by the City of Oakland (refer to attachment) and for a face amount not less than ~~\$40,000.00~~ which shall secure the faithful completion of all property improvements as prescribed in #3 below; all Work Plan steps and requirements, and all terms in this Compliance Plan. Failure to satisfy the deadlines and timelines prescribed in this Work Plan or to abide by any specific condition will constitute a material breach of the Compliance Plan and will result in Administrative Fines of up to \$1000 per day for as long as the performance schedule or condition is not met.
2. Concurrent with execution of this Compliance Plan, Owner(s) shall pay a Compliance Plan fee of ~~\$1931.25~~, which includes administration fees (i.e. Compliance Plan Type, Performance Bond Processing Fee, Record/Tech Fees) and 10 months of Monitoring Inspections Fees as outlined on page 1.
3. Concurrent with execution of this Compliance Plan, Owner(s) shall submit (a) a planning permit application (i.e. Design Review, Variance and Conditional Use Permit) as required by Zoning Division staff that seeks to legalize building and site improvements installed without permits, and (b) any building or specialty permits to legalize any improvements or repairs undertaken that do not require planning approvals (See Exhibit A for List of Unpermitted Improvements). The full scope of required private (on-site) and public (off-site) improvements to be included in all required planning and building permit applications shall include (c) construction of a new loading facility for at least one delivery truck inside the existing warehouse building along Lowell Street (east elevation), and (d) related public Right-of-Way improvements along the property's Lowell Street frontage (from 57<sup>th</sup> Street to Aileen Street) as needed to accommodate unloading of big rig trucks (semi-tractor trailer trucks). These public improvements shall be designed to City standards and shall include a sidewalk, curb, gutter, catch basins, pavement grade adjustments and any drainage improvements as needed per and to the satisfaction of the City Engineer.
4. Not Later Than two weeks from the execution date of this Compliance Plan, Owner(s) shall apply to Building Services to change the property address of Suprema Meat Co from 955 57<sup>th</sup> Street to 5655 Lowell Street, and include the application fee payment as required (i.e. \$393 + tech/recrd mgmt).

## EXHIBIT D



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

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### REHABILITATION SCHEDULE - WORK PLAN

Site Address 955 57<sup>th</sup> Street, Oakland, CA 94608-2843 Parcel# 015-1298-009-00

5. Concurrent with execution of this Compliance Plan, Owner(s) agree to establish the following: (1) Suprema shall immediately discontinue all unloading of big rig trucks (semi-tractor trailer trucks) on 57<sup>th</sup> Street and Lowell Street between 9pm and 7am (daily); (2) No trucks owned by Suprema Meats Inc shall park on the north or south sides of 57<sup>th</sup> Street west of Suprema's west property line; (3) Suprema will not load or unload any trucks within the 57<sup>th</sup> Street public Right-of-Way, except for the limited time period between the date that Suprema obtains a building permit to build the Lowell Street loading dock (referenced in paragraph #3 above) and the date that Suprema receives authorization from Building Inspections staff to use the Lowell Street loading dock; and (4) Suprema shall use their best efforts in good faith to comply with those procedures enumerated in the Delivery Truck Management Plan attached herein as Exhibit B to prevent delivery trucks traveling to and from Suprema from using 57<sup>th</sup> Street and other nearby local streets where truck traffic is prohibited, and to prevent all delivery trucks from parking on 57<sup>th</sup> Street when waiting to be unloaded.
6. Not later than one month from the execution date of this Compliance Plan, Owner(s) agree to discontinue all delivery staging activities (i.e. movement of vehicles, equipment, and product into position for loading), vehicle loading and unloading activities, and vehicle & equipment maintenance activities at Suprema's 57<sup>th</sup> Street open loading facility between the hours of 9 pm and 7 am (daily). The foregoing sentence excludes the movement of loaded vehicles leaving on delivery, which shall be limited as follows. The owner(s) agree to limit all delivery activity noise generated from Suprema's 57<sup>th</sup> Street open loading facility between 9pm and 7 am (daily) to two 3-minute windows of time during which a maximum of 3 pre-loaded delivery trucks can be started and can exit the property during one of the said 3-minute windows (maximum of 5 delivery truck exits total).
7. Owner(s) agree to phase out the use of all non-hybrid delivery trucks within Suprema's 57<sup>th</sup> Street open loading facility between 9pm and 7am within 3 years of the execution date of this Compliance Plan. This will be done by purchasing at least 2 hybrid delivery trucks per year as they become available for purchase, up to a minimum of five hybrid delivery trucks over the 3 year period. The size of the replacement hybrid delivery trucks shall be equivalent to the existing Suprema delivery trucks (i.e. Class 7). Upon purchase of each hybrid delivery truck, Owner(s) agree to remove one conventional truck from those available for use within Suprema's 57<sup>th</sup> Street open loading facility. .
8. Not Later Than 60 days following planning permit approval date (or from the final decision by the City appeal procedure), Owner(s) shall pay all fees and submit a complete application for construction permits to build all on-site and off-site property improvements including all unpermitted improvements and new improvements referenced in paragraph #3 above and as required by the Building Official and City Engineer.
9. Not Later Than 5 months from the date of construction permit issuance, Owner(s) shall obtain all Permit Rough Inspection approvals for the construction of all improvements referenced in paragraph #8 above.
10. Not Later Than 8 months from the date of construction permit issuance, Owner(s) shall obtain all Permit Final Inspection approvals for the construction of all permits referenced in paragraph #8 above.
11. Not Later Than 1 month from the date of Permit Final Inspection approvals, Owner(s) shall submit to Planning & Building staff for review and approval, a post-construction Acoustical Report prepared by a qualified acoustical engineer that measures all noise coming from the Suprema Meats property (day and night) to determine the extent of noise reduction achieved by physical improvements to the facility and operational improvements established by the Compliance Plan.



CITY OF OAKLAND

## EXHIBIT D

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department.

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12. Owner(s) shall conduct periodic post-construction noise monitoring as prescribed in paragraph #11 above and submit two Acoustical Reports to Building Services – Code Enforcement staff every 6 months for 1 year following the date of the initial post-construction Acoustical Report.
13. The City and Owner(s) agree to work in good faith for the purpose of completing the improvements, repairs and rehabilitation of the property. Owner(s) agrees to cooperate with the City and implement improvements and repairs as required by this Compliance Plan. City agrees that it will act in accordance with its ordinary custom and practice with respect to issuing planning approvals, building permits, inspection sign-off(s), time extensions, and other approvals in the administration of this Compliance Plan.
14. Owner(s) retains the right to withdraw from any Conditional Use Permit (CUP) application that may be required by paragraph #3 hereof, without such action constituting a breach of the Compliance Plan, but only on the following conditions: 1) the CUP Conditions of Approval materially alter the means and manner of operation, including the hours of operation, as set forth in the Compliance Plan, 2) the Owner(s) have exhausted all administrative remedies, prior to filing an administrative writ or other court action to contest the terms of the CUP that alter the terms required by this Compliance Plan, and 3) the request to withdraw from the CUP is made within 7 calendar days after a final CUP decision date (from the final decision by the City appeal procedure). The request to withdraw the CUP application must be given in writing to Zoning Division staff. The Owner(s) agree that any request to withdraw the CUP application will be done concurrently with application for a demolition permit to remove the unpermitted steel canopy structure and new loading dock improvements adjacent to 57<sup>th</sup> Street, that the 57<sup>th</sup> Street canopy and loading dock will be removed within 2 weeks of demolition permit issuance, and that use of the 57<sup>th</sup> Street canopy and loading dock must be discontinued as of that date. Owner(s) also agree that construction permit applications to legalize all unpermitted work identified in paragraph #3 above will be applied for not later than 2 weeks from the CUP withdrawal request date. Further, in the event that Owner(s) withdraw from the CUP, the City reserves the right to renew or bring any nuisance or other enforcement actions based on activities that this Compliance Plan is intended to address. If the City determines that the appeals of the CUP are based on non-material conditions, the City has the right to terminate this compliance plan with 7 days' notice to Owners, to require removal of the 57<sup>th</sup> Street canopy and loading dock, and to require discontinued use of the canopy and loading dock. The City reserves the right to renew or bring any nuisance or other enforcement actions based on activities that this Compliance Plan is intended to address.
15. Owner(s) hereby agree that in the event each part and all terms of this Compliance Plan are not completed in full on or before the dates set forth herein, the city will commence proceedings to retain the full face amount of the performance bond for said actions. In addition, this Compliance Plan in no way entitles the owner(s) to operate their business and/or facility in a manner that results in nuisance activity not specifically intended to be addressed by this Compliance Plan agreement.
16. Owner(s) hereby agree that the conditions stated herein will be incorporated as terms of any agreement to lease, or sell the real property, any agreement to sell purchase and sale or transfer the business operating at the site that may be entered into between them and all potential lessee/purchaser for the Property or the business. Owner(s) further agree that their successors in interest, assigns, heirs and transferees will be bound by obligations on the Owners herein, and they likewise will attach and incorporate all conditions stated herein into any lease or purchase and sale agreement for the Property or the business.
17. Within 21 calendar days of executing the Compliance Plan, the Owner(s) of record shall record with the Alameda County Clerk-Recorder's Office a copy of the executed Compliance Plan. Proof of recordation shall be delivered to the City of Oakland via electronic mail and certified mail by the United States Postal Service or any other postal service that provides delivery confirmation. The proof of recordation shall be addressed to Gregory Minor c/o City of Oakland Administrator's Office, 1 Frank H. Ogawa Plaza - 11<sup>th</sup> floor, Oakland CA, 94612.

EXHIBIT D

REHABILITATION SCHEDULE - WORK PLAN

Site Address 955 57<sup>th</sup> Street, Oakland, CA 94608-2843

Parcel# 015-1298-009-00

955 57<sup>th</sup> LLC  
BY [Signature] *MANAGER*  
Owner(s) Signature

50 PRIMA MARIAS INC  
BY [Signature] *president*  
Owner(s) Signature

Miguel E Jara Jr.  
Owner Name

Miguel E Jara Jr.  
Owner Name

10/20/14  
Date

10/20/14  
Date

CITY \_\_\_\_\_  
Inspector's Signature

CITY \_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Inspector's Name

T Low  
Supervisor's Name

\_\_\_\_\_  
Date

10/20/14  
Date

List of Unpermitted Improvements

(955 57<sup>th</sup> Street)

1. Steel Canopy structure
2. Cargo Container Break Room under canopy
3. Pallet Racks throughout warehouse
4. New Walls & Doors in warehouse
5. Mechanical Refrigeration equipment (including structural, access and sound control details)
6. Electrical Alterations & Repairs in warehouse
7. New Loading Dock (including plumbing)
8. Vehicle Entry Gate & Fence
9. New Windows-Framing-Exterior changes at 2<sup>nd</sup> Story Office
10. Reconfigured 2<sup>nd</sup> Story Walls of Break Room & Storage Room
11. Alterations to create 2<sup>nd</sup> Story Kitchen, Bathroom, and half Bathroom (unless such 2<sup>nd</sup> story alterations can be shown to have been previously permitted and approved)
12. Front Entry Security Gate (if remaining)
13. Final Approval of CMU Sound Wall (side lot line) with additional load of canopy.



DELIVERY TRUCK MANAGEMENT PLAN

In complying with its good faith best efforts obligation to prevent trucks coming to and from Suprema Meats, Inc. from creating noise and congestion on 57th Street, 955 57th LLC has prepared and executed this Delivery Truck Management Plan which is to be attached to and incorporated into the Compliance Plan executed on October 20, 2014.

1. By no later than November 1, 2014 Suprema shall advise all of Suprema's suppliers in writing;
  - a. Of Suprema's change of address.
  - b. That all truck traffic on 57th Street between Adeline Street and San Pablo Avenue is prohibited.
2. On the date of execution of the Compliance Agreement, Suprema shall advise each of its drivers that there can be no parking on the north side of 57th and any parking on the south side of 57th must be adjacent to 955 57th LLC's (Suprema's) property and cannot extent west of Suprema's west property line.
3. In the event of a violation of the above, any neighbor or other person can call, text or email Miguel Jara, Jr or Mario Jara to report the violation using the contact information noted below;

Miguel Jara, Jr.

Office Phone Number; 510-654-9282  
Cell Phone Number; 510-376-2162  
Email Address; mmjara@comcast.net

Mario Jara

Office Phone Number; 510-654-9282  
Cell Phone Number; 510-376-3010  
Email Address; tiomarito@comcast.net

4. Each time that a notice of violation comes into either of the two designated individuals noted in #3 above, that person shall immediately go into the street to ascertain whether or not a violation of this Management Plan has occurred. If a truck coming to or from Suprema has been found to have driven down 57th Street, the driver will be verbally admonished of the "no use" restrictions and the owner of the transportation company that has employed the driver shall be provided with a written

EXHIBIT D

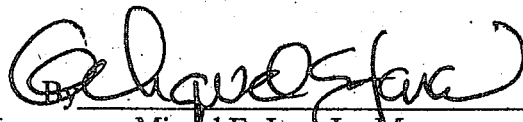
notice of the violation. The City of Oakland, Inspection Services Manager shall be copied on this and all other correspondence related to this matter. In the event of a repeat offense by the trucking company, Suprema shall notify the meat distributor that deliveries will not be accepted if delivered by that offending transportation company.

In the event a delivery truck is parked in 57th Street in violation of this Plan, the driver shall be instructed to immediately move the truck. If the driver refuses, or if within five minutes, the driver can not be located, the police will be called to have the truck cited or towed.

5. Within 24 hours of each such notice of violation received from a neighbor or other person a written report identifying the substance of the complaint, as well as the action taken, shall be emailed to Inspection Services Manager. Suprema shall keep a Complaint Log and tracks all such complaints with regard to date/time of complaint, complainant contact information, complaint description, actions taken to resolve it, and date of resolution. A copy of an updated Complaint Log shall be provide to the Inspection Services Manager monthly and upon request.

Dated this 20<sup>th</sup> day of October, 2014

955 57th LLC

  
By \_\_\_\_\_  
Miguel E. Jara, Jr., Manager

Dated this 20<sup>th</sup> day of October, 2014

Superma Meats, Inc.

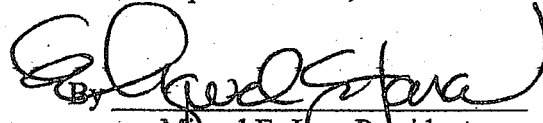
  
By \_\_\_\_\_  
Miguel E. Jara, President

EXHIBIT "B"

(to Compliance Plan; City of Oakland-955 57th LLC)



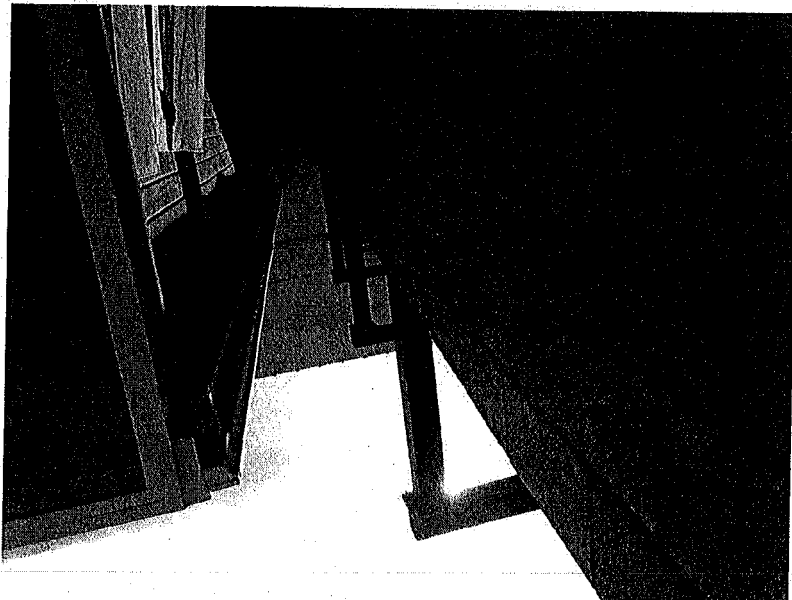
EXHIBIT E: ZONING MAP  
RED: SUPREMA PROPERTY

Map Document

INSIDE BLUE: HBX-1  
BETWEEN BLUE AND GREEN: RESIDENTIAL



EXHIBIT F: CINDERBLOCK WALL



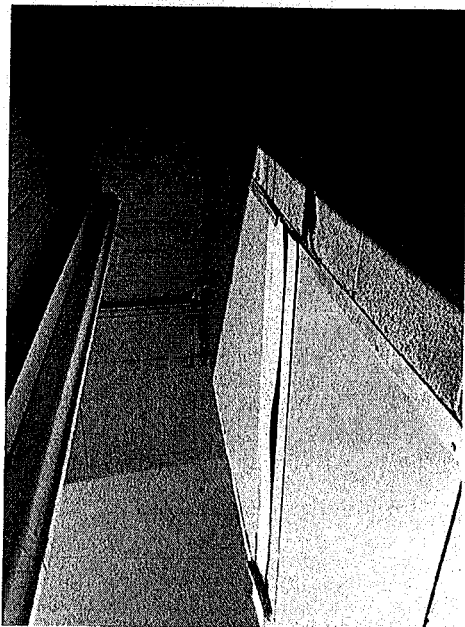
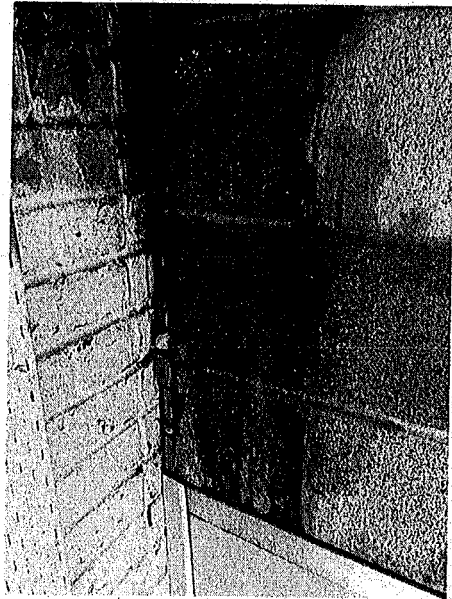
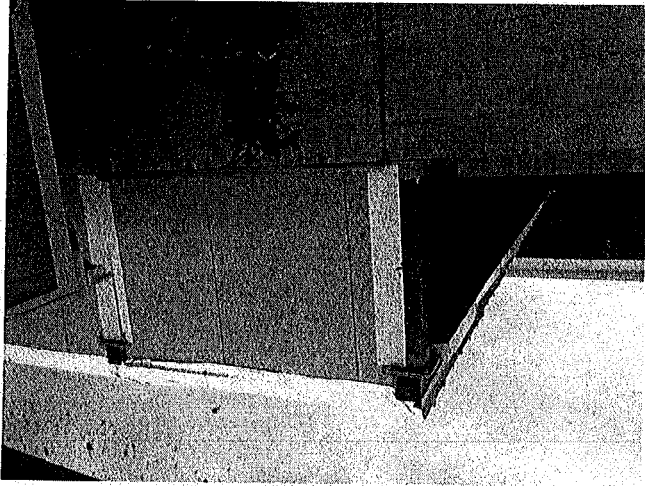


EXHIBIT F: CINDERBLOCK WALL

**EXHIBIT G: FREEZER EXPANSION / ELEVATION**

2800 square foot warehouse elevation built early in 2013 during 2 week period while neighbor was away. This structure sits atop an older part of the warehouse, or possibly even a separate building, which has had its windows filled in. What was this part of the warehouse used for before it became a freezer late in 2013?

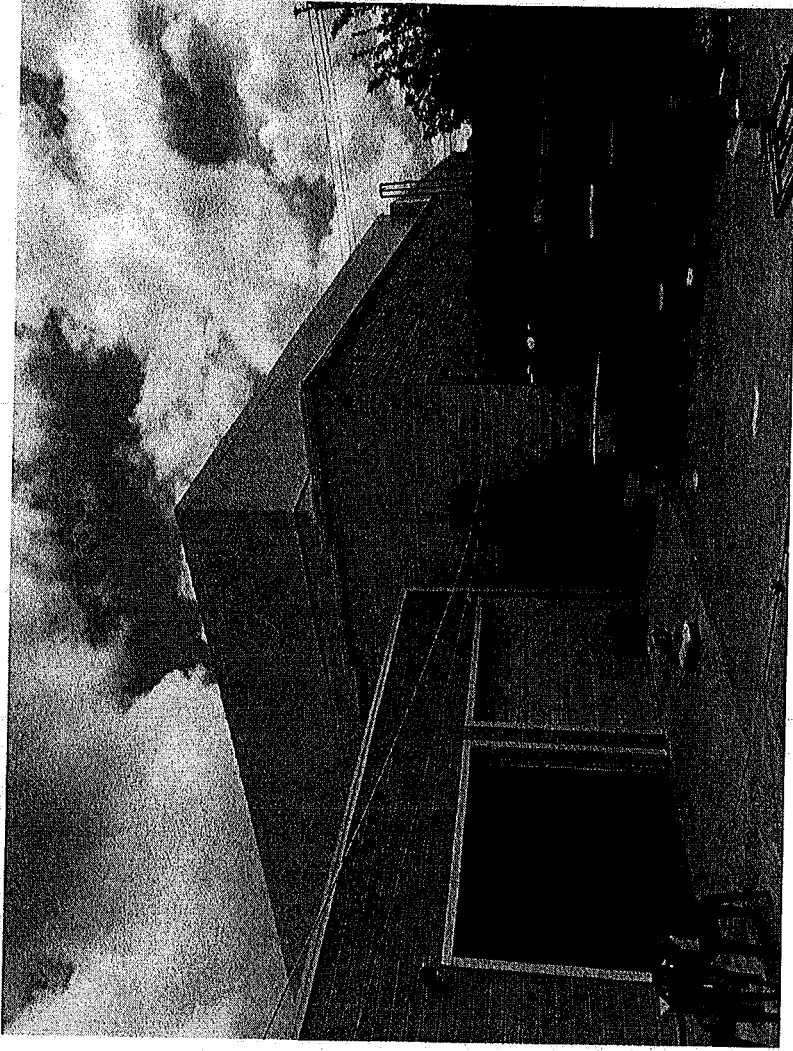
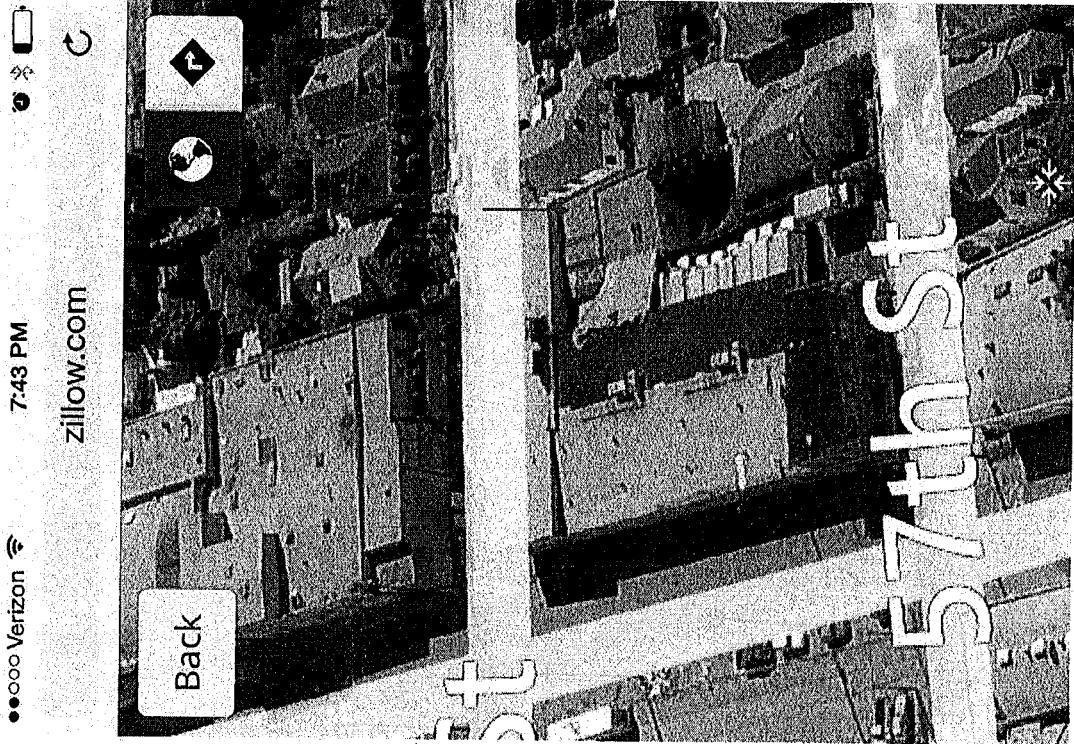


EXHIBIT G: FREEZER EXPANSION / ELEVATION



Screen shots from Zillow from 2013 just before the 2800 square foot elevation was built on top of the warehouse.

It appears that a sizable square footage of space partially beneath and surrounding where the 2800 square foot elevation is now was previously external to the warehouses and that the open facility extended much further back between the warehouses.

Note the makeshift canopies over these previously open spaces.





## EXHIBIT G: FREEZER EXPANSION / ELEVATION



Screen shots from Zillow from 2013 just before the 2800 square foot elevation was built on top of the warehouse and before the 1600 square foot canopy was built late in 2013.

Note the makeshift canopies over what appears to be previously open space that was not part of the warehouse (red arrows).

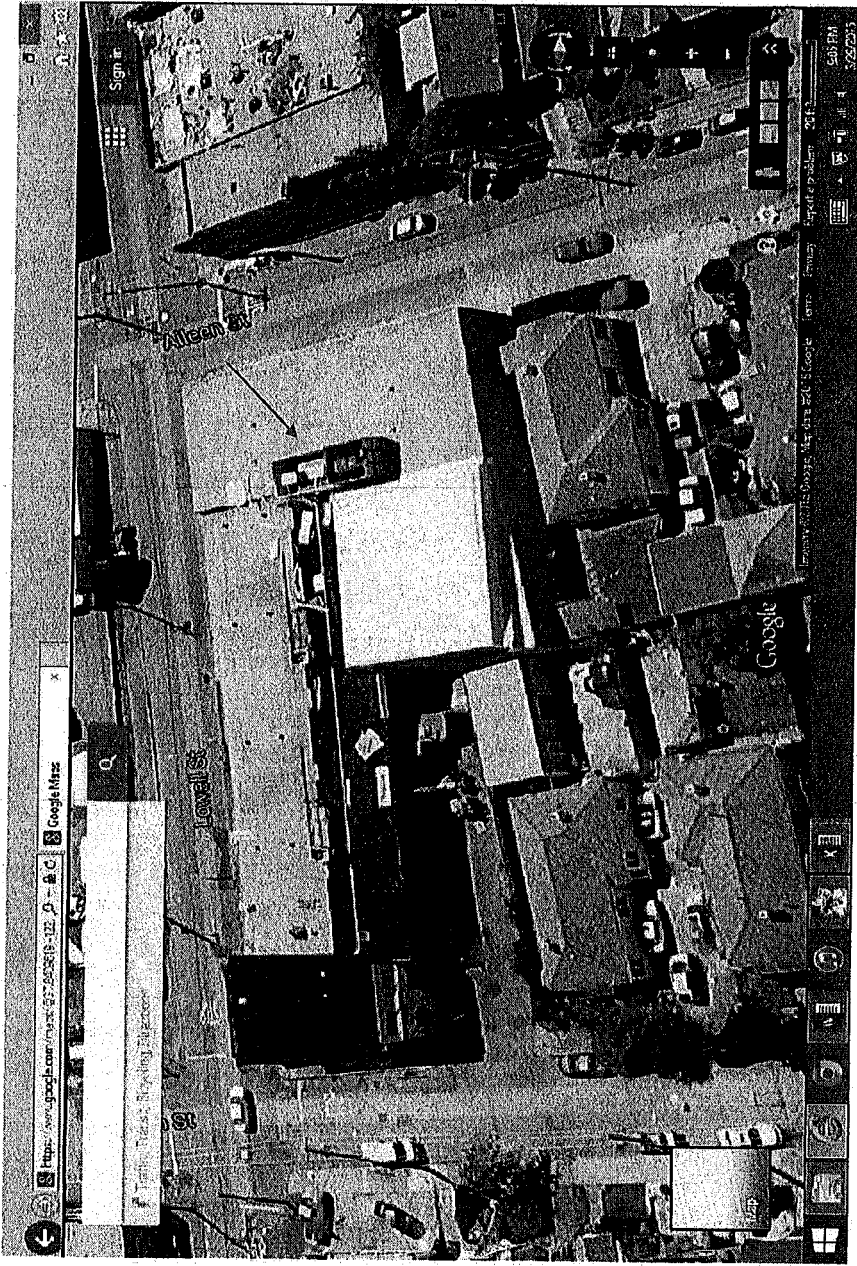
Note the two windows on the west side of the building which now has a 2800 square foot elevation (yellow square) and has been converted to a freezer. What was this building used for previously?

Note the fleet of seven older trucks, four of which are parked where the new 1600 foot canopy is today (blue square). These are smaller than the new trucks that have been added to the fleet since.

**EXHIBIT G: FREEZER EXPANSION / ELEVATION**

Google maps view from late 2013 after the 2800 square foot elevation and closure of previously open space as construction was about to begin on the loading dock and 1600 square foot canopy.

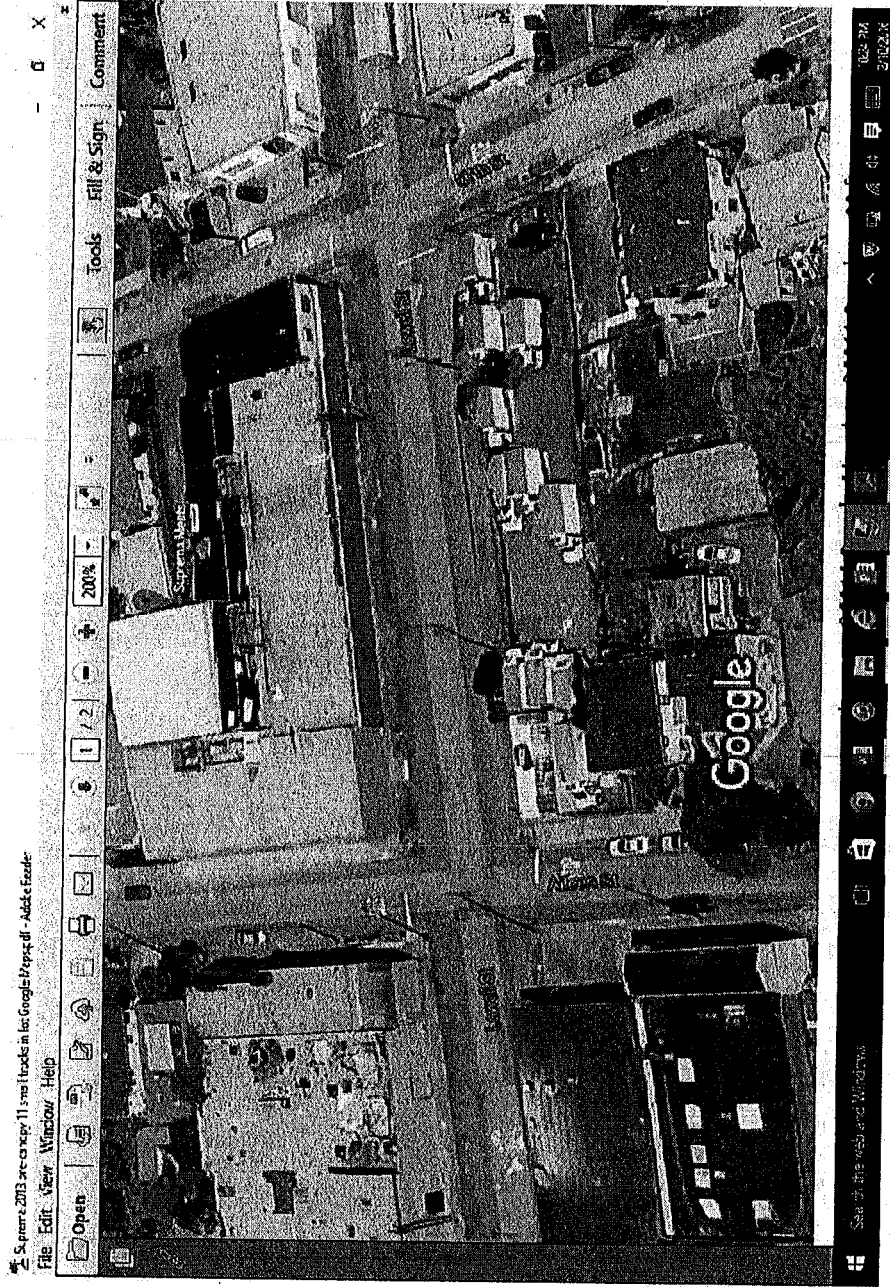
Note installation of rooftop mechanical equipment in progress.



## EXHIBIT G: FREEZER EXPANSION / ELEVATION

Google maps view of Suprema after 2800 foot warehouse elevation and before 1600 square foot canopy built.

Note fleet of 11 small trucks in the east Lowell St parking lot. Larger trucks have been added to the fleet since this shot was taken.



## EXHIBIT H: LETTER FROM RESIDENTS

Mr. Miguel Jara and Suprema Meats, LLC  
955 57<sup>th</sup> St.  
Oakland, CA 94608

July 12, 2014

Dear Mr. Jara,

Please respond to this letter in writing to Lowell Street Connected within 10 business days.

We are writing to make sure you are aware that residents and pedestrians in close proximity to 57<sup>th</sup> and Lowell Streets have been unable to peacefully enjoy our homes due to significant nuisances and risks to our health and safety posed by Suprema's following business practices:

- Excessive noise from loading/unloading of company trucks and big rigs Sunday to Friday and starting as early as 4 am weekdays
- Excessive 24x7 noise from your new cold storage facility/equipment
- Excessive noise from big rig diesel engines and mobile refrigeration units running overnight on the street
- Over-occupation of public streets and sidewalks for forklift and loading activities that endanger through vehicular traffic and pedestrian access
- Increasing volume of big rig traffic using and idling on city streets
- Expanded earlier hours of operation
- Unpermitted major construction projects that continue despite several Stop Work Orders by the City of Oakland
- Severe, long-standing blight due to boarded up windows on the second floor of 955 and broken glass on your Lowell St. wall from 57<sup>th</sup> St. to Aileen St.

The numerous individual and collective disturbances from Suprema's operations have resulted in the following impacts on community members:

- Chronic fatigue due to disturbed early morning sleep, with potentially more damaging effects on neighbors' children
- Difficulty concentrating and/or reduced ability to be safe on the job and driving due to lack of sleep
- Constant fear of pedestrian and automobile accidents (such as the one that occurred a few years ago) due to obscuring of the STOP sign and intersection visibility at 57<sup>th</sup> and Lowell Streets
- Inability to peacefully enjoy our property both indoors (with the windows closed) and in our yards especially on Saturday and Sundays
- Inability to use one or more bedrooms closest to 57<sup>th</sup> St.
- Decreased property values due to increasing noise and blight

EXHIBIT H: LETTER FROM RESIDENTS

Mr. Jara, please acknowledge our concerns and immediately address them in a good faith effort to mutually co-exist with the residents of this community.

We also request that you comply with City of Oakland's performance standards for noise and meet the requirements for construction permits before building and using new infrastructures. The permit and planning process is designed to ensure building safety and adherence to zoning codes for everyone's well-being.

A list of Oakland Municipal Code violations that we believe are occurring as a result of your current operations is attached.

We eagerly look forward to your response to this letter.

Sincerely,

Your neighbors

*[Signature]* Kim Lucas 968 57th St.

*[Signature]* Chris Bray 968 57th St.

*[Signature]* Karin Butts 972-57th St.

*[Signature]* Mansur Dahan 510-309-8001  
965-57th St Oakland 94608

*[Signature]* Romeka Edwards 969 57th St

*[Signature]* 975 57th Street

*[Signature]* BARRS LAING 976 57th St.

*[Signature]* KAREN KO 805 708 0611

*[Signature]* Sylvia Young 979-57th St. Oak 94608

*[Signature]* Angela Grennino 980 57th St.

*[Signature]* Wayne Sandahl 980 57th St Page 2 of 3

*[Signature]* Stan HODRICK 971 Arlington Ave

EXHIBIT H: LETTER FROM RESIDENTS

Deborah Yaffe DEBORAH YAFFE 975 ARLINGTON AVE

*[Signature]* GREGORY DENNIS 975 ARLINGTON AVE

Peter R. Russo Peter Russo 931 Aileen Street

*[Signature]* Christine Fry 931 Aileen Street

*[Signature]* BARBARA BRIGGS 934 AILEEN STREET

Cynthia Washington 977 57th St OAK CA Cynthia Washington

*[Signature]* 984 57th St Oakland, CA 94608

Melanie Robichaux

*[Signature]* David Yi 990 57th Street, Oakland, CA 94608

Lillian Edwards Lillian Edwards 987 57th St.

Jimmy Kim 994 57th Oakland, CA 94608

*[Signature]*

Daniel Motta 983 57th St. " "

Mike Felt (510) 472-5626 964 57th St.

Michael Felix

Darrin Weyers 943 57th St *[Signature]*  
Lauren Wolf

Karen M. ... 945-57th St

## EXHIBIT H: LETTER FROM RESIDENTS

### Oakland Municipal Code violations that may be occurring due to Suprema Meats business

#### 17.120.50 Noise – Section A (Table 17.120.01)

- Excessive noise received across residential property lines during both daytime and nighttime hours from loading/unloading in open yard and on 57<sup>th</sup> and Lowell Streets
- Round the clock refrigeration hum exceeds allowable levels during nighttime hours (see also 17.120.50 Section I)

#### 17.120.50 Noise – Section E

- Loading and refrigeration noise allowable levels 5 decibels lower for whine, screech, hum, impulsive noises which are common during loading/unloading, forklift use, and from the refrigeration unit

#### 17.120.50 Noise – Section G (Table 17.120.04)

- Excessive noise from (unpermitted) construction projects beginning in October 2013 during weekdays and weekends

#### 17.120.50 Noise – Section I

- Excessive noise from stationary refrigeration units (see also 17.120.50 Section A)
- Mobile refrigeration units on big rigs queuing to unload and possibly on company delivery trucks operating within 200 feet of residences outside of an enclosure between 10 pm and 7 am

#### 17.120.110 – Glare

- Flood lights in yard are producing glare on residential windows

#### 15.08.120 – Building and Construction

- Multiple construction projects without building permits

#### 8.24.020 – Blighted Property

- Boarded up windows since July 2013
- Property in a state of disrepair or inadequately maintained
- Condition and appearance along Lowell St. may attract dumping or other nuisance activity

# EXHIBIT I: CEASE AND DESIST LETTER

—  
**LAW OFFICES**  
OF  
**STEVEN J. HASSING**  
—

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

January 21, 2014

Angela Gennino  
980 57th Street  
Oakland, CA 94608

Kim Lucas  
968 57th Street  
Oakland, CA 94608

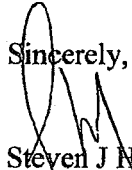
**RE: INTENDED LITIGATION**

Ms. Gennino and Ms. Lucas,

I have been retained by Suprema Meats, Inc. to prosecute litigation against you based upon tortious interference with business relations, defamation and conspiracy. I have begun an investigation into your activities as they relate to Suprema. I will be filing the lawsuit against you---and likely against others in your group---as soon as I am able to assure Suprema that your wrongful conduct provides legal cause for the filing of a viable action.

You might want to consider ceasing and desisting further intentional and malicious actions which cause damage to Suprema.

Sincerely,

  
Steven J Hassing

cc: Suprema Meats, Inc.



# EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

## CITY of OAKLAND City Administrator's Office



CITY HALL • 1 Frank H. Ogawa Plaza • 11th FLOOR • OAKLAND, CALIFORNIA 94612

### Nuisance Abatement Division

Greg Minor, Assistant to the City Administrator

TTY/TDD (510) 238-2007  
Main FAX (510) 238-7084  
Main (510) 238-3301  
Voicemail (510) 238-8370

### NOTICE OF COMPLIANCE PLAN VIOLATION

Certified Mail  
7014 0510 0001 3986 6090

February 17, 2015

Miguel Jara  
Suprema Meats, Inc.  
955 - 57<sup>th</sup> Street  
Oakland, CA 94608-2843

Subject Property: 955 57<sup>th</sup> Street  
APN: 015-1298-009-00

Dear Mr. Jara,

Our office has learned of several violations to the Compliance Plan between Suprema Meat, Inc. and the City Of Oakland. Accordingly, pursuant to paragraph one of the Compliance Plan, the City Of Oakland hereby assesses penalties for the following violations:

### PENALTIES:

DATE	VIOLATION	AMOUNT
11/21/14	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
11/24/14	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
12/5/14	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
12/23/14	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
1/2/15	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
1/29/15	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
2/4/15	Delivery Staging Activity in Excess of Paragraph 6	\$1,000.00
11/01/14-present	Breach of Paragraph 5 (4) Demonstrated via Persistent Truck Traffic on 57 <sup>th</sup> Street	\$1,000.00

TOTAL AMOUNT DUE: \$ 8,000.00

Please submit a check, money order or cashier's check payable to the "CITY OF OAKLAND" for the total amount due. Payment can be mailed or delivered in person to: Nuisance Abatement Division, attn. Susan Vasquez, 1 Frank Ogawa Plaza, 11<sup>th</sup> floor, Oakland, CA 94612. If payment is not received within 14 days, the City Of Oakland may record a lien against the above-referenced property for the total amount due plus lien preparation, recording and release fees plus interest.


This assessment of penalties is based on video and photo documentation (see enclosed CD), observations of neighbors and admissions made by staff of Suprema Meat, Inc. Considering that the above-identified violations likely represent only a sample of Compliance Plan violations that have taken place, our office exercises its discretion to assess the maximum daily penalty amount authorized by paragraph one of the Compliance Plan.

Please take steps immediately to avoid future compliance plan violations and nuisance activity, including but not limited to: obstruction of the public right of way, the spraying of chemical detergents, as well as excessive and annoying noises.

#### APPEAL

You may appeal this notice by using the enclosed form. Your appeal must be received within 14 days from the date of this notice. In order to request an appeal you must pay a \$67.50 non-refundable filing fee. Please be advised that if your written appeal and filing fee is not received before 4:00 p.m. (local time), Monday, March 2, 2015, you waive your right for further administrative adjudication of this matter, and your only other method of redressing this matter may be judicial action.

Sincerely,

  
Greg Minor  
Assistant to City Administrator

Encl.: CD with supporting photographs  
Proof of Service; Administrative Appeal

cc: Steve Hassing (via mail)  
B. Quesada (via email)  
C. Candell (via email)  
R. Illgen (via email)  
R. Flynn (via email)  
Councilperson D. Kalb, District 1 (via email)  
J. Flores, Interim City Administrator (via interoffice mail)

# EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

## CITY of OAKLAND City Administrator's Office



CITY HALL • 1 Frank H. Ogawa Plaza • 11th FLOOR • OAKLAND, CALIFORNIA 94612

### Nuisance Abatement Division

Greg Minor, Assistant to the City Administrator

TTY/TDD (510) 238-2007  
Main FAX (510) 238-7084  
Main (510) 238-3301  
Voicemail (510) 238-6370

### NOTICE OF COMPLIANCE PLAN VIOLATIONS

June 23, 2015

Miguel Jara  
Suprema Meats, Inc.  
955 57<sup>th</sup> Street  
Oakland, CA 94608-2843

Subject Property: 955 57<sup>th</sup> Street  
APN: 015-1298-009-00

Dear Mr. Jara:

Our office has learned of additional violations to the Compliance Plan between Suprema Meats, Inc. (Suprema) and the City Of Oakland. Accordingly, pursuant to paragraph one of the Compliance Plan, the City Of Oakland hereby assesses penalties for the following violations:

### PENALTIES:

3/4/15- 3/6/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$3,000.00
3/10/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$1,000.00
3/12/15- 3/13/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$2,000.00
6/2/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$1,000.00
6/12/15	Unloading of Truck in 57 <sup>th</sup> St Public Right of Way in Violation of Paragraph 5	\$500.00
6/17/15- 6/19/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$3,000.00
6/22/15	9pm-7am Forklift Activity in Violation of Paragraph 6	\$1,000.00

TOTAL AMOUNT DUE: \$ 11,500.00

## EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

955 57<sup>th</sup> Street

Page 2 of 2

Please submit a check, money order or cashier's check payable to the "CITY OF OAKLAND" for the total amount due. Payment can be mailed or delivered in person to: Nuisance Abatement Division, attn. Susan Vasquez, 1 Frank Ogawa Plaza, 11<sup>th</sup> floor, Oakland, CA 94612. If payment is not received within 14 days, the City Of Oakland may record a lien against the above-referenced property for the total amount due plus lien preparation, recording and release fees plus interest.

This assessment of penalties and warnings is based on video and photo documentation, observations of neighbors and admissions made by staff of Suprema.

Our office exercises its discretion to assess the maximum daily penalty amount for the early morning forklift activity in light of the following factors: the number one purpose of the compliance plan is to mitigate noise due to loading and unloading between 9pm-7am; this is Suprema's second Notice of Violation; Suprema has not been forthcoming with City staff when confronted about this activity; and that the specified dates represent only a fraction of forklift-related violations.

Likewise, a \$500 fine is being assessed for unloading in the 57<sup>th</sup> Street right of way as this activity undermines another purpose of the Compliance Plan. The fine is less than the full amount in consideration of Suprema's admission and that this violation does not appear to be ongoing.

### APPEAL

You may appeal this notice by using the enclosed form. Your appeal must be received within 14 days from the date of this notice. In order to request an appeal you must pay a \$67.50 non-refundable filing fee. Please be advised that if your written appeal and filing fee is not received before 4:00 p.m. (local time), Wednesday, July 8, 2015, you waive your right to administrative adjudication of this matter, and your only other method of redressing this matter may be judicial action.

Sincerely,



Greg Minor  
Assistant to City Administrator

Encl.: CD with supporting videos; Email correspondence between City staff and Suprema Meats

cc: Steve Hassing (via email), B. Quesada (via email), C. Candell (via email), R. Illgen (via email), R. Flynn (via email)  
CM Kalb (via email, C. Cappio, Interim City Administrator (via interoffice mail)



# EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • 11<sup>th</sup> Floor • OAKLAND, CALIFORNIA 94612

**Nuisance Abatement Division**  
Greg Minor, Assistant to the City Administrator

TTY/TDD (510) 238-2007  
Main FAX (510) 238-7084  
Voicemail ((510) 238-6370

## ADMINISTRATIVE APPEAL DECLARATION OF PUBLIC NUISANCE NUISANCE ACTIVITY ADMINISTRATIVE PENALTY

PROPERTY ADDRESS \_\_\_\_\_

NON-REFUNDABLE FILING FEE \$67.50

COMPLAINT \_\_\_\_\_ STATION \_\_\_\_\_ CERTIFIED MAIL \_\_\_\_\_ DATE \_\_\_\_\_

- |                          |                          |                               |                          |                 |
|--------------------------|--------------------------|-------------------------------|--------------------------|-----------------|
| <input type="checkbox"/> | <input type="checkbox"/> | PUBLIC NUISANCE - SUBSTANDARD | <input type="checkbox"/> | UNSAFE OCCUPY   |
| <input type="checkbox"/> | <input type="checkbox"/> | ADMINISTRATIVE PENALTY        | <input type="checkbox"/> | IMMINENT HAZARD |

PARCEL NO. \_\_\_\_\_

APPELLANT \_\_\_\_\_

PROPERTY OWNER \_\_\_\_\_

ADDRESS \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE \_\_\_\_\_

CITY/STATE \_\_\_\_\_

TELEPHONE \_\_\_\_\_

TELEPHONE \_\_\_\_\_

### CONDITIONS FOR FILING AN ADMINISTRATIVE APPEAL

THE MUNICIPAL CODE PROVIDES FOR ADMINISTRATIVE ADJUDICATION BY AN INDEPENDENT HEARING EXAMINER OF THE ENFORCEMENT ACTIONS INDICATED ABOVE FOR APPELLANTS HAVING RECORD TITLE INTEREST IN THE PROPERTY. AN APPEAL MUST BE SUBMITTED IN WRITING WITH A FILING FEE. IF THE APPEAL AND FEE ARE NOT RECEIVED BY OUR OFFICE WITHIN 14 CALENDAR DAYS OF THE MAILING DATE OF THE NOTIFICATION OF THE ENFORCEMENT ACTION, OR IF THE APPELLANT FAILS TO IDENTIFY FACTS WHICH SUPPORT A CONTENTION THAT THE CITY HAS ERRED OR ABUSED ITS DISCRETION, THE APPEAL WILL BE DENIED WITHOUT AN ADMINISTRATIVE HEARING. THE INITIAL REVIEW TO DETERMINE IF SUFFICIENT FACTS WERE STATED WILL BE CONDUCTED BY THE CITY'S ADMINISTRATIVE HEARING OFFICER (AHO). THE ONLY OTHER REDRESS AVAILABLE TO AN APPELLANT WILL BE JUDICIAL ACTION (CIVIL PROCEDURE 1094.6, etc.).

- BRIEFLY IDENTIFY YOUR LEGAL INTEREST IN THE BUILDING OR PROPERTY:
- BRIEFLY IDENTIFY WHICH OF THE ENFORCEMENT ACTIONS BY THE CITY YOU ARE APPEALING:
- BRIEFLY IDENTIFY HOW THE CITY HAS ERRED OR ABUSED ITS DISCRETION IN BRINGING THIS ACTION:
- BRIEFLY IDENTIFY HOW YOU WANT THE CITY TO RESOLVE YOUR APPEAL:

*I DECLARE UNDER PENALTY OF PERJURY THAT THE INFORMATION GIVEN HEREWITH IS IN ALL RESPECTS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.*

\_\_\_\_\_  
APPELLANT'S SIGNATURE  
*AGENT MUST PROVIDE NOTARIZED AUTHORIZATION*

\_\_\_\_\_  
DATE

EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

PROOF OF SERVICE

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I am a resident of the State of California, over the age of eighteen years. My business address is 1 Frank Ogawa Plaza, Oakland, California 94612. On the date set forth below, I served the within documents:

NOTICE OF COMPLIANCE PLAN VIOLATION  
RE: 955 - 57<sup>th</sup> Street  
FEE ASSESSMENT

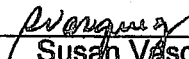
- Notice dated 6/23/15
- CD with Supporting Videos
- Email Correspondence Between City Staff & Suprema Meats

- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, certified mail, return receipt requested, in the United States mail at Oakland, California addressed as set forth below.
- by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering, at my at my business address above, the document(s) listed above to the person(s) set forth below.
- by causing such envelope to be sent by Federal Express/ Express Mail, Next Day Delivery to the address below.
- By email to

Miguel Jara  
SUPREMA MEATS, INC.  
955 - 57<sup>th</sup> Street  
Oakland, CA 94608-2843

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2015 at Oakland, California.

  
\_\_\_\_\_  
Susan Vasquez

# EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

## CITY of OAKLAND City Administrator's Office



CITY HALL • 1 Frank H. Ogawa Plaza • 11th FLOOR • OAKLAND, CALIFORNIA 94612

**Nuisance Abatement Division**  
Greg Minor, Assistant to the City Administrator

TTY/TDD (510) 238-2007  
Main FAX (510) 238-7084  
Main (510) 238-3301  
Voicemail (510) 238-6370

### NOTICE OF COMPLIANCE PLAN VIOLATIONS

July 23, 2015

Miguel Jara  
Suprema Meats, Inc.  
955 57<sup>th</sup> Street  
Oakland, CA 94608-2843

Subject Property: 955 57<sup>th</sup> Street  
APN: 015-1298-009-00

Dear Mr. Jara:

Our office has learned of additional violations to the Compliance Plan between Suprema Meats, Inc. (Suprema) and the City Of Oakland. Accordingly, pursuant to paragraphs one and fifteen of the Compliance Plan, the City Of Oakland hereby assesses penalties for the following violations:

#### PENALTIES:

6/25/15	9pm-7am Forklift Activity in Violation of Paragraph 6 and O.M.C. 1.08	\$1,000.00
7/1/15- 7/3/15	9pm-7am Forklift Activity in Violation of Paragraph 6 and O.M.C. 1.08	\$3,000.00
7/7/15- 7/9/15	9pm-7am Forklift Activity in Violation of Paragraph 6 and O.M.C. 1.08	\$3,000.00
7/13/15- 7/16/15	9pm-7am Forklift Activity in Violation of Paragraph 6 and O.M.C. 1.08	\$4,000.00

TOTAL AMOUNT DUE: \$ 11,000.00

Please submit a check, money order or cashier's check payable to the "CITY OF OAKLAND" for the total amount due. Payment can be mailed or delivered in person to: Nuisance Abatement Division, attn. Susan Vasquez, 1 Frank Ogawa Plaza, 11<sup>th</sup> floor,

## EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

955 57<sup>th</sup> Street

Page 2 of 2

Oakland, CA 94612. If payment is not received within 14 days, the City Of Oakland may record a lien against the above-referenced property for the total amount due plus lien preparation; recording and release fees plus interest.

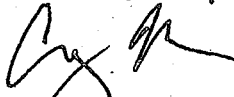
This assessment of penalties and warnings is based on video and photo documentation, observations of neighbors and admissions made by staff of Suprema.

Our office exercises its discretion to assess the maximum daily penalty amount for the early morning forklift activity in light of the following factors: the number one purpose of the compliance plan is to mitigate noise due to loading and unloading between 9pm-7am; this is Suprema's third Notice of Violation; Suprema has not been forthcoming with City staff when confronted about this activity; and that the specified dates represent only a fraction of forklift-related violations.

### APPEAL

You may appeal this notice by using the enclosed form. Your appeal must be received within 14 days from the date of this notice. In order to request an appeal you must pay a \$67.50 non-refundable filing fee. Please be advised that if your written appeal and filing fee is not received before 4:00 p.m. (local time), Thursday, August 6, 2015, you waive your right to administrative adjudication of this matter, and your only other method of redressing this matter may be judicial action.

Sincerely,



Greg Minor  
Assistant to City Administrator

Encl.: CD with supporting videos

cc: Steve Hassing (via email), B. Quesada (via email), C. Candell (via email), R. Ilgen (via email), C. Lum (via email), R. Flynn (via email), CM Kalb (via email), S. Landreth City Administrator (via interoffice mail)



# EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

## CITY of OAKLAND City Administrator's Office



CITY HALL • 1 Frank H. Ogawa Plaza • 11th FLOOR • OAKLAND, CALIFORNIA 94612

**Nuisance Abatement Division**  
Greg Minor, Assistant to the City Administrator

TTY/TDD (510) 238-2007  
Main FAX (510) 238-7084  
Voicemail (510) 238-8370

Via Certified Mail  
7015 1660 0000 0910 0897

### NOTICE OF COMPLIANCE PLAN VIOLATION

May 2, 2017

Miguel Jara  
Suprema Meats, Inc.  
955 - 57<sup>th</sup> Street  
Oakland, CA 94608-2843

Subject Property: 955 57<sup>th</sup> Street  
APN: 015-1298-009-00

Dear Mr. Jara,

Our office has learned of continued violations to the Compliance Plan between Suprema Meats, Inc. and the City Of Oakland. Accordingly, pursuant to paragraph one of the Compliance Plan, the City Of Oakland hereby assesses penalties for the following violations:

#### PENALTIES:

DATE	VIOLATION	AMOUNT
3/24/17	Compliance Plan Paragraph Six	\$1,000.00
3/27/17	Compliance Plan Paragraph Six	\$1,000.00
3/28/17	Compliance Plan Paragraph Six	\$1,000.00
3/31/17	Compliance Plan Paragraph Six	\$1,000.00
4/3/17	Compliance Plan Paragraph Six	\$1,000.00
4/7/17	Compliance Plan Paragraph Six	\$1,000.00
4/21/17	Compliance Plan Paragraph Six	\$1,000.00

TOTAL AMOUNT DUE: \$ 7,000.00

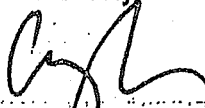
Please submit a check, money order or cashier's check payable to the "CITY OF OAKLAND" for the total amount due. Payment can be mailed or delivered in person to: Nuisance Abatement Division, attn. Susan Vasquez, 1 Frank Ogawa Plaza, 11<sup>th</sup> floor, Oakland, CA 94612. If payment is not received within 14 days, the City Of Oakland may record a lien against the above-referenced property for the total amount due plus lien preparation, recording and release fees plus interest.

This assessment of penalties is based on video documentation (see enclosed CD) and observations of neighbors. Our office exercises its discretion to assess the maximum daily penalty amount in light of the following factors: this is not Suprema's first set of violations of the Compliance Plan; more than one violation took place per day in many instances; the number one purpose of the compliance plan is to mitigate noise between 9pm-7am; and the above-documented violations likely represent only a sample of Compliance Plan violations that have taken place.

#### APPEAL

You may appeal this notice by using the enclosed form. Your appeal must be received within 14 days from the date of this notice. In order to request an appeal you must pay a \$110 non-refundable filing fee. Please be advised that if your written appeal and filing fee is not received before 4:00 p.m. (local time), Tuesday, May 16, 2017, you waive your right to administrative adjudication of this matter, and your only other method of redressing this matter may be judicial action.

Sincerely,



Greg Minor  
Assistant to City Administrator

Encl.: CD and Appeal Form  
Proof of Service

cc: Steve Hassing (via mail)  
C. Candell, Zoning/Planning (via email)  
C. Lum, City Attorney's Office (via email)  
D. Ranelletti, Zoning/Planning (via email)  
Councilperon D. Kalb, District 1 (via email)  
S. Landreth, City Administrator (via email)

EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

PROOF OF SERVICE

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I am a resident of the State of California, over the age of eighteen years. My business address is 1 Frank Ogawa Plaza, Oakland, California 94612. On the date set forth below, I served the within documents:

RE: 955 – 57<sup>th</sup> Street dba Suprema Meats, Inc.

Notice of Compliance Plan Violation  
Copy of CD, May 2017  
Appeal Form

- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, certified mail, return receipt requested, in the United States mail at Oakland, California addressed as set forth below.
- by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering, at my at my business address above, the document(s) listed above to the person(s) set forth below.
- by causing such envelope to be sent by Federal Express/ Express Mail, Next Day Delivery to the address below.
- By email to

Miguel Jara  
SUPREMA MEATS, INC.  
955 – 57<sup>th</sup> Street  
Oakland, CA 94608-2843

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 2, 2017 at Oakland, California.

*Susan Vasquez*  
Susan Vasquez

EXHIBIT J: COMPLIANCE PLAN VIOLATIONS

PROOF OF SERVICE

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I am a resident of the State of California, over the age of eighteen years. My business address is 1 Frank Ogawa Plaza, Oakland, California 94612. On the date set forth below, I served the within documents:

RE: 955 – 57<sup>th</sup> Street dba Suprema Meats, Inc.

Notice of Compliance Plan Violation

- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, certified mail, return receipt requested, in the United States mail at Oakland, California addressed as set forth below.
- by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering, at my at my business address above, the document(s) listed above to the person(s) set forth below.
- by causing such envelope to be sent by Federal Express/ Express Mail, Next Day Delivery to the address below.
- By email to [sjh@hassinglaw.com](mailto:sjh@hassinglaw.com)

Steven J. Hassing  
Law Offices of Steven J. Hassing  
425 Calabria Court  
Roseville, CA 95747

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 2, 2017 at Oakland, California.

  
\_\_\_\_\_  
Susan Vasquez



CITY OF OAKLAND

EXHIBIT K

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Department of Planning and Building

[www.oaklandnet.com](http://www.oaklandnet.com)

(510) 238-6402

FAX: (510) 238-2959

TDD: (510) 238-3254

### NOTICE OF VIOLATION

Date: 2/6/14

*Certified and Regular mail*

To: 955 57<sup>th</sup> LLC  
955 B 57<sup>th</sup> St.  
Oakland, CA 94608-2843

Code Enforcement Case No.: 1305560  
Property: 955 57<sup>th</sup> St.  
Parcel Number: 015-1298-009-00  
Correction Due Date: 3/10/14

The Code Enforcement Division inspected your property on 1/22/14 and confirmed that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under 'Required Actions'. Photographs of the violations are enclosed where applicable.

Description of Violation	OMC Section	Required Action
<b>Property</b>		
<b>Building</b>		
<b>Zoning</b>		
Noise loading/unloading trucks exceeds noise standards. Maximum noise allowed across residentially zoned property lines is greater of 45 dBA or ambient noise. Ambient was approx. 63dBA. Average noise levels over 20 minutes 67-69 dBA with spikes ranging 75-80 dBA.	17.120.050 Performance Standards, Noise	Reduce noise levels to meet noise ordinance standards.

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations before the first re-inspection date shown below. Your inspector is available by phone at 510-238-6986 and by email at [ccandell@oaklandnet.com](mailto:ccandell@oaklandnet.com).

If the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,045.00. In addition, Priority Lien fees in the amount of \$1,194.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

*You have a right to appeal* this Notice of Violation. To file an appeal, you must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If the Code Enforcement Division does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review.

Sincerely,

Chris Candell  
Planner III  
Department of Planning and Building

First Fee Charged Re-inspection Date: 3/10/13

Second Fee Charged Re-inspection Date: 3/17/14

cc:

Encl: Violation Appeal Form

Surface mold present on \_\_\_\_\_ . See enclosed brochure for remediation guidelines. (Description required, e.g. bedroom walls)

City of Oakland



CITY OF OAKLAND

EXHIBIT K

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department

Building Permits, Inspections and Code Enforcement Services

[www.oaklandnet.com](http://www.oaklandnet.com)

(510) 238-6402

FAX: (510) 238-2959

TDD: (510) 238-3254

## NOTICE OF VIOLATION

Date: 6/1/16

*Certified and Regular mail*

To: 955 57<sup>TH</sup> LLC  
995 B 57<sup>TH</sup> St.  
Oakland, CA 94608-2843

Code Enforcement Case No.: 1601870

Property: 949 57<sup>th</sup> St.

Parcel Number: 015-1291-016-01

Correction Due Date: 7/5/16

Code Enforcement Services inspected your property on 5/28/16 and confirmed that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under 'Required Actions'. Photographs of the violations are enclosed where applicable.

Description of Violation	OMC Section	Required Action
<b>Property</b>		
<b>Building</b>		
<b>Zoning</b>		
Conducting a primary "Auto & Other Light Vehicle Repair & Cleaning Commercial Activity" and/or "Trucking & Truck Related Industrial Activities" within the HBX-1 zone that does not permit or conditionally permit either of these activities. Storage of pallets and shipping container(s) either too tall or too close to property lines. See zoning code section for details.	17.10.480 & 17.10.585 Use classifications, 17.65.030 permitted and conditionally permitted activities; and 17.65.140 Outdoor storage.	Cease truck washing activity. Move storage (esp. shipping container & pallets) to a conforming location or reduce height to bring into compliance, or both, or Obtain zoning approval for the truck cleaning activity and outdoor storage.

Notice of Violation  
Page 2 of 2

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations before the first re-inspection date shown below. Your inspector is available by phone at 510-238-6986 and by email at ccandell@oaklandnet.com.

**Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after receiving a 30 day Notice of Violation further enforcement action(s) will include additional fees.**

If the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,665.00. In addition, Priority Lien fees in the amount of \$1,926.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

**You have a right to appeal** this Notice of Violation. To file an appeal, you must complete the enclosed Appeal form and pay the filing in the amount of \$110.00 and return it with supporting documentation in the enclosed envelope. If the Code Enforcement Division does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review.

Sincerely,

Chris Candell  
Planner III  
Planning and Building Department

First Fee Charged Re-inspection Date: 7/5/16

Second Fee Charged Re-inspection Date: 7/19/16

Administrative Hearing Fees	
Filing Fee	\$ 110.00
Conduct Appeals Hearing	Actual Cost Appeal (Fee charged only if Appellant loses appeal)
Processing Fee	\$ 931.00
Reschedule Hearing	\$ 329.00

*Fee Includes 9.5% Records Management Fee and 5.25% Technology Enhancement Fee*

cc: 955 57<sup>th</sup> LLC, 5655 Lowell St, Oakland CA 94608-2843

Encl: Violation Appeal Form





1 Steven J. Hassing SBN 152125  
2 LAW OFFICES OF STEVEN J. HASSING  
3 425 Calabria Court  
4 Roseville, CA 95747  
5 Telephone: (916) 677-1776  
6 Facsimile: (916) 677-1770

FILED  
ALAMEDA COUNTY

JUN 30 2015

By *[Signature]* Exec. Off./Clerk

7 Attorney for Suprema Meats, Inc.

8 SUPERIOR COURT OF STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 Unlimited Civil

11 SUPREMA MEATS, INC., a  
12 California Corporation and 955-57<sup>th</sup> LLC, a  
13 California Limited Liability Company

14 Plaintiffs,

15 vs.

16 Mandip Dhillon and DOES 1-50,

17 Defendants,

CASE NO. RG15776:2:1

COMPLAINT FOR TRESPASS,  
INVASION OF PRIVACY,  
TEMPORARY RESTRAINING ORDER,  
PRELIMINARY AND PERMANENT  
INJUNCTION

JURY TRIAL DEMANDED

18 Comes now, Suprema Meats, Inc., a California Corporation and 955-57<sup>th</sup> LLC, a  
19 California Limited Liability Company, Plaintiffs, which allege the following:

20 I  
21 PARTIES

22 1. Plaintiff, Suprema Meats, Inc., is a California Corporation duly licensed by the State  
23 of California. "Suprema" operates a meat wholesale business from a premises located at  
24 5655 Lowell Street, Oakland, CA.  
25  
26  
27  
28

1 2. Plaintiff, 955-57<sup>th</sup> LLC is a California Limited Liability Company licensed by the  
2 State of California. "955" owns "The Property" located at 5655 Lowell Street in Oakland,  
3 CA.  
4

5 3. Defendant, Mandip Dhillon, is an individual who resides at 963 57<sup>th</sup> Street, Oakland,  
6 CA, immediately west of The Property.

7 4. Plaintiff is ignorant of the true names and capacities of any Defendants sued herein as  
8 Does 1 through 50 and therefore sues these Defendants by such fictitious names. Plaintiff  
9 will amend this complaint to allege their true names and capacities when ascertained.  
10 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named  
11 Defendants is responsible in some manner for the incurrence herein alleged, and that  
12 Plaintiff's damages as herein alleged were proximately caused by their conduct.  
13  
14

15 II

16 JURISDICTION AND VENUE

17 5. Defendant resides in Alameda County, both Plaintiffs are located in and do business  
18 within Alameda County, the trespass occurred and is occurring in Alameda County and  
19 Alameda County Superior Court is the proper jurisdiction within which to resolve this  
20 dispute.  
21

22 III

23 GENERAL ALLEGATIONS

24 6. Defendant, Mandip Dhillon, resides next to and immediately west of The Property  
25 from which Suprema conducts its meat wholesale business.  
26

27 7. On June 2, 2015; June 19, 2015; and June 29, 2015, early in the morning prior to  
28 Suprema's opening for business, Dhillon has been seen extending his arm across a party wall

1 which separates his residence from The Property to film Suprema's employees on Suprema's  
2 side of the wall and to record their private conversations.

3  
4 8. Dhillon has been notified that his conduct constitutes an unwanted and unwelcome  
5 trespass and has been instructed not to intrude onto The Property.

6 9. Despite the admonitions noted in the preceding paragraph, Dhillon continues to  
7 engage in the unlawful trespass and invasion of privacy.

8  
9 IV

10 FIRST CAUSE OF ACTION

11 (Temporary Restraining Order;  
12 Preliminary and Permanent Injunction)

13 10. Plaintiff hereby incorporates paragraphs 1 through 9 above.

14 11. Despite Plaintiffs' admonitions, Dhillon continues to trespass onto Plaintiffs' property  
15 for the purpose of unlawfully videoing Suprema's employees and recording their private  
16 conversations.

17 12. Dhillon's trespass is unwelcome, annoying, constitutes trespass and an invasion of  
18 privacy, is distracting to Suprema's employees and constitutes a dangerous condition  
19 subjecting Plaintiffs to potential liability.

20 13. There are no remedies available to Plaintiffs other than those sought within this First  
21 Cause of Action.  
22

23  
24 WHEREFORE, Plaintiffs pray for the relief hereinafter set forth.

25 V

26 SECOND CAUSE OF ACTION

27 (Trespass)

28 14. Plaintiff hereby incorporates paragraphs 1 through 13 above.

1 15. At all times relevant, 955 was the owner of The Property and Suprema held legal  
2 possession of The Property by virtue of a written lease.

3  
4 16. Defendant, Dhillon intentionally entered The Property during the dates mentioned  
5 above and possibly other times presently unknown to Plaintiffs.

6 17. Plaintiffs did not give Defendant, Dhillon, permission to enter The Property or to  
7 video employees or to record their private conversations.

8  
9 18. Plaintiffs and each of them have sustained harm from Dhillon's trespass.

10 19. Dhillon's conduct as complained of herein was a substantial factor in causing  
11 Plaintiffs' harm.

12 WHEREFORE, Plaintiffs pray for the relief hereinafter set forth.

13  
14 VI

15 THIRD CAUSE OF ACTION

16 (Intentional Invasion of Privacy)

17 20. Plaintiff hereby incorporates paragraphs 1 through 19 above.

18 21. Suprema and its employees expect a reasonable degree of privacy in their actions and  
19 conversations conducted on Suprema's property prior to opening for business in the  
20 mornings.  
21

22 22. It is reasonable for Suprema and its employees to have an expectation of visual and  
23 aural privacy from having their person and conversation covertly videotaped by an unwanted  
24 intruder prior to business hours.

25  
26 23. Penal Code 647(i) and (j), commonly referred to as California's "Peeping Tom" laws,  
27 also make it a crime to peek---with or without use of a camera or cell phone---into the  
28 property of an inhabited structure while loitering on private property without lawful business

1 with the owner or occupant. The crime is punishable by up to one year in county jail and/or  
2 a fine of up to \$2,000.00.

3  
4 24. Suprema and its employees have been damaged by Dhillon's actions complained of  
5 herein, similar to that of a "Peeping Tom", in an amount to be proven at trial.

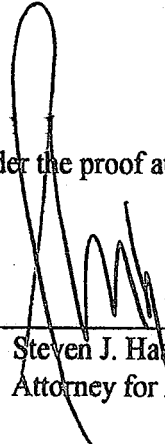
6 WHEREFORE, Plaintiffs pray for the relief hereinafter set forth.

7  
8 PRAYER

9 Plaintiffs, and each of them, now pray for the following relief;

- 10 1. For a temporary restraining order to prevent further trespass and invasion of privacy.  
11 2. For a preliminary injunction prohibiting further activity on the part of Dhillon as  
12 complained of herein.  
13 3. For a preliminary injunction prohibiting further activity on the part of Dhillon as  
14 complained of herein.  
15 4. For damages to be proven at time of trial.  
16 5. For attorney fees and costs.  
17 6. For other relief as deemed appropriate under the proof at trial.

18  
19  
20  
21 Dated this 30<sup>th</sup> day of June, 2015

22   
23 \_\_\_\_\_  
24 Steven J. Hassing  
25 Attorney for Plaintiff  
26  
27  
28

# EXHIBIT M: RECORDS ACT REQUESTS

**LAW OFFICES**  
OF  
**STEVEN J. HASSING**

ALSO LICENSED AND PRACTICING  
IN WASHINGTON STATE

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

**GOVERNMENT CODE § 6253**  
**FREEDOM OF INFORMATION ACT REQUEST**

July 21, 2015

Dan Kalb  
Oakland City Councilman  
City of Oakland  
Frank H. Ogawa Plaza  
Oakland, CA 94612

Dear Mr. Kalb,

In accordance with § 6253 of the Government Code, I am requesting an opportunity to obtain copies of the following public records;

1. All documents, including without limitation, letters, emails, memoranda of telephone conversation, written telephone messages, inter-office memoranda, complaints, or any other writing generated by anyone including, without limitation, any citizen of the City of Oakland, any owner of real property which is located within the City of Oakland or any past or present employee of the City of Oakland and you that in any way references Suprema Meats, Inc., Miguel Jara or Miguel Jara, Jr.

The California Public Records Act requires a response within ten business days of your receipt of this request. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies of the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

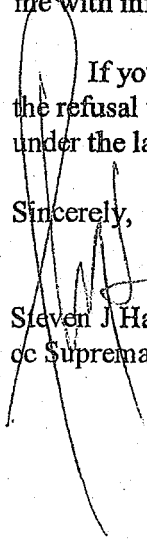
  
Steven J Hassing  
cc Suprema Meats, Inc.

EXHIBIT M: RECORDS ACT REQUESTS

LAW OFFICES  
OF  
STEVEN J. HASSING

ALSO LICENSED AND PRACTICING  
IN WASHINGTON STATE

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

GOVERNMENT CODE § 6253  
FREEDOM OF INFORMATION ACT REQUEST

July 21, 2015

Rachel Flynn  
Director of Planning & Building  
City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 4314  
Oakland, CA 94612

Dear Ms. Flynn

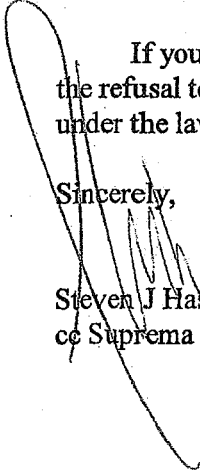
In accordance with § 6253 of the Government Code, I am requesting an opportunity to obtain copies of the following public records;

1. All documents, including without limitation, letters, emails, memoranda of telephone conversation, written telephone messages, inter-office memoranda, complaints, or any other writing generated by anyone including, without limitation, any citizen of the City of Oakland, any owner of real property which is located within the City of Oakland or any past or present employee of the City of Oakland that in any way references Suprema Meats, Inc., Miguel Jara or Miguel Jara, Jr. This includes, but is not limited to, documents as described herein between City of Oakland and Angela Gennino and/or Kim Lucas.

The California Public Records Act requires a response within ten business days of your receipt of this request.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

  
Steven J Hassing  
cc Suprema Meats, Inc.

# EXHIBIT M: RECORDS ACT REQUESTS

LAW OFFICES  
OF  
STEVEN J. HASSING

ALSO LICENSED AND PRACTICING  
IN WASHINGTON STATE

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

GOVERNMENT CODE § 6253  
FREEDOM OF INFORMATION ACT REQUEST

July 21, 2015

Department of Planning and Zoning  
c/o Scott Miller  
Zoning Manager  
City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 4314  
Oakland, CA 94612

Dear Mr. Miller,

In accordance with § 6253 of the Government Code, I am requesting an opportunity to obtain copies of the following public records;

1. All documents, including without limitation, letters, emails, memoranda of telephone conversation, written telephone messages, inter-office memoranda, complaints, or any other writing generated by anyone including, without limitation, any citizen of the City of Oakland, any owner of real property which is located within the City of Oakland or any past or present employee of the City of Oakland that in any way references Suprema Meats, Inc., Miguel Jara or Miguel Jara, Jr.
2. All documents, including but not limited to, those provided by the Engineering Department of the City of Oakland and memoranda and emails from other City of Oakland employees, which you have reviewed or considered during the performance of your responsibilities as zoning manager in drafting, proposing, or considering conditions of approval in conjunction with Suprema Meats, Inc.'s application for a conditional use permit for the property located at 5655 Lowell Street, (formerly 955-57<sup>th</sup> Street), Oakland, CA.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$300.00. The California Public Records Act requires a response within ten business days of your receipt of this request. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies of the requested records.



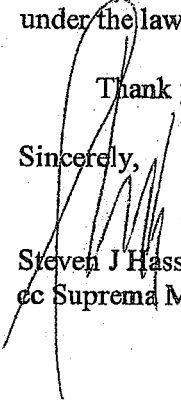
## EXHIBIT M: RECORDS ACT REQUESTS

Scott Miller  
July 21, 2015  
Page 2

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

  
Steven J Hassing  
cc Suprema Meats, Inc.

# EXHIBIT M: RECORDS ACT REQUESTS

**LAW OFFICES  
OF  
STEVEN J. HASSING**

ALSO LICENSED AND PRACTICING  
IN WASHINGTON STATE

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

**GOVERNMENT CODE § 6253  
FREEDOM OF INFORMATION ACT REQUEST**

July 21, 2015

Greg Minor  
Assistant to the City Administrator  
City of Oakland  
250 Frank H. Ogawa Plaza  
11<sup>th</sup> Floor  
Oakland, CA 94612

Dear Mr. Minor,

In accordance with § 6253 of the Government Code, I am requesting an opportunity to obtain copies of the following public records;

1. All documents, including without limitation, letters, emails, memoranda of telephone conversation, written telephone messages, inter-office memoranda, complaints, or any other writing generated by anyone including, without limitation, any citizen of the City of Oakland, any owner of real property which is located within the City of Oakland or any past or present employee of the City of Oakland that in any way references Suprema Meats, Inc., Miguel Jara or Miguel Jara, Jr. This includes, but is not limited to, documents as described herein between City of Oakland and any of the following;

- a. Michael Abner
- b. Jerry Alvarez
- c. Kilimba Alvarez
- d. Katrina Alcorn
- e. Stephen Abreu
- f. Nicole Abreu
- g. Adam Anderson
- h. Albert Angulo
- i. Caroline Attri
- j. James Aultman
- k. Phoebe Barkan
- l. Kelly Barlett

## EXHIBIT M: RECORDS ACT REQUESTS

Greg Minor  
July 21, 2015  
Page 2

m. Katrine Benninger  
n. Karin Betts  
o. John Blunt  
p. Steve Bracale  
q. Chris Bray  
r. Barbara Briggs  
s. Danica Brinton  
t. Aaron Buchhotz  
u. Alexandra Candia  
v. Stacy Carlson  
w. Andrea Castillo  
x. Candice Chang  
y. Mariaelena Conserva  
z. Barbara Corley  
aa. Cathrine Dam  
bb. Richel Desamparado  
cc. Sheila Donnelly  
dd. Ericka Doolittle  
ee. Marcus Eichenberg  
ff. Francisco Elizondo  
gg. Martha Evans  
hh. Alexia Exarchos  
ii. Chuck Fahrenbach  
jj. Yael Falicov  
kk. Paulette Forte  
ll. Emily Fox  
mm. Christine Fry  
nn. Angela Gennino  
oo. Susana Garcia  
pp. Cherrie Hakanson  
qq. Michael Hamilton  
rr. Laura Hamilton  
ss. Gerald Hebert  
tt. Gregory Hendricks  
uu. Marilyn Imes  
vv. Laura Ingram  
ww. Mason Kirtland  
xx. Gretchen Koehler  
yy. Justin LaBo  
zz. Barrs Lang  
aaa. Jeremy Leeds  
bbb. Kathy Lemmon  
ccc. Ngoc Loi

## EXHIBIT M: RECORDS ACT REQUESTS

Greg Minor  
July 21, 2015  
Page 3

ddd. Kim Lucas  
eee. Marie Mazwi  
fff. John McConnico  
ggg. Krisina McConnico  
hhh. Rena Meyer  
iii. Robin Meyerhoff  
jjj. Colleen Mulleedy  
kkk. Manish Patel  
lll. Janet Payne  
mmm. Rayna Pelly  
nnn. Darlene Perdisatt  
ooo. Vivian Prater  
ppp. Gerald Robinson  
qqq. Ashley Reede  
rrr. Lisa Robles  
sss. Peter Russo  
ttt. J.S. Roche  
uuu. Adi Shakti  
vvv. Diana Soublet  
www. Wayne Samdahl  
xxx. Jason Slota  
yyy. Jeffrey Squires  
zzz. Dale Zola

2. All documents upon which you relied or considered—including written complaints, memoranda of telephone complaints and noise readings--- in assessing penalties or considering alternative penalties against Suprema Meats, Inc in July of 2015 based upon alleged compliance plan violations.

The California Public Records Act requires a response within ten business days of your receipt of this request. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies of the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

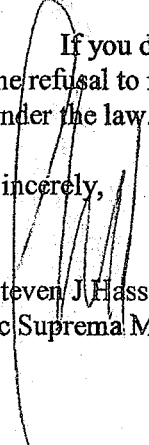
  
Steven J. Hassing  
cc Suprema Meats, Inc.

EXHIBIT M: RECORDS ACT REQUESTS

LAW OFFICES  
OF  
STEVEN J. HASSING

ALSO LICENSED AND PRACTICING  
IN WASHINGTON STATE

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

GOVERNMENT CODE § 6253  
FREEDOM OF INFORMATION ACT REQUEST

July 21, 2015

Rachel Flynn  
Director of Planning & Building  
City of Oakland  
250 Frank H. Ogawa Plaza  
Suite 4314  
Oakland, CA 94612

Dear Ms. Flynn

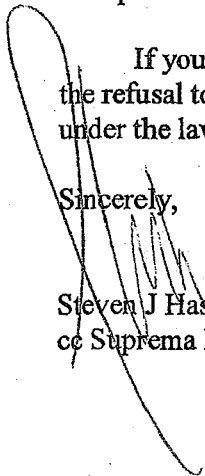
In accordance with § 6253 of the Government Code, I am requesting an opportunity to obtain copies of the following public records;

1. All documents, including without limitation, letters, emails, memoranda of telephone conversation, written telephone messages, inter-office memoranda, complaints, or any other writing generated by anyone including, without limitation, any citizen of the City of Oakland, any owner of real property which is located within the City of Oakland or any past or present employee of the City of Oakland that in any way references Suprema Meats, Inc., Miguel Jara or Miguel Jara, Jr. This includes, but is not limited to, documents as described herein between City of Oakland and Angela Gennino and/or Kim Lucas.

The California Public Records Act requires a response within ten business days of your receipt of this request.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

  
Steven J Hassing  
cc Suprema Meats, Inc.

## EXHIBIT N

From: Ransom, Michael <MRansom@oaklandnet.com>  
Date: Wed, Dec 28, 2016 at 3:18 PM  
Subject: Re: Miguel Jara harassed me last night  
To: kim lucas <klucas1111@gmail.com>, "Minor, Gregory" <GMinor@oaklandnet.com>

Good Afternoon Kim,

As you said in the e-mail, I saw that Ofc. Blackwell spoke with you and took an incident report and I reviewed your video that you took. I will like to follow up with you and take another report in the near future. My squad and I are going to be in another part of the city helping out on an operation today and possibly tomorrow as well. I think we should try to meet early next week if that is possible. Will you be available on Monday at 5:00pm?

Here is the information on where you can obtain a court order:

Rene C. Davidson, Courthouse

Family Law Unit

1225 Fallon Street, Room 250

Oakland, Ca 94612

510-891-6028

I would suggest that you call the number as soon as possible in order for you to schedule a court date in the near future.

Thanks,

## EXHIBIT N

*Michael Ransom 9145*

*Community Resource Officer - Beat 10X/10Y*

*Special Resource Section - Area 2*

*Oakland Police Department*

---

**From:** kim lucas <[klucas1111@gmail.com](mailto:klucas1111@gmail.com)>  
**Sent:** Wednesday, December 28, 2016 1:39:58 PM  
**To:** Ransom, Michael; Minor, Gregory  
**Cc:** Verdin, Felicia; Ranelletti, Darin; Kalb, Dan; Kirstyn Russell; Angela Gennino; Deborah Yaffe; [Cmjbray@gmail.com](mailto:Cmjbray@gmail.com)  
**Subject:** Miguel Jara harassed me last night

Hello Officer Ransom and Greg,

I am writing to report an incident involving Miguel Jara (owner of Suprema Meats) that occurred at the sidewalk in front of our home (968 57th St) last night at 8:05 pm.

I had just returned from from work and was outside in front of the house as trucks were being loaded in Suprema's yard. Miguel Jara drove a forklift stacked with meat from around the southwest corner of Lowell St and headed straight toward me instead of going into Suprema's gate. He stopped just short of the utility pole in front of my house and proceeded to taunt, insult, and intimidate me for nearly two minutes.

I recorded the entire incident: <https://www.youtube.com/watch?v=dz-Xsu6PW4>

I felt especially threatened by these two comments:

## EXHIBIT N

1) "You know, I have enough money to afford to ... uh .... get AT you".

2) "You will remember me for the rest of your life. What you'll remember, is that I PLAYED you and had FUN with you, from the very first day that you got here".

I consider Miguel Jara's behavior to be harassment of a threatening nature with the intent to intimidate me from reporting nuisance and code violations and to instill fear for my family's peace and safety. Miguel Jara has a history of intimidation both in person and in writing.

I called the OPD non-emergency number right after the incident but the officer did not arrive until after we were asleep and did not knock on the door.  
Incident # 12/27/2016 - 0785.

I filed a police report this morning at home with Officer Ashley Blackwell.  
Incident # 12/28/2016 - 0785.

I will be consulting with an attorney and am considering filing a restraining order against Miguel Jara, his brother Mario Jara, and any other Suprema employee.

I realize that you cannot give legal advice, but if you have any other suggestions, I would greatly appreciate them.

Thanks,

Kim



## EXHIBIT O



### WILSON IHRIG & ASSOCIATES ACOUSTICAL AND VIBRATION CONSULTANTS

CALIFORNIA

NEW YORK

WASHINGTON

6001 SHELLMOUND STREET  
SUITE 400  
EMERYVILLE, CA 94608

Tel: 510-658-6719

Fax: 510-652-4441

www.wiai.com

2014 July 17

Mr. Miquel Jara  
Suprema Meat Company  
955 57<sup>th</sup> Street  
Oakland, California 94608

Subject: 955 57<sup>th</sup> Street  
Suprema Meat Company  
Loading Dock Noise  
Job 12-091

Dear Mr. Jara:

At your request, I visited the above site on 23 June 2014 and again on 09 July 2014 and recorded noise at the northern curb of 955 57<sup>th</sup> Street opposite the western boundary of the above property. The purpose of these measurements was to compare noise levels with the City of Oakland's noise ordinance limits, both the current ordinance of June 11, 1996, and the earlier ordinance limits that were in place prior to June 11, 1996, and to recommendation procedures for controlling loading dock noise.

#### CURRENT OPERATIONS

The existing operations include loading up to six two-axle delivery trucks before 7AM. The trucks are normally parked the night before, with two trucks parked in the interior of the property, one truck in a recessed loading dock, and one or two trucks in the drive isle leading into the property. Two additional trucks may be parked off-site, perhaps on Lowell Street. The trucks include Freight-Liner, Nissan, and International Harvester.

A noise barrier curtain is located interior to the lot, and is intended to reduce noise from electric or hand operated pallet jacks and electric fork lifts that are used for loading the trucks parked in the interior.

The loading dock is intended avoid using fork lifts, allowing the pallet jacks to traverse directly into the truck at the loading dock.

Noise is currently produced by the following:

- Diesel two-axle delivery truck engines, cooling fans, and brake release as trucks enter or leave the loading dock and other parts of the loading apron.
- Diesel tractor-trailer delivery trucks. These tend to park on Lowell Street, though may park on the south side of 57<sup>th</sup> Street, adjacent to SMC if Lowell St. is occupied by other trucks. Product is unloaded with electric fork lifts and transported on the street to the drive isle on 57<sup>th</sup> Street and then into the refrigerated warehouse. These trucks may arrive before 7AM, but unloading may not commence until after 7AM. The diesel trucks do not run engines while parked.

## EXHIBIT O

- Pallet jack and fork lift electric motor and/or reduction gear noise
- The front wheels of the pallet jacks used to create noise as they passed over the 1" x 6" wooden planks of pallets. However, plastic pallets with no plank at the bottom side have been purchased and put into service to avoid such noise generation.
- Impact noise created by the pallet jacks crossing the gap between the loading dock apron and truck bed. A rubber pad is positioned across the ramp to reduce this noise.
- Impact noise created by the positioning of the load dock ramp. This is done manually, and may involve dropping the ramp in place. The result is a very short transient noise that occurs for less than one second.
- Impact noise due to pallet jacks moving inside the trucks during loading, involving positioning of the pallets and product. The noise is a muffled, low frequency sound that appears to be radiated by the floor of the truck and possibly the walls.
- HVAC roof-top equipment.

### RECORDINGS

The data were recorded with a Norsonic Type 140 digital sound level meter with a sampling frequency of 12KHz, giving an upper limit of 6KHz. The data were analyzed with proprietary software LXTHIRD and EXCEL to determine the statistical noise levels corresponding to time periods defined in both the current and previous City of Oakland noise ordinance.

The recordings extended over the following time periods:

DATE	RECORDING	PERIOD
June 23, 2014	R01	4:37AM – 7AM
	R02	7AM – 7:30AM
July 09, 2014	R01	4:06AM – 5AM
	R02	5AM – 6AM
	R03	6:02AM – 6:30AM

The recordings on June 23 were affected by roof-top mechanical equipment that was supposed to have been off prior to 7AM. SMC corrected the situation, and adjusted the timer so that they would turn on after 7AM. The recordings were repeated on July 09. The data discussed below are focused entirely on the July 09 data.

Upon arrival at 4:06 AM, one truck was parked in the loading dock, two trucks were parked on the apron, inside the lot, and two were parked in the drive isle, next to the loading dock. Evidently, the truck at the loading dock was loaded at about 4AM, prior to my arrival. The truck left the loading dock at 4:08AM, loaded with product.

## EXHIBIT O

WILSON, IHRIG & ASSOCIATES

3

Suprema Meat Loading Dock Noise

One of the trucks parked in the drive isle was started at 4:18AM and repositioned in the loading dock, and was then shut down as soon as it was parked in the dock. The loading of the truck began at 4:21AM.

The noise reducing curtain was drawn at about 4:39 AM to reduce noise during loading of trucks parked in the interior of the lot.

Between 4:56 and 4:59 AM three trucks were started and left the loading dock, drive isle, and interior, in that order. A fourth truck (Freightliner) was started and repositioned in the loading dock.

The recording was started at 5:01 AM. The noise reducing curtain was drawn. One truck was positioned in the loading dock.

At 5:22 the truck at the loading dock started and left.

A truck was parked in the loading dock at 5:41AM. Loading began at 5:47AM. The truck left the loading dock at 5:57AM.

No trucks remained on the site at 6:00AM. No trucks were loaded between 6AM and 6:24 AM.

Measurements were terminated at 6:24 AM after SMC indicated that no further loading would occur until after 7AM.

### MEASURED LEVELS

The noise level versus time recorded between 4:09AM and 5:00AM are plotted in Figure 1. The noise levels recorded during 5:02 and 6:00AM are plotted in Figure 2. These data indicate that most of the noise is transient, or impulsive, in nature. The exceptions occur when the trucks start up and move, in which case the noise may be elevated for a minute or two.

Background sound levels between 6:00 AM and 6:24AM are plotted in Figure 3. Some limited activity occurred on the lot, and some limited auto traffic passed the measurement site. No trucks passed by on 57<sup>th</sup>. Railroad warning horns were heard, with level about 54dBA. Cars passing on Lowell produced levels of about 53 to 57dBA. Pallet jacks operated on the loading dock apron produced noise at levels of about 50 to 53dBA.

### Comparison with Current Noise Ordinance Limits

The results for sound levels exceeding various amounts of time are listed in Table 1 along with the current City of Oakland ordinance limits. The time periods of 20 minutes represent background noise levels, here controlled by roof-top equipment.

The statistical levels for 10, and 20 minutes per hour are largely controlled by loading dock noise. The L(10min) (Level of noise exceeded more than 10 minutes during the hour) was about 48 dBA, controlled by both loading dock noise and background noise. The L(5min) level 64 dBA between 4AM and 5AM, caused by diesel truck movement, and was in excess of the 55 dBA limit. The L(5min) between 5AM and 6AM was within the limit even though a truck left the loading dock at about 5:21AM. The L(1min) and L(0min) exceeded the 60dBA and 65dBA limits for both hours between 4:09 and 6AM. (The L(0min) level is the maximum level.) No loading or SMC truck operation occurred between 6:00AM and 6:24AM, the end of the last sample. The data shown between 6:00AM and 6:24AM were all within the ordinance limits.

The data were also analyzed to determine the statistical exceedance levels during loading operations only, without operation of the diesel trucks. The results are listed in Table 2. The noise levels were

## EXHIBIT O

WILSON, IHRIG & ASSOCIATES

4

Suprema Meat Loading Dock Noise

within the noise ordinance limits, except for the maximum noise level of 65dBA. During the period 6:00 to 6:24 AM, during which time not loading operations occurred, the maximum noise level did not exceed the limit.

These levels were measured with the "FAST" meter response, for which a root-mean-square averaging time of 0.125 seconds is used. The "FAST" meter response is specified in the noise ordinance for impulsive noise, such as that which occurs during loading operations. The "SLOW" meter response gives a maximum level that is about 7dB lower than that obtained with the "FAST" meter response. For example, loading operations between 4:22 and 4:40 produced a maximum level of 70.3 dBA "SLOW", which may be compared with the 77.6dBA level shown in the table for 4:22AM to 4:40AM. The remaining exceedance levels were typically about 1 dB higher than those obtained with the "FAST" meter response, and generally within the ordinance limits.

The levels shown in Table 2 were obtained by a statistical analysis over the time periods shown. They represent the levels that would be directly comparable with the noise ordinance limits if the loading operation continued over the entire hour, rather than the periods shown. The measured levels would be lower if extended over the entire hour, neglecting truck noise, with the exception that the maximum level would remain unchanged.

**Table 1 Noise Levels During Early Morning Hours of 2014 JULY 09**

TIME PERIOD	10PM-7AM	4:09-5:00	5:00-6:00	6:00-6:30 (1)
MINUTES PER HOUR	RESIDENTIAL LIMIT-dBA	dBA	dBA	dBA
0	65	86.5	81.9	59.2
1	60	72.7	70.5	54.5
5	55	64.4	59.1	51.4
10	50	48.3	48.6	49.8
20	45	43.4	44.9	48.0

**Note: (1) No loading or truck movement occurred**

**Table 2 Noise levels during loading operations, without truck operation**

TIME PERIOD	10PM-7AM	4:22:34-4:40:47	5:02-5:21
DURATTION - MIN:SEC		18:13	18:40
MINUTES PER HOUR	RESIDENTIAL LIMIT-dBA	dBA	dBA
0	65	77.6	79.4
1	60	58.3	56.7
5	55	50.0	49.5
10	50	46.7	46.9
20	45	43.4	43.4

**Note: (1) No loading or truck movement occurred**

EXHIBIT O

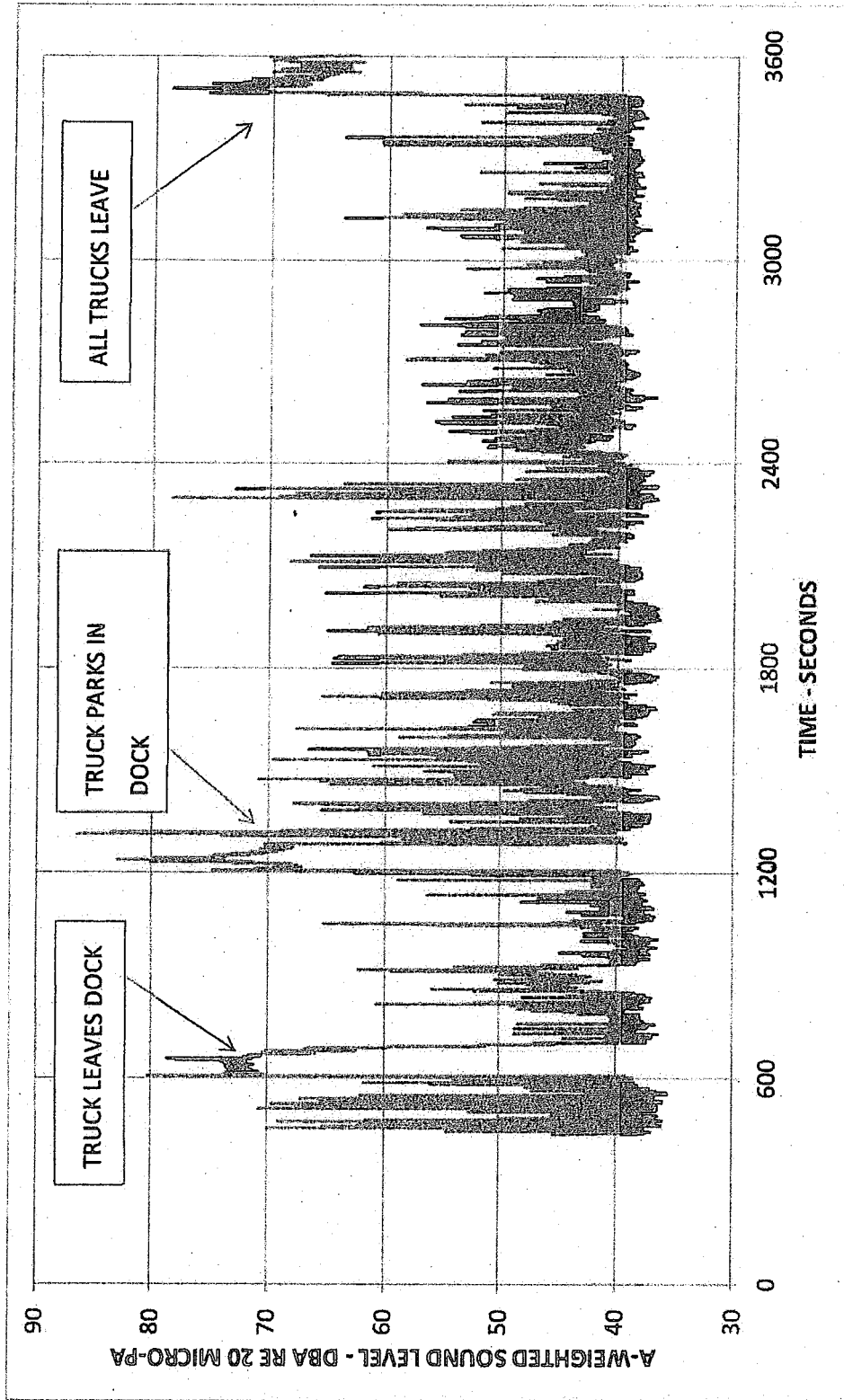


Figure 1 Noise levels between 4:09AM and 5AM

EXHIBIT O

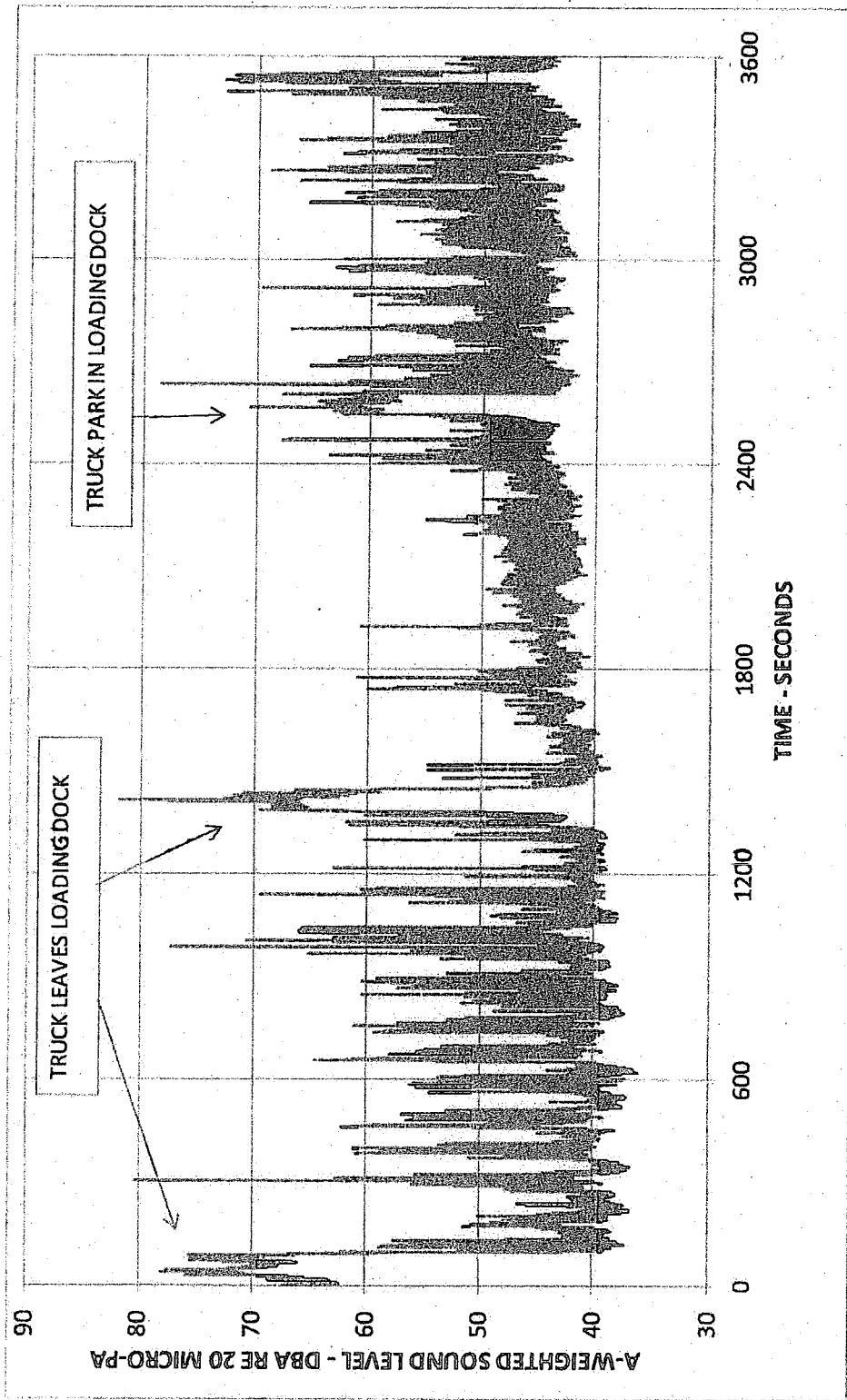


Figure 2 Time varying sound level between 5AM and 6AM - Fast Meter Response

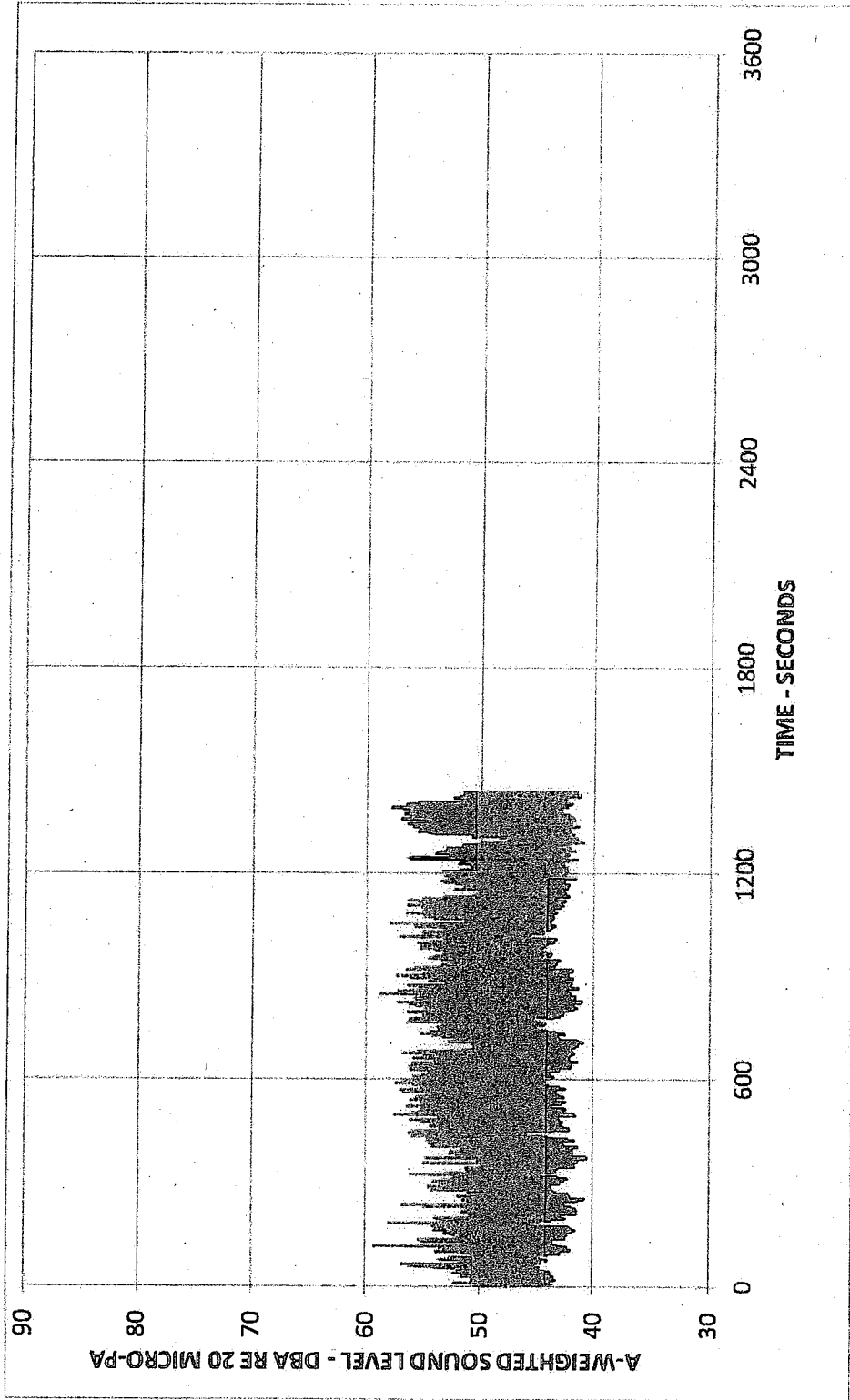


EXHIBIT O

Figure 3 Noise Levels between 6:00AM and 6:24AM

## EXHIBIT O

WILSON, IHRIG & ASSOCIATES

8

Suprema Meat Loading Dock Noise

### Comparison with Pre-1996 Noise Ordinance Limits

The octave band sound levels recorded during loading operations are compared in Figure 4 and Figure 5 for the time periods represented in Table 2. These levels just barely comply with the pre-1996 ordinance limits for events exceeding three minutes duration. If the analyses were extended for the entire hour, the levels would have been within the pre-1996 ordinance limits, unless loading operations were extended over the entire hour.

The truck noise levels exceeded the pre-1996 ordinance limits, as the truck noise occurred over durations exceeding 3 minutes. The octave band noise levels for the periods 4:09AM to 5AM and 5AM to 6AM are compared with the pre-1996 noise ordinance limits in Figure 6, and Figure 7, respectively. While the levels exceeded 12 minutes in the hours were comparable with or less than the pre-1996 ordinance limits, the levels exceeded 3 minutes per hour were well in excess of the pre-1996 ordinance limits in the 600Hz through 4,800 Hz octaves.

The octave band limits identified in the pre-1996 ordinance are archaic. They were redefined in the 1970's. The octave band levels shown here were constructed from the 1/3 octave bands with modern center frequencies.

The comparison of noise levels with pre-1996 ordinance limits gives roughly the same conclusion as the comparison with the current noise ordinance limits, with the possible exception that if truck noise could be limited to perhaps no more than 2 minutes in any hour, the pre-1996 noise ordinance limits might be met.



# EXHIBIT O

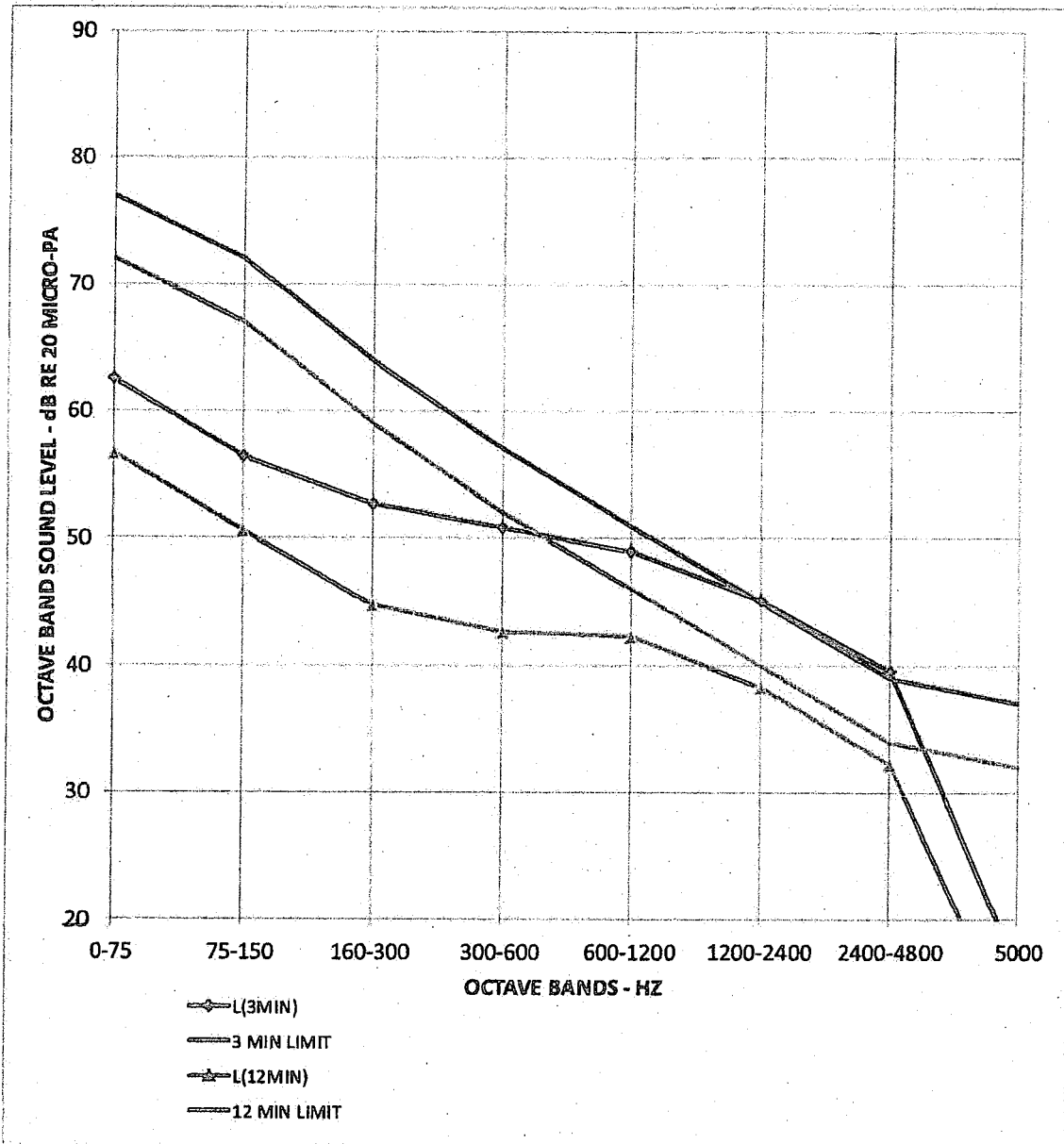


Figure 4 Comparison of loading noise levels occurring between 4:22 and 4:40 AM with pre-1996 noise ordinance limits

# EXHIBIT O

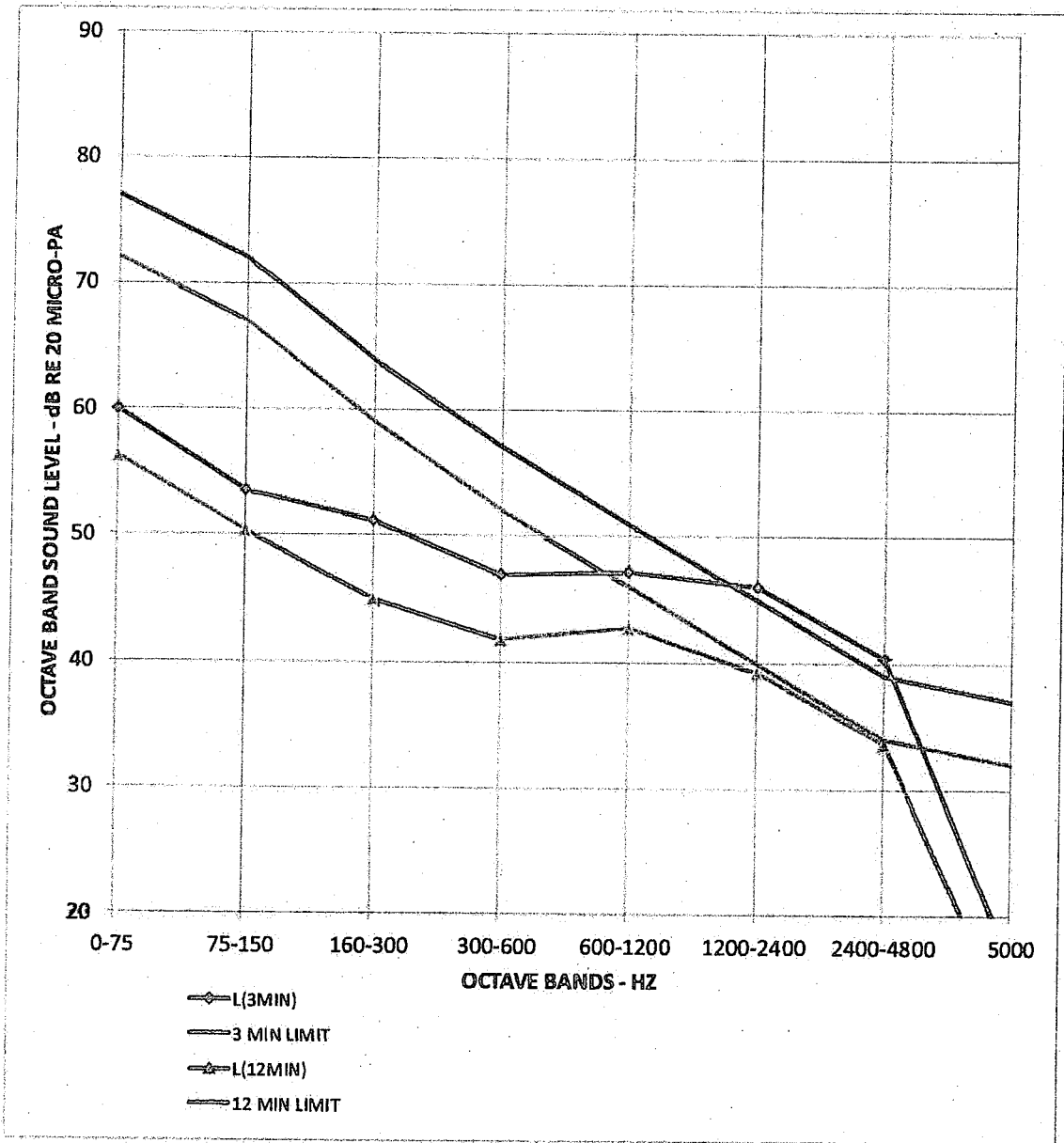


Figure 5 Comparison of loading noise levels occurring between 5:02 AM and 5:21 AM with pre-1996 ordinance limits

# EXHIBIT O

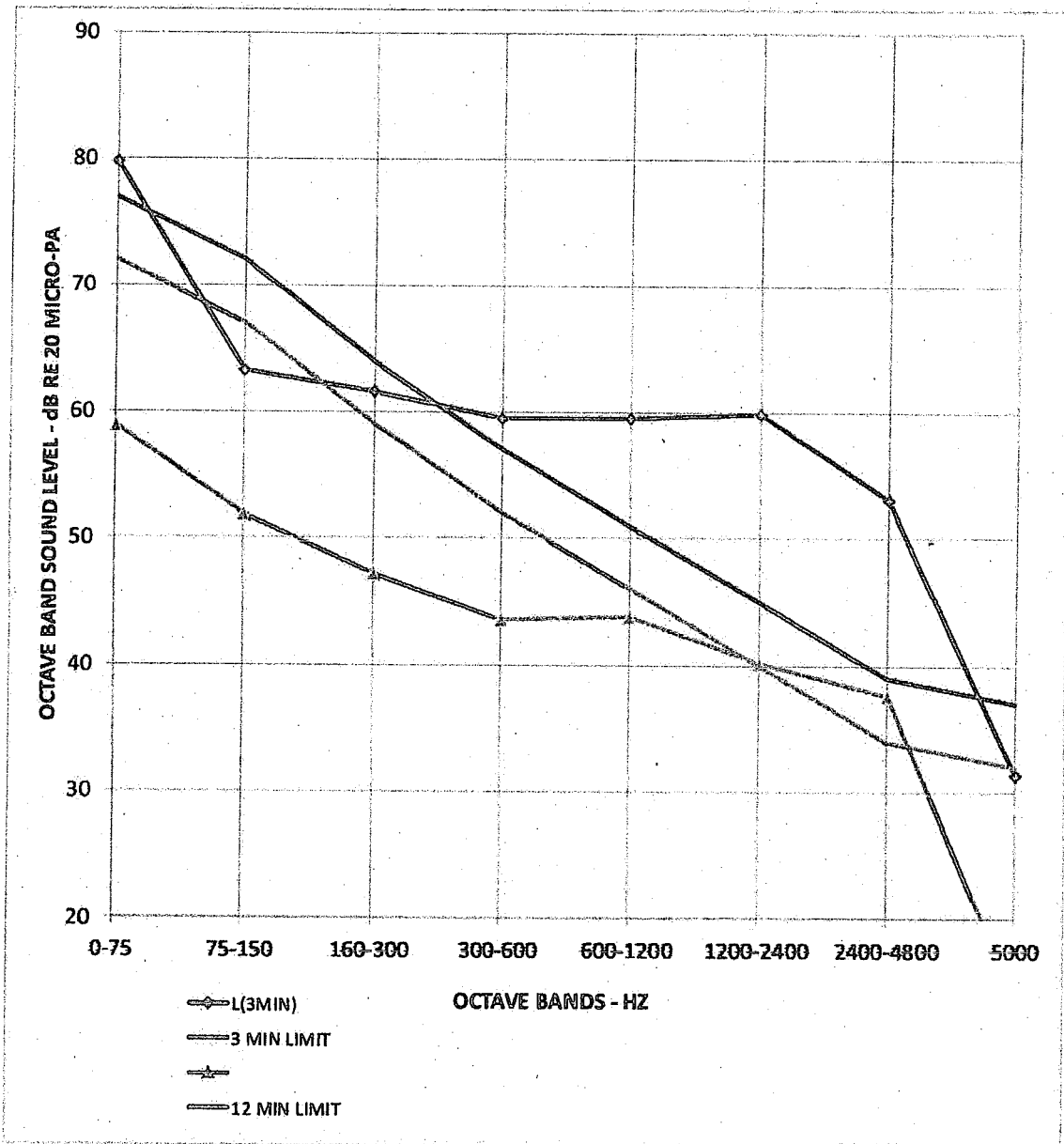


Figure 6 Comparison of octave band noise levels with pre-1996 noise ordinance limits - 4:09AM to 5AM

# EXHIBIT O

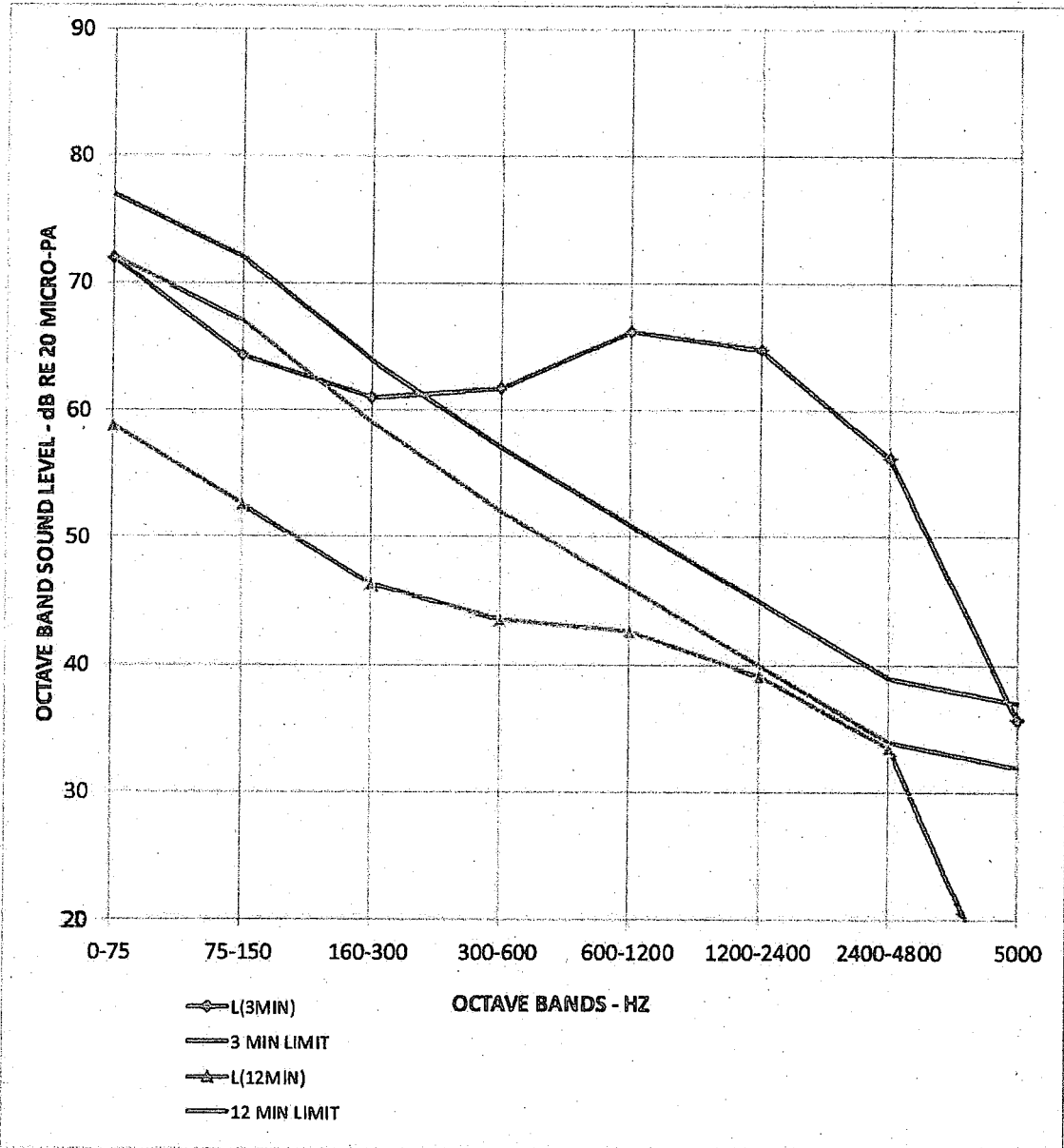


Figure 7 Comparison of octave band noise levels with pre-1996 noise ordinance limits - 5AM to 6AM

## EXHIBIT O

### NOISE CONTROL

Several options are listed below, beginning with administrative controls.

- 1) Note that loading operations exceeded only the maximum ordinance noise level limit (the level exceeded zero minutes in any hour). Thus, loading noise would likely be within ordinance limits without additional noise control, except for the occasional maximum noise event caused perhaps by the loading dock ramp being positioned or some other impact noise. These noise events can be controlled administratively. However, such events may still occur, due to employee errors. Thus, some additional measures might be taken.
- 2) Provide a hydraulic damper to control the fall of the steel ramp at the end of the loading dock. Provide 45 durometer rubber bumpers to prevent contact between the steel ramp and concrete or steel ramp and truck bed. Continue using the elastomer mat that is currently placed across the ramp.
- 3) Transient noise events occur as the pallet jacks are used to position the loaded pallets in the trucks. The noise may be produced by the pallets being rapidly let down onto the truck bed, as with the release of the hydraulic lift. Other sounds may involve contact of the loaded pallets with the side walls of the truck. In any event, placing 1/2" thick 60 durometer rubber or neoprene mat on the floor of the truck and a 1/8" thick steel plate over the top may damp vibration of the truck bed sufficiently to reduce transient noise during loading. Blankets may be hung against the interior walls of the truck to reduce transient noise caused by contact of the pallets with the wall. (This might also provide some thermal benefit.) The steel plate would weigh about 600 lbs, depending on dimensions of the bed. The elastomer pad would weigh about 350 lbs. Thus, the total weight would be about 1,000 lbs, which would increase fuel consumption. A test can be run before installing the elastomer mat and blankets in all trucks to see if the treatment is effective in view of increased fuel costs and possible thermal benefits.
- 4) Provide a 12-foot high sound barrier along the western edge of the loading dock pit to control loading noise radiation from the truck box floor and ceiling. The barrier would extend above the top of the truck box by perhaps 3 feet. The barrier should extend from the front of the loading dock to the rear of the loading dock. If practicable, extend the barrier about 4 feet further to the south to reduce noise from the ramp, though this can be made flexible to avoid conflict with other trucks. The barrier can be temporary in nature, consisting of a steel frame from which so-called "STC-25" blankets may be suspended. The STC-25 consists of a lead-loaded or barium loaded vinyl with 2" thick glass fiber absorption on the side facing the truck, encapsulated in a light-weight pervious cloth or nylon cloth cover. These blankets are supplied by Environmental Noise Control, 13806 Inglewood Avenue, Hawthorne, CA 90250. 310-679-8633. [www.environmental-noise-control.com](http://www.environmental-noise-control.com) ) These can be rented, complete with supporting frames, for a test of performance before building a more permanent structure if such is desired. However, a moveable partition may be most practicable.
- 5) Treat the western wall of the building bordering the eastern edge of the loading dock with 3 inches of 3pcf glass fiber acoustical absorption. The treatment should extend to the top of the truck, and should extend from the front of the building to the rear of the wall, at the end of the loading dock.

## EXHIBIT O

- 6) Treat the walls of the loading dock with acoustical treatment, if space permits, to absorb sound radiated from the bottom of the truck box. The treatment should be at least 2 inch thick glass fiber acoustical absorption. Provide a perforated sheet metal cover or screen over the treatment to protect it. (The STC-25 blanket referred to above may be adequate for test purposes.)
- 7) Move some of the loading operations to the east side of the building on Lowell Street. Residences are located at greater distances from the building, due to the open parking lot located east of Lowell Street. The residences located east of the parking lot at the east side of Lowell would be exposed to more loading noise than currently, but the levels would be about 6 to 10 dB less than the levels currently occurring along the north side of 57<sup>th</sup> opposite the loading dock. Further, a delivery truck with side access as well as rear door would allow the truck to be parked with the side access door directly opposite the opening in the building, so that sound from pallet jacks would be attenuated by the truck body.
- 8) An excellent noise control provision would involve complete enclosure of the entire loading dock area, extending to the western edge of the property, and provision of a rollup door at the drive entrance and roof. The ceiling of the enclosure and walls would be treated with acoustical absorption. When trucks are ready to leave, the doors can be opened, and trucks leave in relatively short amount of time, preferably in less than one minute.
- 9) None of the above provisions would reduce diesel engine noise from the trucks. Thus, minimizing truck movement would be very desirable to reduce community noise exposure. Rather than move a truck from the driveway and back it into the loading dock, the truck should be loaded where it sits. Loading noise may be reduced by hanging STC blankets along the sides of the truck box from the top of the box. When ready to depart, the blankets can be removed and stored.
- 10) A reduction of the number of trucks leaving before 7AM would reduce noise exposure levels along 57<sup>th</sup>. For example, one truck leaving during the hour could ostensibly leave in less than one minute. However, the maximum level would still exceed the noise ordinance limit along 57<sup>th</sup>. The pre-1996 noise ordinance did not restrict noise levels for events occurring less than 3 minutes in any hour. Conceivably, two trucks could leave the lot within this time without exceeding the pre-1996 ordinance. Some of the trucks require more than a minute to charge the air brake systems, while others may start and immediately depart. The trucks requiring long brake charging times could be loaded on Lowell. Trucks could be loaded on Lowell on a schedule that does not depend on loading schedule for trucks parked in the loading area or drive isle. That is, the building would provide shielding of 57<sup>th</sup> residents from Lowell operations. However, truck noise should be controlled along Lowell as well. Thus, the following departure schedule would minimize noise exposure within the hourly periods of 3AM to 4AM, 4AM to 5AM, 5AM to 6AM, and 6AM-7AM:
  - a. Load two trucks parked inside the loading area to take advantage of shielding provided by two trucks parked in drive isle and one truck parked in loading dock.
  - b. Position truck at Lowell side of building the day before to avoid positioning in the morning before 7AM.

## EXHIBIT O

WILSON, IHRIG & ASSOCIATES

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Suprema Meat Loading Dock Noise

- c. Load one truck on Lowell and send between 4AM and 5AM.
- d. Move second truck to Lowell loading dock, load, and send between 5AM and 6AM
- e. Load truck at loading dock and send between 4AM and 5AM.
- f. Load one truck in drive isle and send between 4AM and 5AM
- g. Load second truck in drive isle and send between 5AM and 6AM
- h. Send one truck from interior of loading area between 5AM and 6AM.
- i. Send second truck from interior of loading area after 6AM.

11) Assume normal loading and operations after 7AM

12) Accept delivery of product from tractor-trailer delivery trucks after 7AM.

13) Tractor-trailer delivery trucks should be scheduled to arrive after 7AM and park with engines off along Lowell.

Variations on the above pattern can be considered. The goal, though, would be to limit truck operation on either Lowell or 57<sup>th</sup> to no more than 3 minutes in any hour. Note that operations on Lowell would be independent of those on 57<sup>th</sup>, due to shielding by the building. Thus, considerable flexibility may be had with scheduling on Lowell and 57<sup>th</sup>.

### CONCLUSION

I will be pleased to discuss noise control options with you and the architect further. I recommend that you provide details of any noise control provisions for a quick review before implementing. I will also be pleased to develop details regarding structure and placement of noise control provisions.

Please contact me if you have any questions or desire additional information.

Very truly yours:

WILSON, IHRIG & ASSOCIATES

James T. Nelson, Ph.D., P.E.  
President

EXHIBIT P



PAPADIMOS GROUP

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**Suprema Meat Company**  
Oakland, California

Noise Survey

22 December 2015

SUBMITTED TO:

Rachel Flynn, AIA  
Oakland Planning and Building Dept.  
250 Frank H. Ogawa Plaza  
Oakland, CA, 94612  
Tel 510-238-2229

ACOUSTIC AND VIBRATION CONSULTANTS



# EXHIBIT P

## 1.0 INTRODUCTION

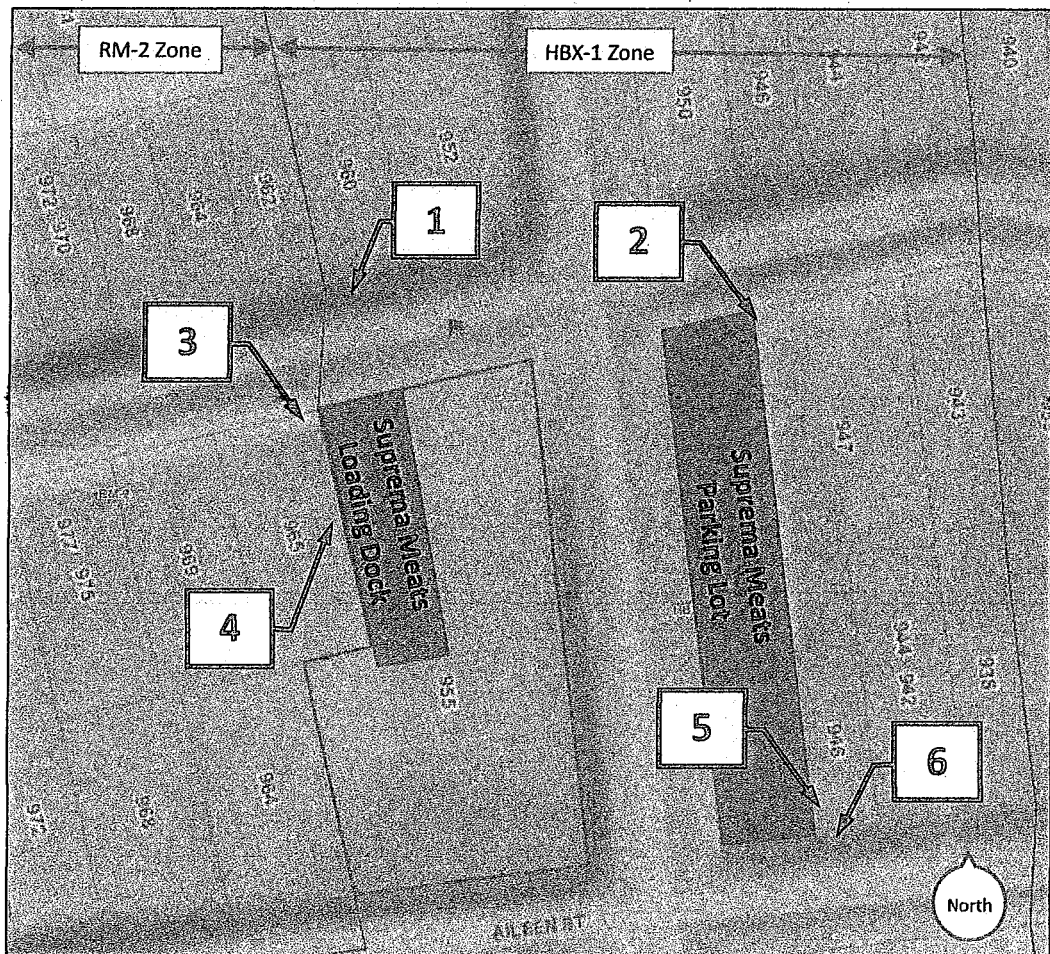
This report summarizes measurements and observations used to assess operational noise of the Suprema Meat Company (SMC) facility at 955 57<sup>th</sup> Street, Oakland, CA.

The purpose of this effort was to establish background conditions for residential properties surrounding the SMC facility through attended and unattended measurements.

## 2.0 MEASUREMENT PROCEDURES

To assess noise from SMC operations at surrounding properties, both attended and unattended noise readings were carried out at several nearby residential receiving property locations. The measurement locations were selected in consultation with some of the neighbors in order to capture and address key areas of concern. Figure 1 below shows all measurement locations and zoning boundaries.

FIGURE 1: Noise Measurement Locations



## EXHIBIT P

### 2.1 Attended Measurements

Attended measurements were taken in the late afternoon on 9/17/2015 (Positions 1 and 2 in Figure 1) and the early morning on 9/29/2015 (Positions 1, 4, and 6 in Figure 1). We used Brüel & Kjær Model 2250 and Larson Davis Model 824 sound level meters placed on tripods 4 to 5 feet above the ground (see Photos 1, 3, and 6 in Appendix B)

During each measurement, the sound level meter ran continuously for 1 hour period while we observed noise levels produced by individual events associated with SMC operations. The sound level meters were set up to also capture statistical noise levels.

### 2.2 Unattended Measurements

Unattended measurements were taken over the course of 2 weeks (9/14/2015 to 9/29/2015) and included 3 different positions shown in Figure 1. The unattended meters ran continuously during these periods on hourly intervals.

- Position 1 (in a tree about 10' above ground) from 9/21/2015 to 9/29/2015
- Position 3 (in a tree about 10' above ground) from 9/14/2015 to 9/21/2015
- Position 5 (on balcony about 15' above ground) from 9/17/2015 to 9/29/2015

Measurements were taken using Larson Davis Model 820 sound level meters. The meters at positions 1 and 3 were secured in trees 10 to 12 feet above the ground (see photos 2 and 4 in Appendix B). The meter at position 5 was secured to the inside of the 2<sup>nd</sup> floor porch railing at 946 Aileen Street (see Photo 5 in Appendix B).

Weather conditions throughout the survey were good without rain. All noise measurements were taken using hourly intervals. Refer to Appendix C for definitions of acoustical terms used in this report.

## 3.0 MEASUREMENT RESULTS

### 3.1 Overview

The results of the noise measurements are included in Appendix A (unattended) and in Table 1 (attended) below. Facility activities that generated noise included trucks idling, entering and exiting the facility, forklift activity and operation of rooftop mechanical equipment.

During the unattended readings, it was not possible to confirm specific sources of noise or associate such noise conclusively with the SMC facility; however based on the overall trend (refer to charts in Appendix A) noise exposure was roughly consistent with what we observed during our attended readings.

### 3.2 Attended Measurements

During the attended measurements, we observed various activities at the SMC facility as described in the following paragraphs. Table 1 below summarizes the results of the attended measurements. Most of the activities at the SMC facility were intermittent and of short duration, with the exception of rooftop mechanical equipment noise that was continuous once it turned on.

# EXHIBIT P

**TABLE 1: Attended Noise Measurements Summary**

Location (See Figure 1)	1-Hour Noise Reading (dBA)										Noise Sources (SMC unless noted otherwise)
	Start Time	Leq <sup>1</sup>	L0 <sup>2</sup>	L1 <sup>2</sup>	L5 <sup>2</sup>	L10 <sup>2</sup>	L20 <sup>2</sup>	L90 <sup>3</sup>	Min		
Pos. 1 - Sidewalk in front of 960 57th Street	5:15 pm 9/17/2015	62	80	71	66	62	57	48	43		Truck movement: 70-80 dBA Loading activity: 65-70 dBA Typical local traffic <sup>4</sup> : 60-70 dBA
Pos. 1 - Sidewalk in front of 960 57th Street	9:30 am 9/29/2015	56	83	64	60	57	53	46	44		Forklift scraping sidewalk: 83 dBA Truck movement: 55-68 dBA Forklift movement: 60-66 dBA Typical local traffic <sup>4</sup> : 55-65 dBA Loading activity: 50-60 dBA
Pos. 2 - Parking lot at 947 57th Street	5:15 pm 9/17/2015	59	84	66	63	60	56	49	47		Car Alarm <sup>4</sup> : 84 dBA Truck brakes: 65-75 dBA Truck movement: 60-70 dBA Typical local traffic <sup>4</sup> : 55-60 dBA
Pos. 4 - Side yard at 965 57th Street	4:00 am 9/29/2015	55	72	67	48	41	39	37	35		Trucks idling: 68-72 dBA Trucks departing: 55-63 dBA Loading activity: 50-62 dBA Distant traffic <sup>4</sup> : 35-40 dBA
Pos. 4 - Side yard at 965 57th Street	5:05 am 9/29/2015	43	55	48	47	45	41	39	37		Forklift movement: 55 dBA Loading activity: 40-50 dBA Roof top equipment <sup>5</sup> : 47 dBA Typical local traffic <sup>4</sup> : 40-45 dB
Pos. 6 - Sidewalk in front of 946 Aileen Street	7:00 am 9/29/2015	60	80	70	61	56	52	48	46		Truck movement: 75-80 dBA Typical local traffic <sup>4</sup> : 55-65 dBA Truck idling on Lowell: 52 dBA

**NOTES:**

- Also known as the average noise level. Refer to Appendix C for definitions of acoustical terms.
- L0, L1, L5, L10, and L20 refer to the noise level exceeded 0, 1, 5, 10 and 20 minutes in one hour, respectively.
- L90 refers to the noise level exceeded 90% of the time and is also known as the background noise level.
- Local noise not associated with Suprema Meats.
- SMC rooftop equipment operated for the last 8 minutes of this reading.

## EXHIBIT P

### Position 1: Sidewalk in front of Residence at 960 57<sup>th</sup> Street

This residence is located directly across 57<sup>th</sup> Street from the entrance to the SMC loading dock. The sound level meter was at the property line along the sidewalk. From this position, most of the loading dock was in plain view and noise from SMC activity was directly observed (refer to Photos 1, 7 and 8 in Appendix B). We conducted two hourly measurements at this position as described below.

### Noise Reading from 5:15pm to 6:15pm, September 17, 2015

During this measurement, the background noise level was 48 dBA primarily due to street traffic. There was activity at the SMC loading area ranging between 65 and 70 dBA. SMC truck noise was as high as 80 dBA as trucks exited the loading dock.

### Noise Reading from 9:30am to 10:30am, September 29, 2015

SMC activities during this measurement included primarily noise from forklifts, vehicles entering and leaving and loading activity. We observed forklift movements between the loading dock and trucks parked on Lowell Street (see Photo 8 in Appendix B). but did not observe any trucks parked on 57<sup>th</sup> Street.

The forklift movements resulted in noise levels generally below 65 dBA, similar to noise from other loading dock activities and local street traffic. The only exception was when a forklift scraped the driveway while entering the loading dock and this produced a noise level of 83 dBA.

Small trucks and vans would periodically enter the loading dock from off-site and were loaded on the property. These activities also generated noise levels below 65 dBA with the exception of engine startup noise from small trucks which approached 70 dBA.

### Position 2: Parking Lot of Residence at 947 57<sup>th</sup> Street

This residence is up against the east property line of the SMC parking lot used for storing trucks overnight. The sound level meter was placed on a tripod up against the fence along the property line near the parking lot entrance on 57<sup>th</sup> Street and recorded noise levels starting at 5:15pm on September 17, 2015 (Thursday).

During this measurement multiple trucks moved in and out of the parking lot. However, truck loading took place only in the loading dock. The background noise level was 49 dBA at this position. Noise levels from truck movements in the parking lot stayed below 70 dBA with the exception of truck air breaks which resulted in noise levels as high as 73 dBA.

### Position 4: Side yard of Residence at 965 57<sup>th</sup> Street

This residence is up against the SMC loading dock and noise measurements were taken starting at 4:00am on September 29, 2015 (Tuesday). The sound level meter was placed on a tripod between the house and the sound wall of the SMC facility. Some of the loading activities could not be directly identified because they were not visible behind the wall, but the source of the noise was clearly from SMC activities.

## EXHIBIT P

### Noise Reading from 4:00am to 5:00am

The background noise level was 37 dBA and was primarily attributed to distant traffic. During this measurement, activities in the SMC loading dock dominated noise levels and there was minimal local street traffic. Twice during this time, trucks parked in the loading dock were started up, stayed idling for a short time and then drove off. While on SMC property these activities resulted in noise levels between 68 and 72 dBA.

Other loading activities included banging noises, weight drops, and forklifts movements. Based on the unattended readings at Positions 1 and 3 (see Charts 1 and 2 in Appendix A), observed noise levels during this measurement would be typical of weekdays and correspond with SMC's operating hours (reportedly weekdays 3:15am to 6:00pm, closed on Saturdays, Sundays 6:30 am to 6:00pm).

### Noise Reading from 5:00am to 6:00am

There was little activity in the loading dock during this time. However, at 5:57 am, mechanical equipment at the SMC facility turned on and background noise levels increased from 37 dBA to 47 dBA. The noise appeared to be associated with SMC rooftop mechanical equipment, and remained steady.

### Position 6: Sidewalk in front of Residence at 946 Aileen Street

This residence is also up against the east property line of the SMC parking lot and together with some other surrounding residences is located in the HBX-1 zone. The sound level meter was placed on a tripod at the sidewalk in front of the residence approximately 10 feet from the parking lot fence and near the entrance.

### Noise Reading from 7am to 8 am

There was very little activity in the parking lot during this time and noise levels were **primarily due to local traffic and neighborhood activity**. The background noise level was 48 dBA primarily due to rooftop mechanical equipment for various facilities including SMC and distant traffic.

During this time, SMC activity included a truck idling on Lowell Street (53 dBA) and movement of one truck out of the parking lot. The truck in the parking lot produced noise levels between 69 and 79 dBA, and was loudest when the truck started up.

### 3.3 Unattended Measurements

The sound level meters at the unattended positions continuously monitored noise levels for approximately 1 week at each location. This data was used to establish trends in the area surrounding the SMC facility since we were not able to confirm specific sources of noise. These trends are described in the sections below and the noise data is presented graphically in Charts 1 to 4 in Appendix A.

In general and as expected, noise levels were typically higher on days SMC operates (Sunday through Friday) for monitoring positions near the loading area. Furthermore, the SMC facility noise we observed during our attended readings at Position 4 starting at 4:00 am appears to consistently happen on each weekday.

## EXHIBIT P

### Position 1: In front of Residence at 960 57<sup>th</sup> Street

This residence is located directly across 57<sup>th</sup> Street from the entrance to the SMC loading dock. The sound level meter was placed in a tree at the sidewalk in front of the residence and monitored noise levels for about a week starting in the evening hours of 21 September 2015.

Background noise levels were the highest during daytime hours and were near 50 dBA on weekdays and slightly lower on the weekend, between 45 and 50 dBA. Background noise levels dropped below 45 dBA during late night and early morning hours. Average daytime noise levels were between 55 and 60 dBA on Saturday when SMC is closed and between 60 and 65 dBA on Sunday through Friday when SMC is open.

On weekdays, between 4:00 am and 5:00 am when the SMC facility starts operating, noise levels are similar to those recorded during daytime hours. This is consistent with our observations from attended readings and suspect such noise levels are influenced from activities at the SMC loading area.

### Position 3: In front of Residence at 965 57<sup>th</sup> Street

This residence is up against the SMC loading dock in the RM-2 zone and the sound level meter was placed in a tree near the edge of the property near the SMC loading dock entrance. Noise levels were monitored for about a week starting in the evening hours of 14 September 2015.

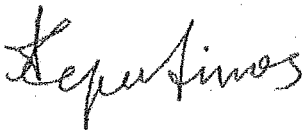
Noise levels were generally 5 dB lower than Position 1, also located near the loading dock entrance, but follow the same general trends. Background noise levels were typically 45 to 50 dBA during the day and decreased below 45 dBA during late night and early morning hours. Daytime noise levels were lower when SMC is reportedly closed on Saturday (50 to 55 dBA) as opposed to the rest of the week when they are generally between 55 and 60 dBA.

This meter also recorded uncharacteristically high noise levels Tuesday through Friday between 4:00 am and 5:00 am. During this hour, maximum noise upwards of 80 dBA and suspect this is associated with the SMC operation.

### Position 5: Balcony of Residence at 946 Aileen Street

This residence is also up against the east property line of the SMC parking lot and together with other surrounding residences is located in the HBX-1 zone. The sound level meter was secured to the 2<sup>nd</sup> floor balcony closest to the SMC parking lot and monitored noise levels for over a week starting in the evening of 17 September 2015.

Sincerely,  
THE PAPADIMOS GROUP, INC.



Chris Papadimos, INCE  
Principal

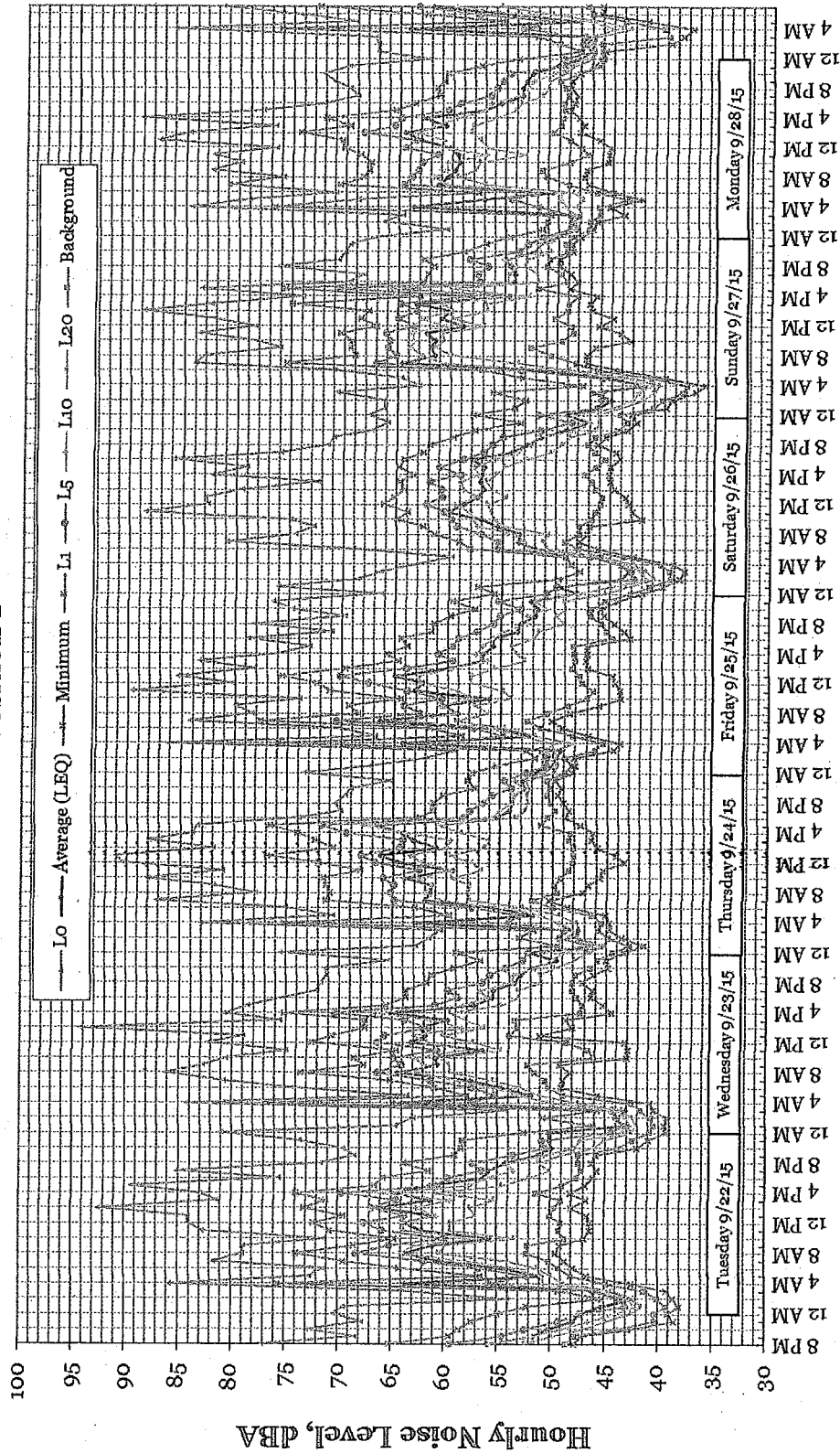
# EXHIBIT P

## APPENDIX A

### RESULTS OF UNATTENDED MEASUREMENTS

EXHIBIT P

Chart 1 - Unattended Noise Monitoring  
Position 1



Hour Starting



EXHIBIT P

Chart 2 - Unattended Noise Monitoring  
Position 3

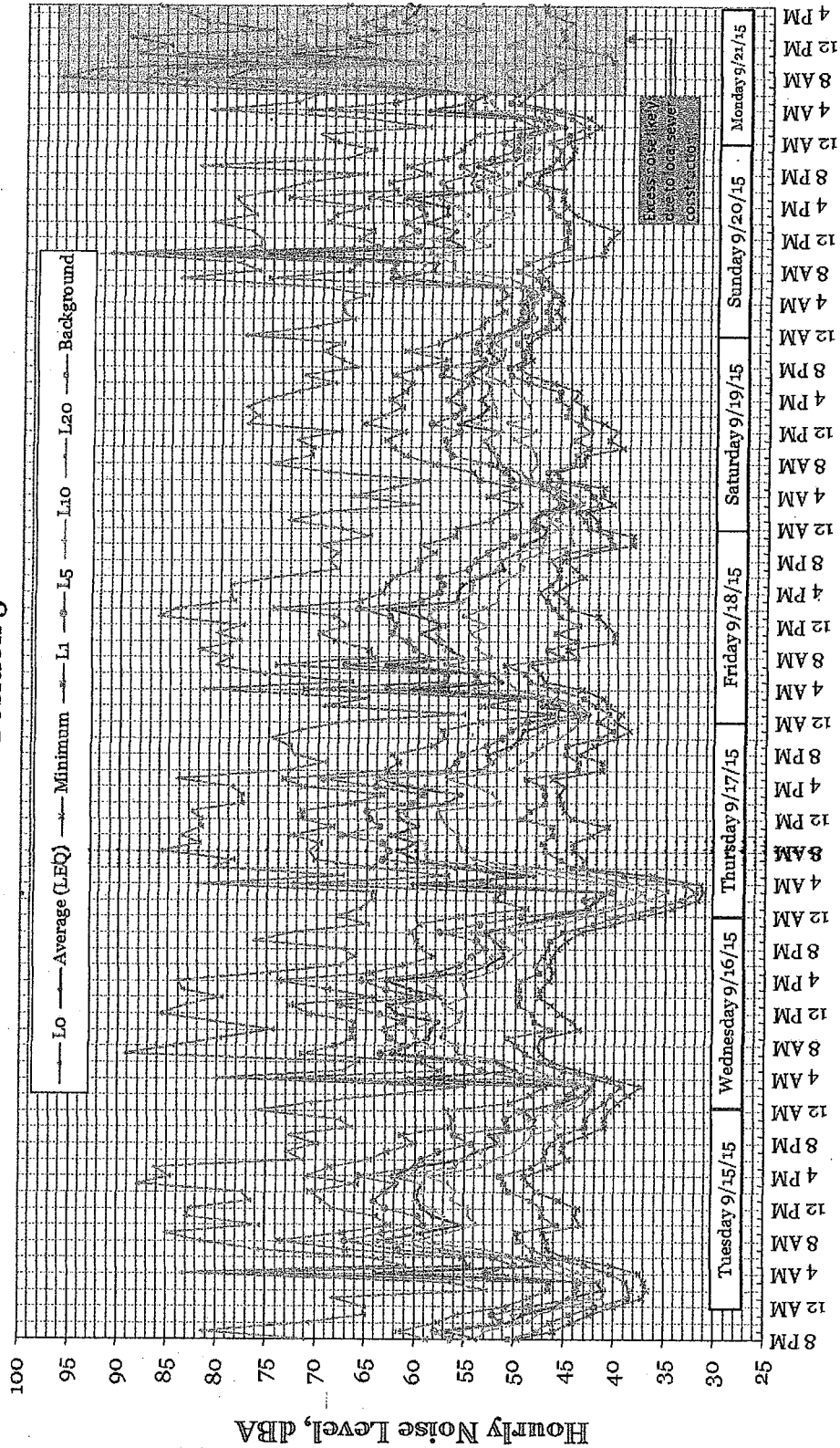


EXHIBIT P

Chart 3 - Unattended Noise Monitoring  
Position 5 (9/17 to 9/23)

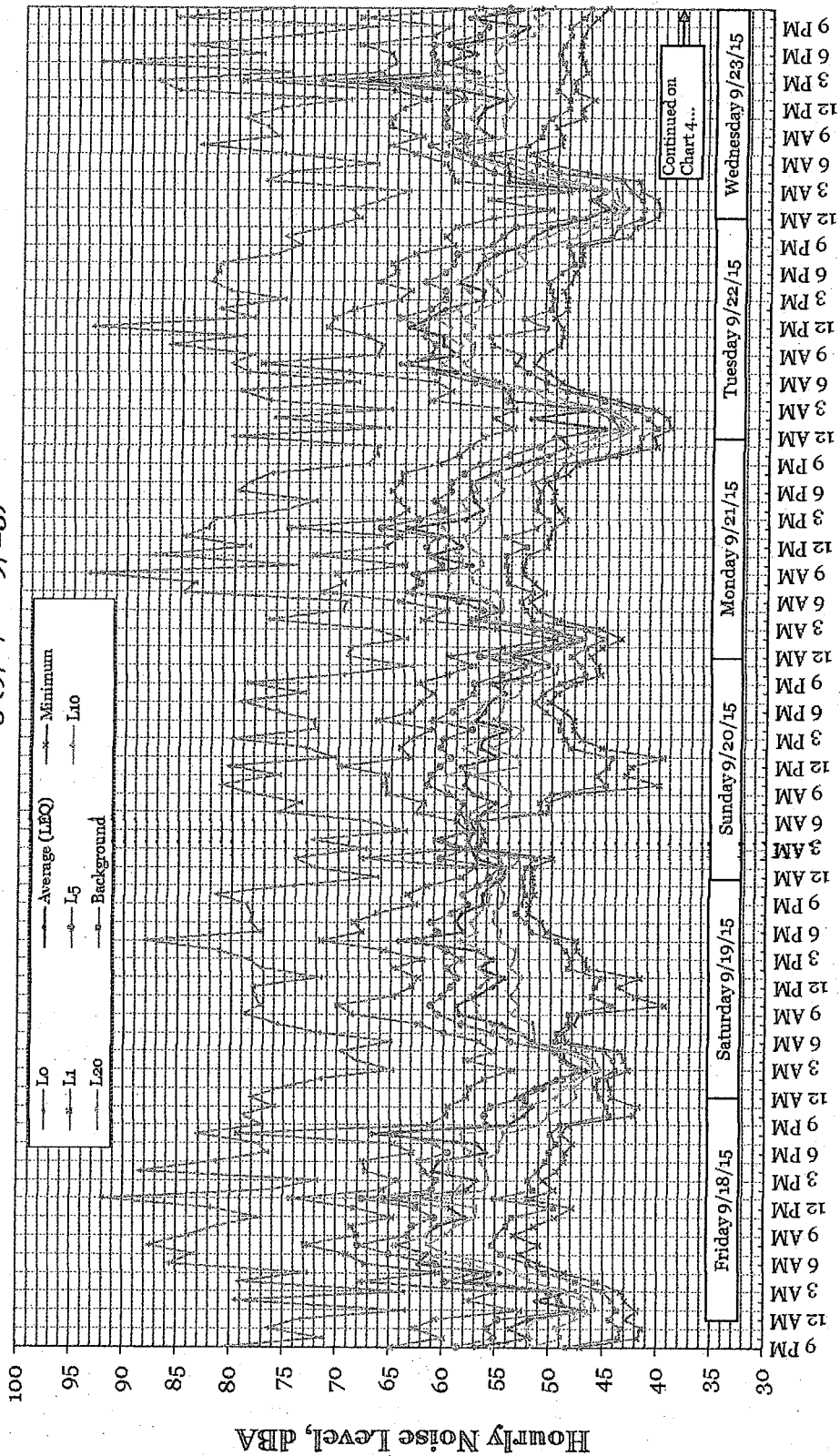
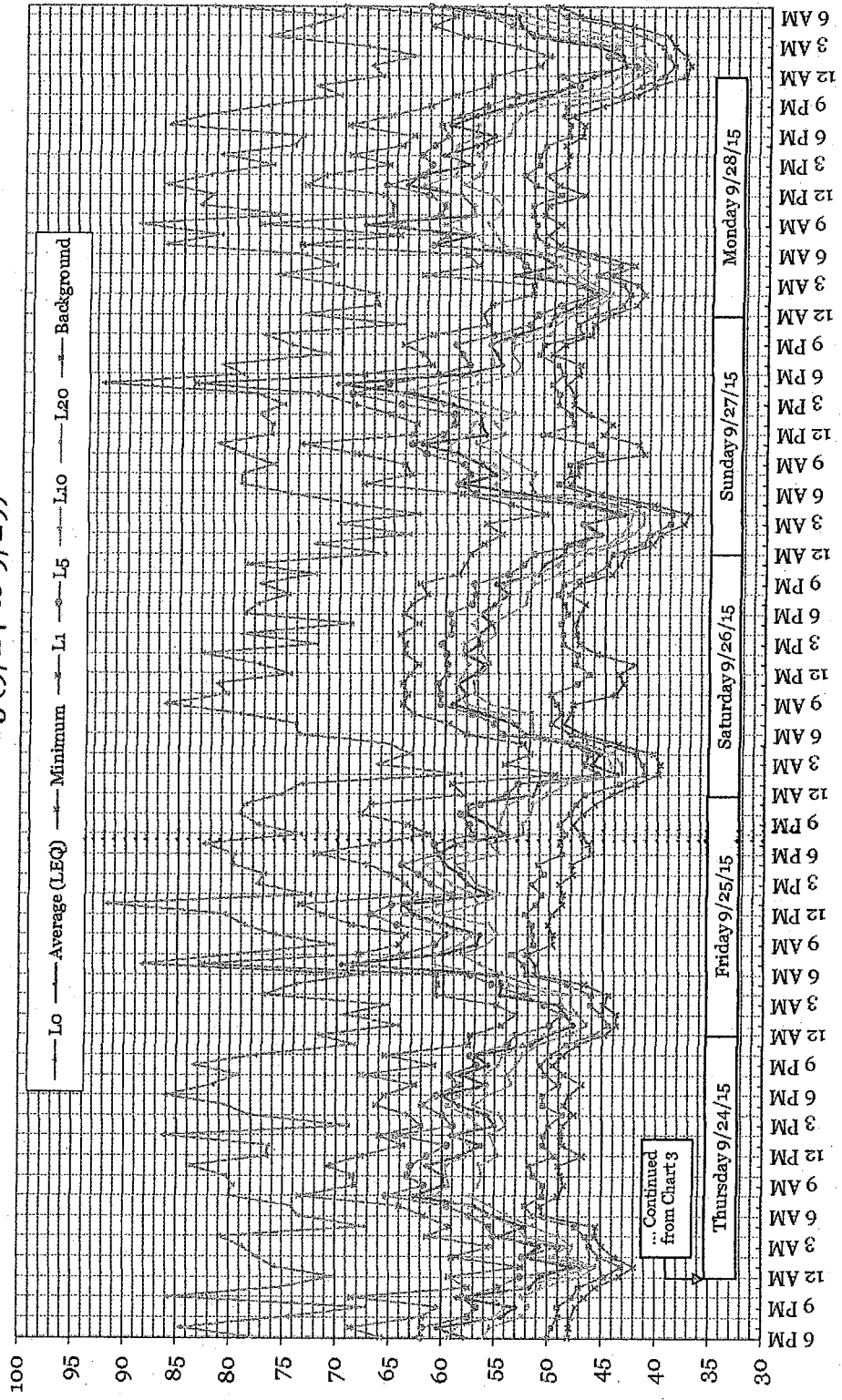


EXHIBIT P

Chart 4 - Unattended Noise Monitoring  
Position 5 (9/24 to 9/29)



Hour Starting

**EXHIBIT P**

**APPENDIX B**

**PHOTOGRAPHS OF MEASUREMENT POSITIONS**

EXHIBIT P

PHOTO 1: Attended measurement at Position 1 (in front of 960 57<sup>th</sup> Street)



PHOTO 2: Unattended meter at Position 1 (tree in front of 960 57<sup>th</sup> Street)

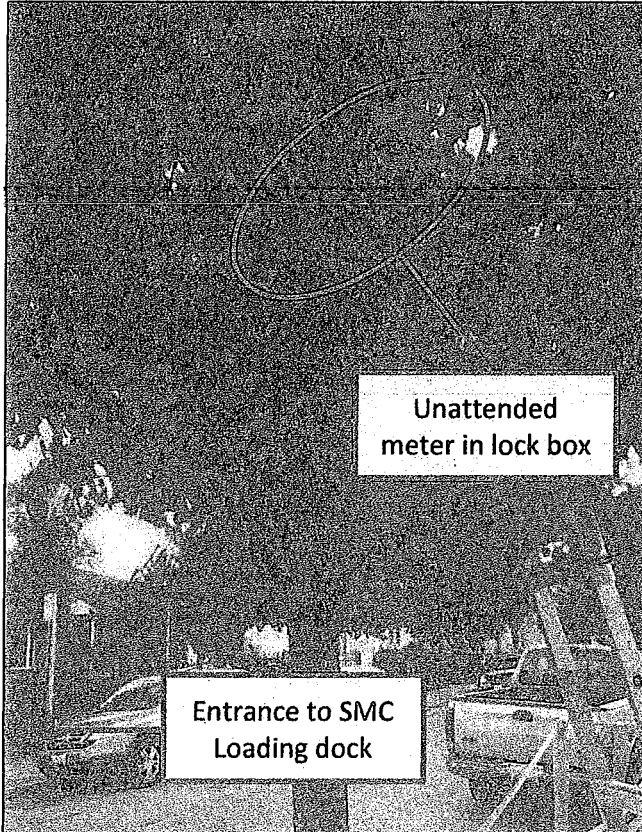


EXHIBIT P

PHOTO 3: Attended meter at Position 2 (property line of 947 57<sup>th</sup> Street)

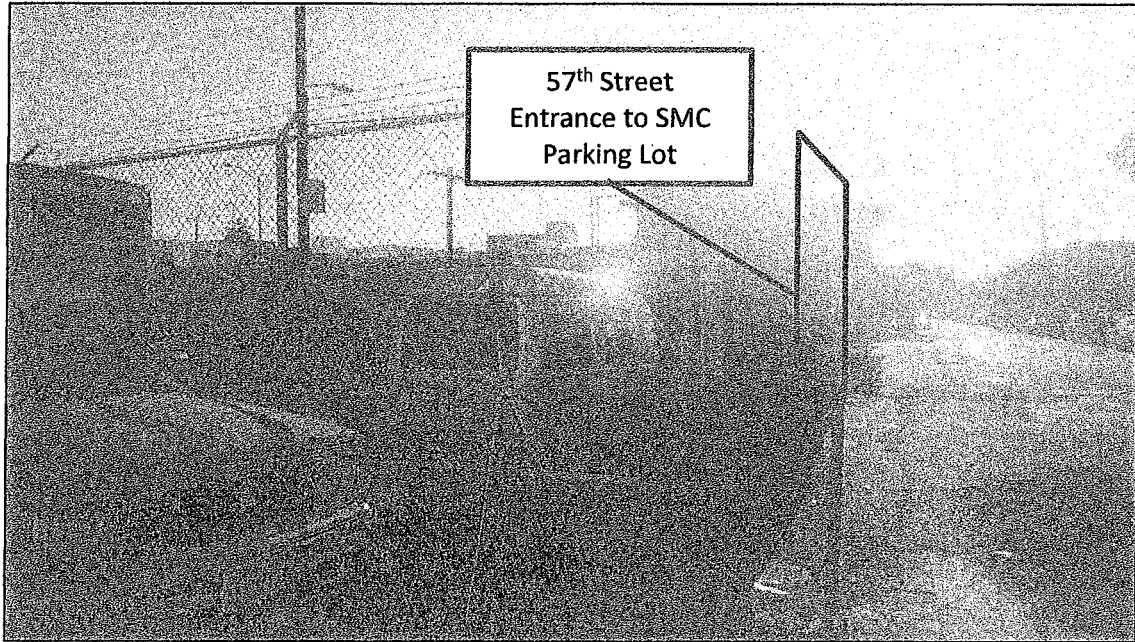


PHOTO 4: Unattended meter at Position 3 (tree in front of 965 57<sup>th</sup> Street)

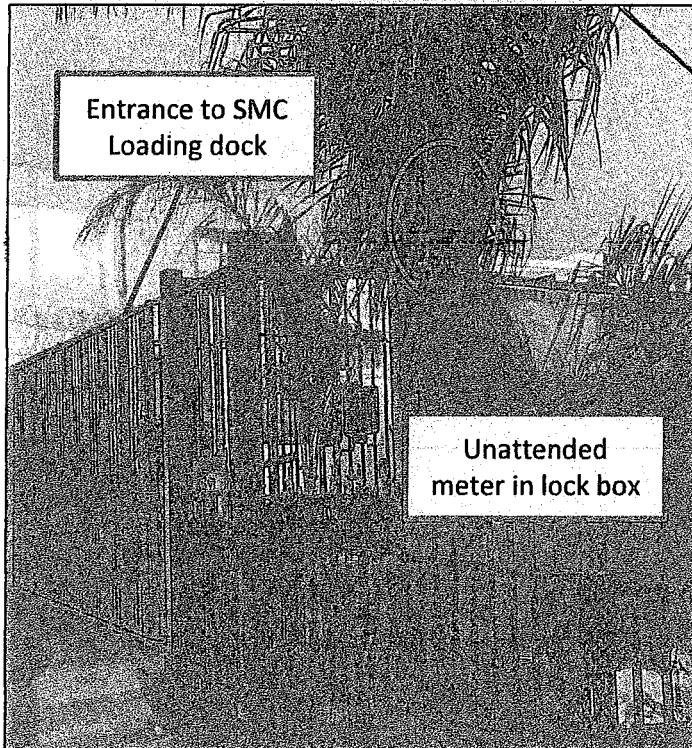


EXHIBIT P

PHOTO 5: Unattended meter at Position 5 (balcony in front of 946 Aileen Street)

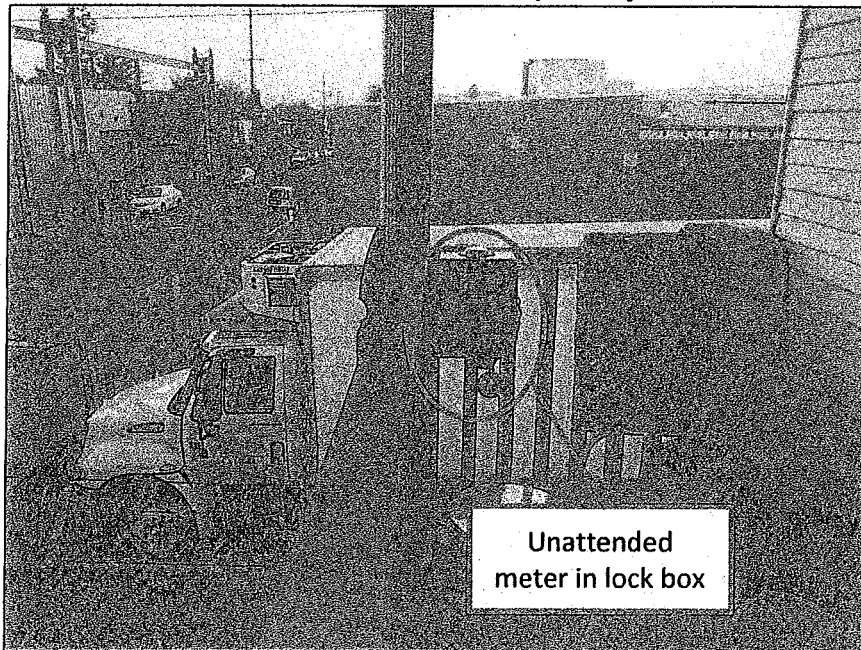
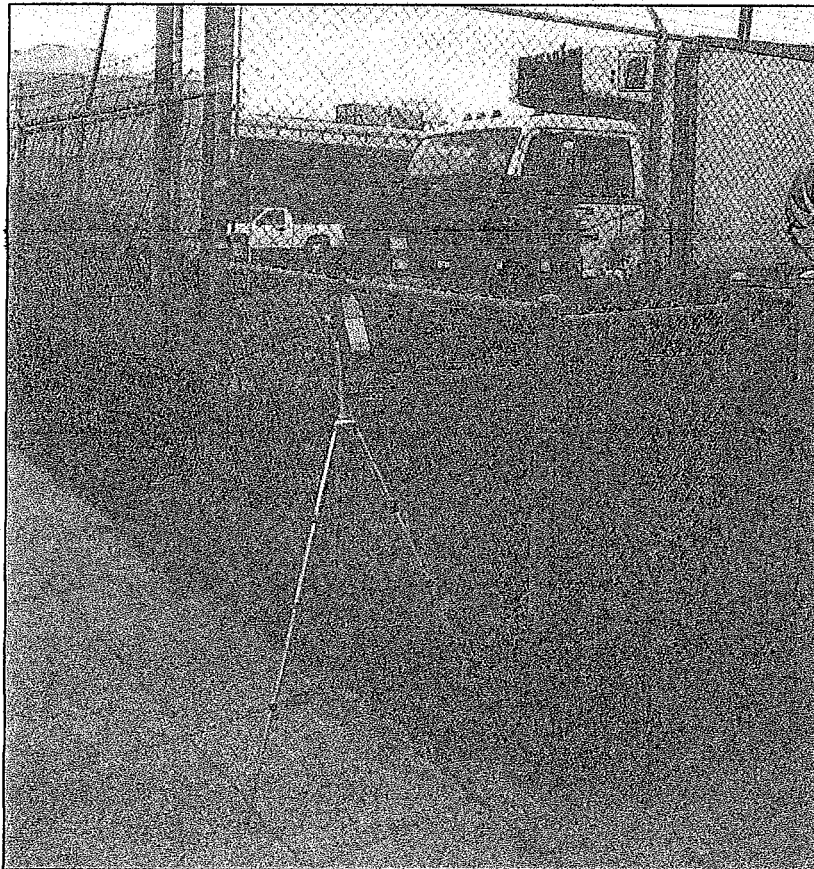


PHOTO 6: Unattended meter at Position 6 (sidewalk in front of 946 Aileen Street)



## EXHIBIT P

**PHOTO 7: Truck entering/leaving the SMC Loading dock on 57<sup>th</sup> Street**



**PHOTO 8: Forklift entering/leaving the SMC Loading dock on 57<sup>th</sup> Street**





## EXHIBIT P

### APPENDIX C

#### DEFINITIONS OF COMMON ACOUSTICAL TERMS

## EXHIBIT P

### DEFINITIONS OF COMMON ACOUSTICAL TERMS

**Decibel, dB** – A unit describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure (20  $\mu$ Pa).

**A-weighted Sound Level, dBA** – The sound pressure level in decibels as measured on a sound level meter using the A-weighting filter network. The A-weighting filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the frequency response of the human ear and correlates well with subjective reactions to noise.

**Ambient Noise** – The sound level in a given environment usually comprised of many sources in many directions near and far with no particular sound dominant.

**Background Noise** - The total noise from all sources other than a particular sound that is of interest. It is often defined as  $L_{90}$  or the noise level exceeded 90% of the time.

**Integrated or Equivalent Noise Level,  $L_{eq}$**  – The energy average A-weighted noise level during the measurement period. Often referred to as the average noise level

**Community Noise Equivalent Level, CNEL** – The average A-weighted noise level during a 24-hour day, obtained after addition of 5 dB in the evening (7:00 pm to 10:00 pm) and after addition of 10 dB to sound levels measured in the night (between 10:00 pm and 7:00 am).

**Day/Night Noise Level,  $L_{dn}$  (or DNL)** – The average A-weighted noise level for a 24-hour period, obtained after addition of 10 dB to levels measured in the night (10:00 pm to 7:00 am).

**Sound level meter** - An instrument that measures sound. Various features are incorporated into such instrument including frequency bands, integration of sound over time and display of average, minimum, and maximum levels.

**Sound pressure level** - the ratio, expressed in decibels, of the mean-square sound pressure level to a reference mean-square sound pressure level that by convention has been selected to approximate the threshold of hearing (0.0002  $\mu$ bar)

**Frequency** – The number of times per second that the oscillation of a wave of sound or that of a vibrating body repeats itself, expressed in Hertz (Hz).

**Octave band** - The frequency range of one octave of sound frequencies. The upper limit is always twice the frequency of the lower limit. Octave bands are identified by the geometric mean frequency or center between the lower limit and the upper limit.

**Outdoor-Indoor Transmission Class (OITC)** – A laboratory measured single-number rating system used to compare the sound isolating characteristics of exterior building elements.

**Sound Transmission Class (STC)** – A laboratory measured single-number rating system used to compare the sound isolating characteristics of partitions used to separate occupied spaces.

**Noise Isolation Class (NIC)** - A field measured single number rating used to compare the sound isolating characteristics of the total construction between two enclosed spaces that are acoustically connected by one or more paths.

**Noise Criteria (NC) Curves** – These curves define the limits that the octave-band spectrum of a noise source must not exceed to achieve a level of occupant acceptance.

# EXHIBIT Q: NEIGHBOR NOISE MEASUREMENTS

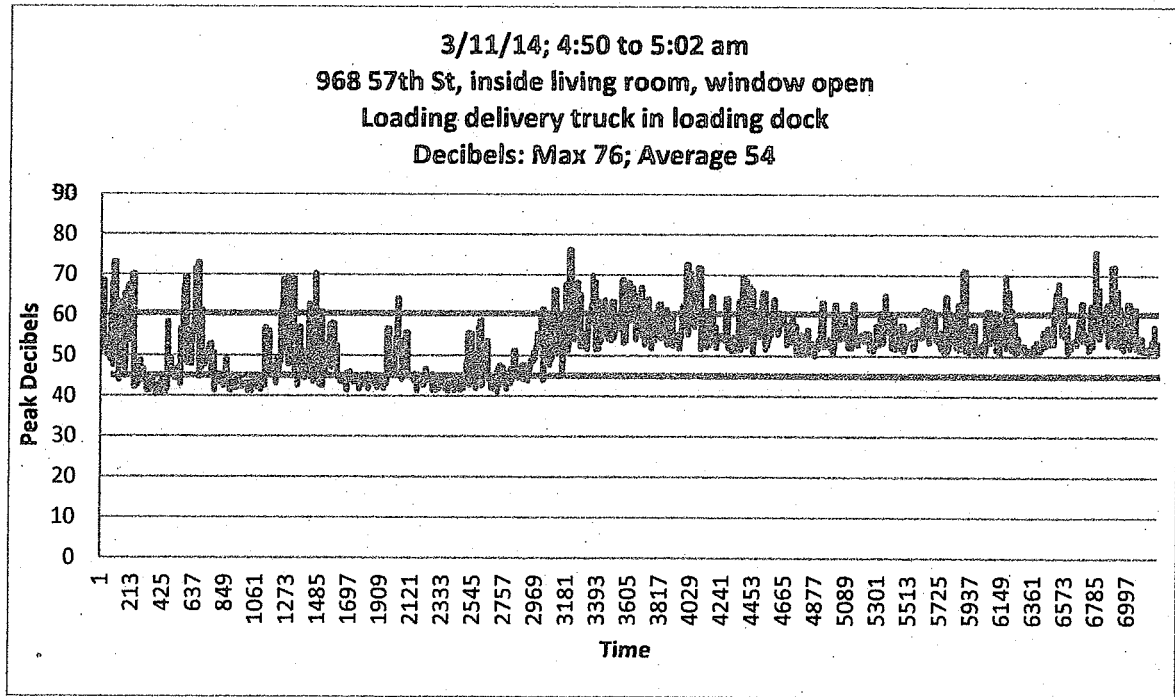
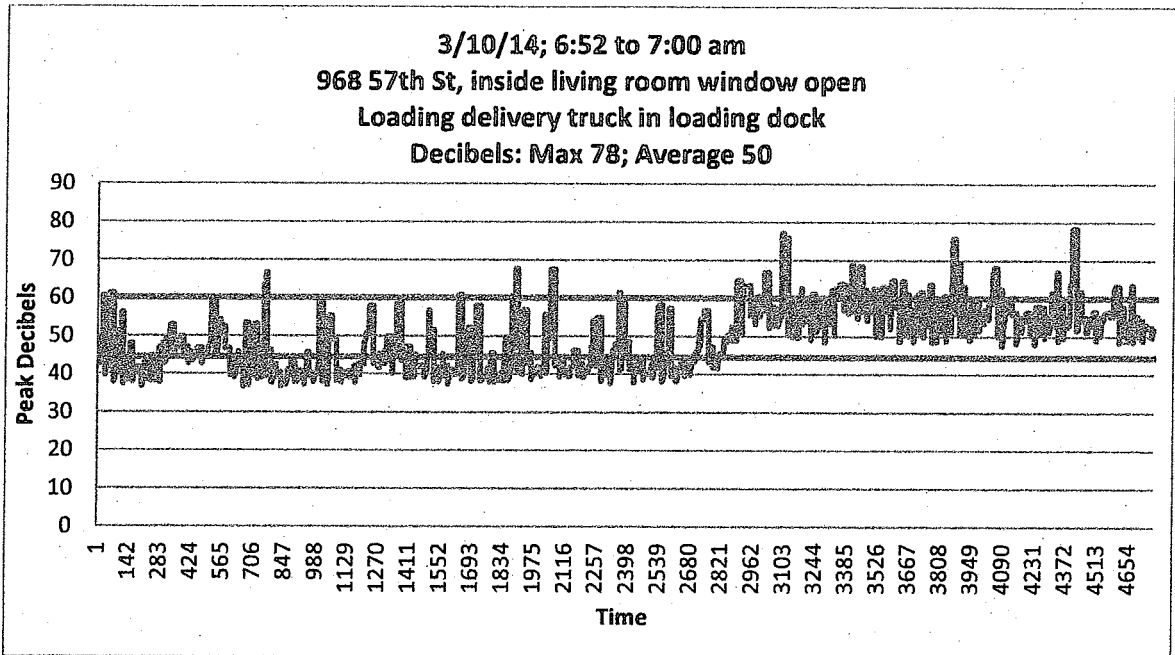
Sample Decibel Readings from Residence Three Houses Away from Suprema Meat Company

Receiving dB allowed across residential property line,  $\leq 20$  min total / hr, during day (60) or night (45)

[OMC 17.120.050 Table 17.120.01]

EPA has identified levels of  $\leq 55$  dB outdoors and  $\leq 45$  dB indoors to prevent activity interference

(e.g., sleep, speech, work)



# EXHIBIT Q: NEIGHBOR NOISE MEASUREMENTS

Sample Decibel Readings from Residence Three Houses Away from Suprema Meat Company

Receiving dB allowed across residential property line,  $\leq 20$  min total / hr, during day (60) or night (45)

[OMC 17.120.050 Table 17.120.01]

EPA has identified levels of  $\leq 55$  dB outdoors and  $\leq 45$  dB indoors to prevent activity interference (e.g., sleep, speech, work)

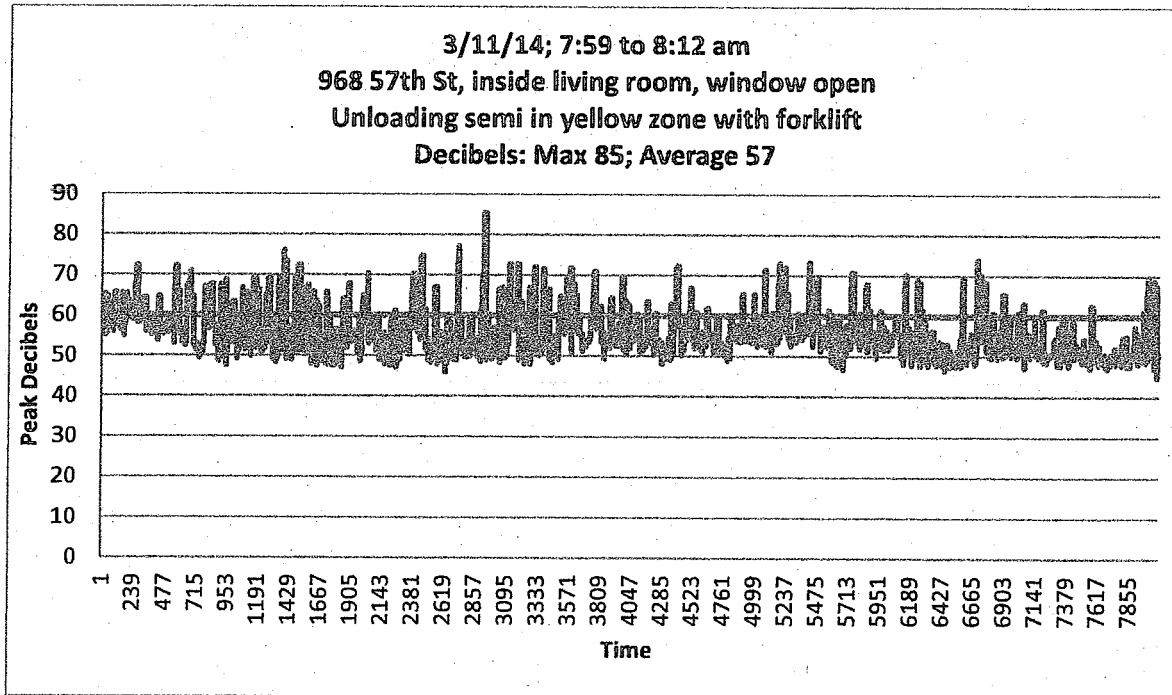
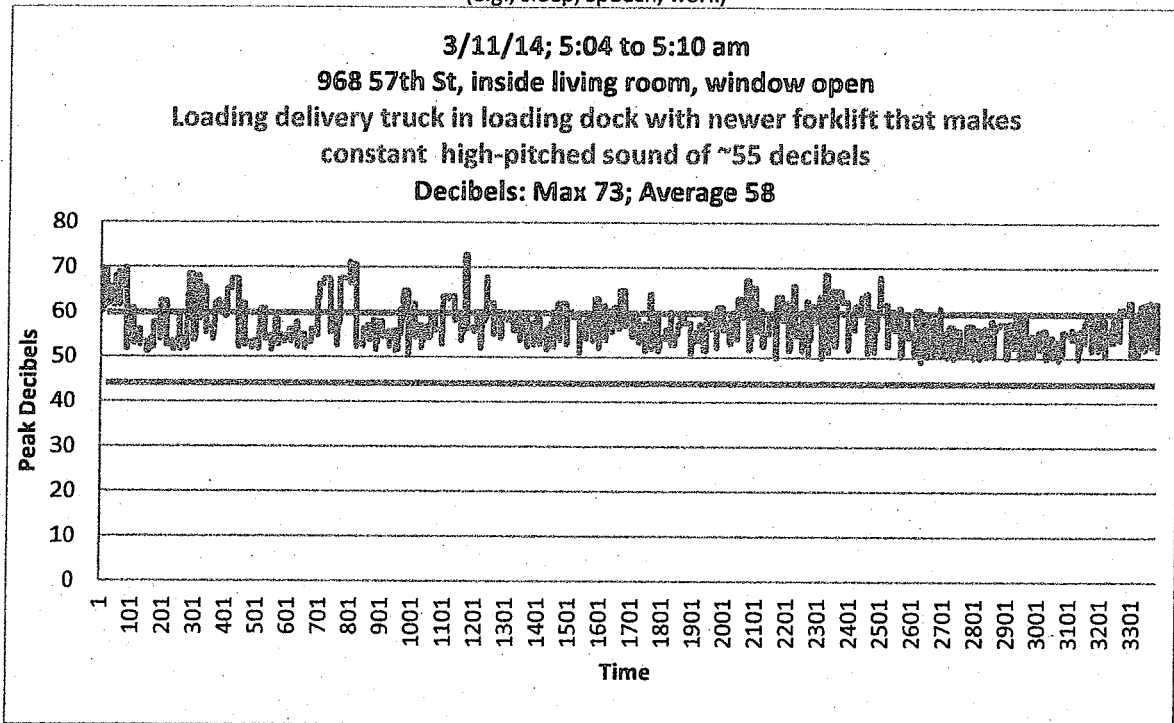


EXHIBIT R: TRAFFIC / USE OF STREETS

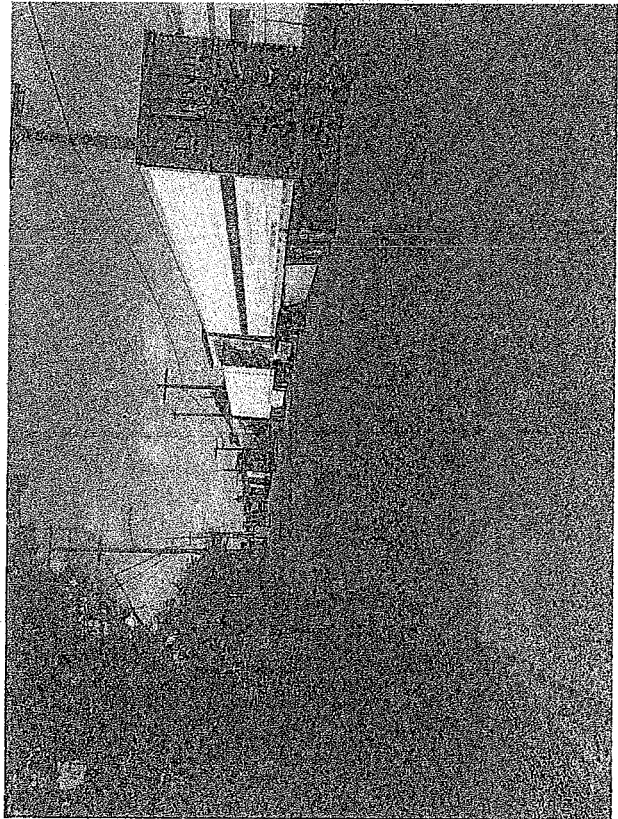
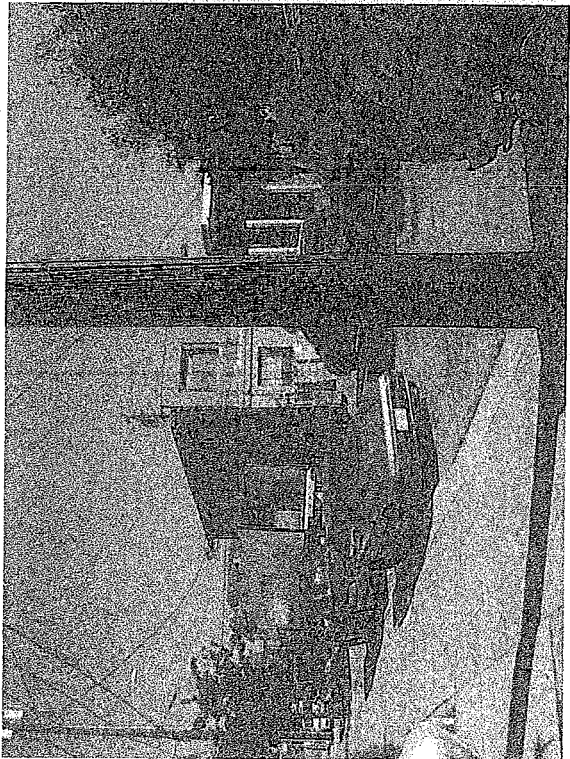
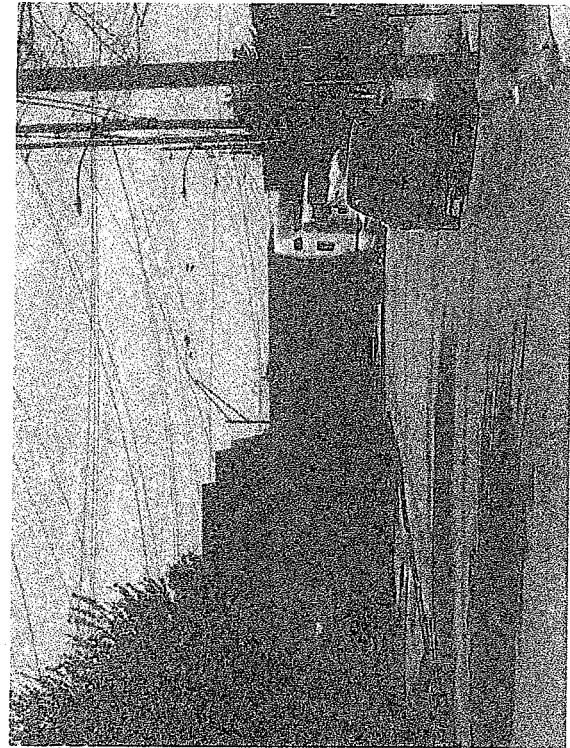


EXHIBIT R: TRAFFIC / USE OF STREETS

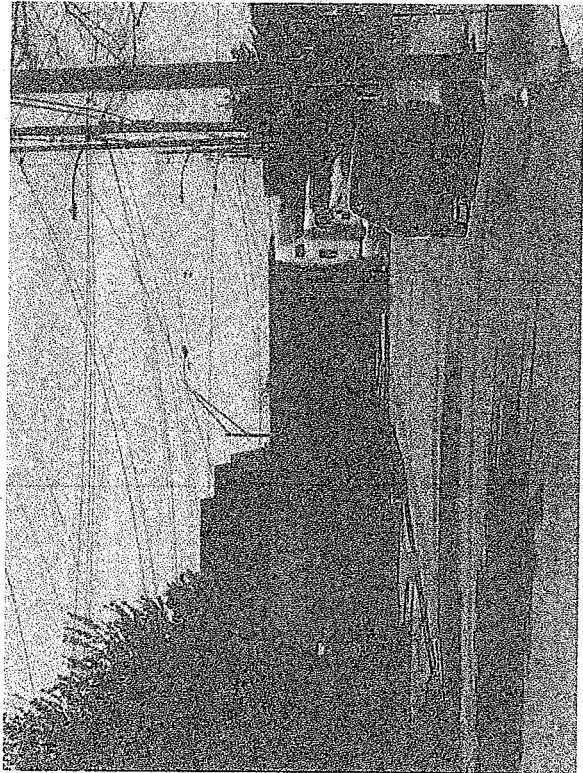
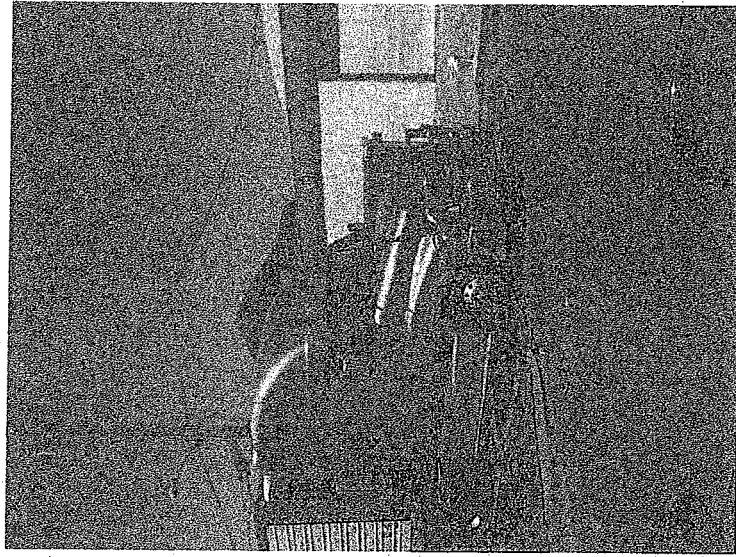
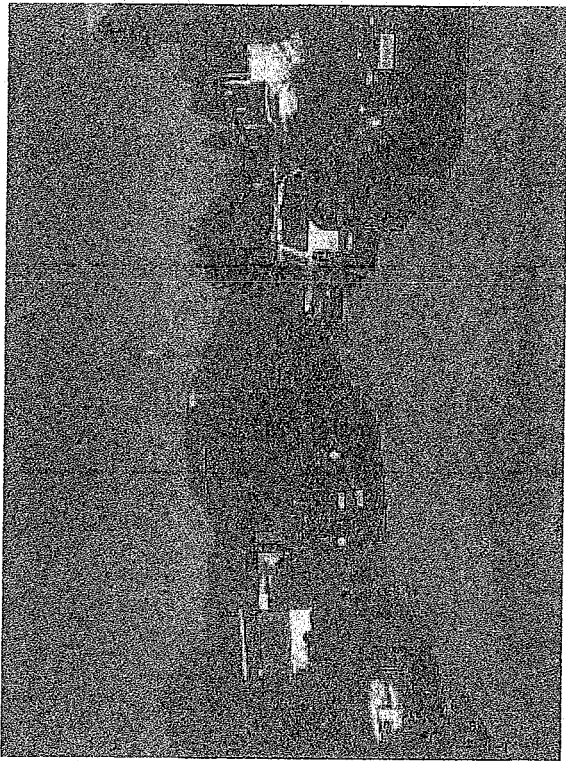


EXHIBIT R: TRAFFIC / USE OF STREETS

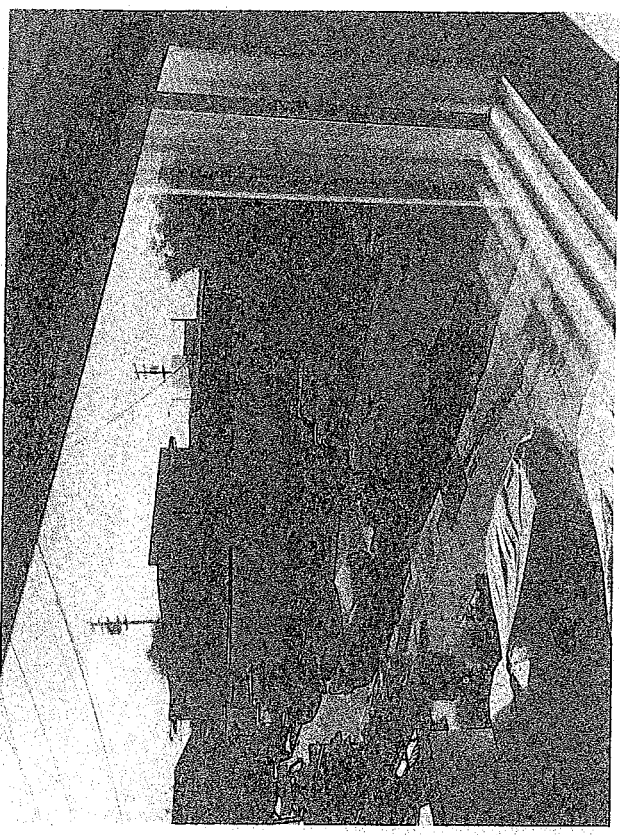
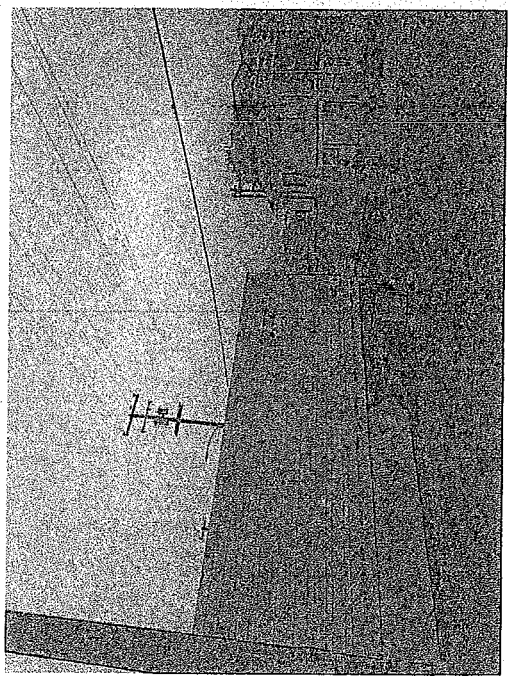
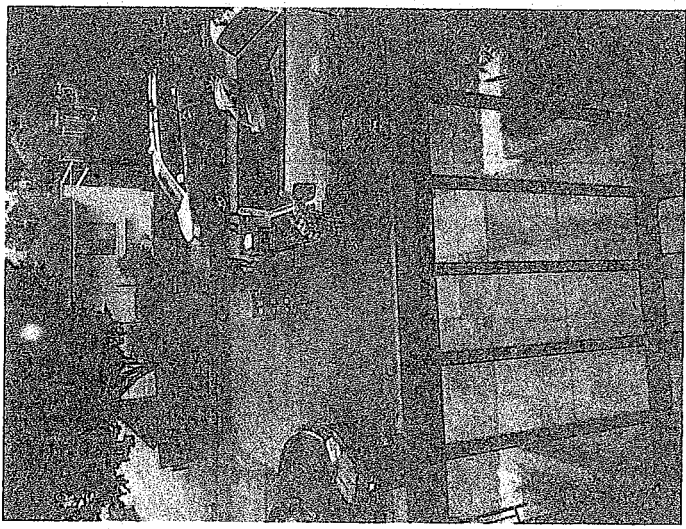


EXHIBIT S: TRUCKER COMMENTS

Verizon 8:01 PM plus.google.com

**christopher sowle**  
6 months ago

☆☆☆☆☆

wf... is all i gotta say.. why in the hell are they getting loads of meat delivered by a company like mine that pulls a 53 ft trailer. knowing where they are located

Flag as inappropriate

**Simon H**  
a year ago

☆☆☆☆☆

Truck driver directions (DO NOT TURN ON 57th ST OR YOU MIGHT GET STUCK ON A VERY TINY STREET WITH 1FT EITHER SIDE OF PARKED CARS ON RESIDENTIAL ST)

Upon exit off hwy 24 east on to Martin Luther King Jr way continue to a 3 way intersection and turn left ADELIN ST SW, (changes to STANFORD AVE SW), YOUR GPS WILL TELL YOU TO TURN ON MARKET ST !!!DO NOT!!!! CONTINUE ABOUT 1000 FT LOS ANGELES ST MAKE A U-TURN and THEN A RIGHT ONTO LOWELL ST SUPREMA IS ON THE CORNER OF 57TH AND LOWELL. parking is very limited and it is VERY highly recommended you do not park here overnight (dangerous area). SUPREMA IS LOCATED IN A RESIDENTIAL AREA.

Verizon 8:19 PM facebook.com

**Bernie Dickey at Suprema Meat Co**  
March 8 at 7:03am · Oakland, CA

Definitely not a place this truck should be, in the middle of a old residential neighborhood in Oakland with bike paths for streets.

**Suprema Meat Co**  
Cargo & Freight

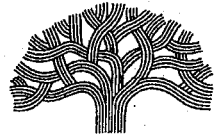
4 people like this.

Share



EXHIBIT T

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building  
Zoning Division

(510) 238-3911  
FAX (510) 238-4730  
TDD (510) 238-3254

SENT VIA EMAIL AND US MAIL

March 1, 2016

Miguel Jara  
Suprema Meats  
955 57 Street, LLC  
955 57<sup>th</sup> Street  
Oakland, California 94608

Steven J. Hassing  
Law Offices of Steven J. Hassing  
425 Calabria Court  
Roseville, California 95747

RE: Determination of Nonconforming Status - Suprema Meats, 955 57<sup>th</sup> Street

Dear Mr. Jara and Mr. Hassing:

As summarized here, and explained below in detail, the City has determined that the Suprema Meats activity is now subject to current performance standards in Oakland Planning Code (OPC) Chapter 17.120 because Suprema's activity has changed since its inception in early June 1996 and this has resulted in a greater degree of nonconformity with respect to noise and other applicable standards. Thus, the requirements of OPC Chapter 17.120, including section 17.120.050 regarding noise, now apply. This determination is appealable within ten (10) days of the date of this letter, which is March 11, 2016, by 4:00 p.m.

It is the City's understanding that the Suprema activity started in early June 1996, and pre-dated the adoption of Ordinance No. 11895 C.M.S. (June 11, 1996), which established noise (and other) performance standards, codified in OPC Chapter 17.120. As I stated in my January 19, 2016 letter to you, while the Suprema activity may have been grandfathered in, such that it was previously not subject to performance standards, the operation could not be changed to result in a greater degree of nonconformity.

## EXHIBIT T

In a letter dated December 24, 2015, and again in the aforementioned January 19, 2016 letter, the City requested information regarding Suprema's operations prior to the June 11, 1996 Performance Standards Ordinance going into effect. To date, the City has not received the requested operational information. Therefore, the City has evaluated the non-conforming status based upon available documentation. This includes, 1) Suprema revenue information previously provided by you, 2) other revenue information publically available on Suprema as a result of a lawsuit from 2004, 3) information submitted by Suprema in support of the current Zoning application for a Conditional Use Permit, Design Review, and Variance, 4) information submitted by neighbors in response to the current Zoning application, and 5) other relevant information.

Based on the evaluation of the above, the City hereby determines that the Suprema Meats activity is now subject to current performance standards in OPC Chapter 17.120. As I stated in my January 19, 2016 letter, such a determination is based on OPC section 17.114.080 (Nonconforming Activity – Allowed alterations and extensions), and specifically 17.114.080.C. This section states:

“any activity which is itself a permitted activity where it is located and which is nonconforming only as to off-street parking or loading requirement, performance standards, or other requirements applying to activities may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, in any way which does not result in a greater degree of nonconformity with respect to such requirements and which conforms to the requirements normally applying to uses where the activity is located.”

Of primary importance is the issue of whether any non-conformities exist related to Performance Standards (Planning Code Section 17.120). The Performance Standards Code Section 17.120.020 (Existing Activities), in turn, states:

“Activities existing on the effective date of the zoning regulations, or of a subsequent rezoning or other amendment thereto applying more restrictive performance standard to such activities, shall not be required to change their operation to comply with the performance standards. However, their operations shall not be so changed as to result in a greater degree of nonconformity with respect to such standards, except as otherwise authorized under the development agreement procedure in Chapter 17.138. For existing activities meeting the definition specified in Section 17.114.080.C, an expansion greater than twenty percent (20%) of production (e.g. non-administrative) floor area is *one example* [italics added] of a change in operations that shall be considered an increase in the degree of nonconformity.”

The City's position is that the Suprema activity has changed since its inception in early June 1996, which has resulted in a greater degree of nonconformity with respect to noise and other applicable standards. Hence, the requirements of OPC chapter 17.120, including section 17.120.050 regarding noise, now apply.

## EXHIBIT T

The determination that the facilities accommodating and/or serving Suprema's activity were altered or otherwise changed – resulting in a greater degree of nonconformity since the June, 1996 effective date of the current performance standards – is based on the following factors, each of which provides a separate and independent basis for the determination, and when viewed collectively provides an overall basis for the determination:

1. Significant business growth occurred up to at least the year 2002, including revenue growth from approximately \$12 million in 1998 to more than \$44 million in 2002, as evidenced in the Statements of Fact in the lawsuit between Mr. Jara and his father dating to 2004 (an almost 4-fold increase in revenue over 4 years), and including revenue growth from approximately \$41 million in 2001 to \$60 million in 2013, as evidenced by tax return data provided by you in May, 2015.
2. Physical improvements to the property including new rooftop refrigeration units, an additional canopy, and a new loading dock (currently unpermitted and subject to compliance action).
3. Since the Suprema activity is understood to have started in early June, 1996, it is unlikely that the business was operating at anywhere near its current activity level only 10 days later, on June 11, 1996, which again is the effective date of the current Performance Standards. Thus, the facilities accommodating and/or serving Suprema's activity have increased and been altered and/or otherwise changed.
4. Since about 2014, the City received an increased amount of neighbor complaints about Suprema's nuisance-related activity. Neighbors reported disturbances including, but not limited to, a high volume of traffic related to Suprema's business and constant noise and vibration from Suprema's equipment and operations, including without limitation increased truck traffic and forklift activity.

Pursuant to OPC section 17.132.02, if you, or any interested party, seeks to challenge this Administrative Determination/Interpretation, an Appeal must be filed no later than ten (10) days, from the date of this letter, which is Friday, March 11, 2016, by 4:00 p.m. An Appeal shall be on a form provided by the Zoning Division and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA, 94612, to the attention of Scott Miller, Zoning Manager. The Appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his decision is not supported by substantial evidence and must include payment of \$1,622.57 in accordance with the City of Oakland Master Fee Schedule. Failure to timely file an Appeal will preclude you, or any interested party, from challenging the City's decision in court. The Appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the Appeal. Failure to

## EXHIBIT T

do so may preclude you, or any interested party, from raising such issues during the Appeal and/or in court.

Please do not hesitate to contact me at (510) 238-2235 or [smiller@oaklandnet.com](mailto:smiller@oaklandnet.com) should you want to discuss this determination, however, such communication does not substitute for timely filing of an appeal as described above.

Sincerely,

A handwritten signature in cursive script that reads "Scott Miller". The signature is written in black ink and is positioned below the word "Sincerely,".

Scott Miller  
Zoning Manager

cc: Rachel Flynn, Director, Planning and Building Department  
Bill Quesada, Zoning Inspections Manager

**EXHIBIT U: NEIGHBOR SUBMITTED EVIDENCE OF EXPANSION**

**Evidence of Suprema Meats' Business Growth**

1) 1998-2002 revenue growth documented in 2004 State Court of Appeals case.  
 See <http://caselaw.findlaw.com/ca-court-of-appeal/1240014.html>

FY Ending	Revenues	Gross Margin	Net Income	2 Executives Compensation	2 Executive Bonuses	Revenue Growth per Year	Business Growth 1998-2002
3/31/1998	\$12.0 million	\$1,010,000	\$241,482	\$800/wk each			
9/30/1999	\$22.4 million	\$1,995,402	\$959,600	\$800/wk each		+87%	
9/30/2000	\$32.4 million	\$2,258,124		\$2000/wk each	\$220K & \$180K	+45%	
9/30/2001	\$41.3 million	\$3,454,141				+28%	
9/30/2002	\$44.4 million	\$4,944,482				+7.5%	270%

2.) Current MANTA Business Profile See <http://www.manta.com/c/mmpb86f/suprema-meats>

Annual Revenue Estimate	\$50 to 100 million
Employees	20 to 49
SIC Code	5147, Meats and Meat Products
NAICS Code	42447005, Meat & Meat Product Merchant Wholesalers

## EXHIBIT U: NEIGHBOR SUBMITTED EVIDENCE OF EXPANSION

### 3) Observational Business Increases

- **New cold storage unit** installed late 2013 increasing the numbers of units from 3 to 4 and the total product capacity by **at least 25%**.  
See attached: SUPREMA HUM EMITTERS PRE-2012 & SUPREMA HUM EMITTERS 2013
- **New delivery trucks** in 2013 expanded the Suprema fleet of 7 to 10 or 11, with the additions having greater cold storage capacity and generating much higher noise levels. Daily product distribution capability increased anywhere from 57% to 80%.  
See attached image of previous fleet of 7: SUPREMA PARKED FLEET 2012
- **Big rigs increase** from 2 or 3 per day (pre-2013) to 7 or 8, boosting delivered product volume **by at least 100%**.
- **Longer hours of operation** from 4am-11am to 4am-approx 5pm, depending on the day, resulting in an increase of **86%**.

### 4) Anecdotal Evidence

"After Suprema purchased the property in 2013 and installed new freezer equipment without noise abatement devices, a 24x7 hum that prevents me from enjoying my front yard and indoors it forces me to keep all my windows and doors closed at all times. This has also negatively impacted family members, who are not generally sensitive to noise. A constant vibration accompanies the freezer hum that I feel throughout the house and yard as it permeates the property along its east side, from the driveway. This vibration is viscerally felt as it comes up through the floor. I have to stay enclosed in my house to avoid the hum but then I am subject to the vibration. There is no escape from these nuisances."

*Glory Sykes,  
965 Aileen St., homeowner since 2001*

"There have always been trucks using 57<sup>th</sup> St. going to and coming from Suprema. But in the last year, I'm getting blocked twice as much in my driveway for periods to 15-20 minutes while semi-trucks block the residential intersection of 57<sup>th</sup> at Los Angeles streets. The loud noise of continual semi-trucks getting unloaded now from 6am to 6pm affects my ability to sleep and work from home. And more truckers using Lowell St. for overnight parking have increased safety concerns. Truck drivers have attracted prostitutes and unsavory characters and leave waste on the street."

*Ashley Reede  
993 57<sup>th</sup> St., homeowner since 2001*

## EXHIBIT U: NEIGHBOR SUBMITTED EVIDENCE OF EXPANSION

"Two and a half years ago when we bought the property Suprema's work schedule started at 4 or 4:30 am but now they open at 3 or 3:30. Before they stopped at 3:30 or 4 in the afternoon but now they work until 6. Since the construction started last year many times they are working inside with the doors closed on Saturdays which is normally closed for business. Before they had only about 4 or 5 trucks and now we have counted around ten trucks and some of them are new."

*Manny Dhillon and Mandeep Kaur*

963-965 57<sup>th</sup> St., homeowner since 2011

"I mostly noticed the increase in Suprema's business activity over the last six months or so, especially when I'm home from work on Sundays. More big rigs traveling down my block of 57<sup>th</sup>, and more unloading and noise for longer periods per day."

*Darrin Weyers*

943 57<sup>th</sup> St., homeowner since 2007

"Since moving into my home on 57<sup>th</sup> St. (between Market and Lowell) just three years ago, there has been a dramatic increase in the number of big rigs traveling to and from Suprema Meats Company down my block. I have also witnessed Suprema continually increase its use of public streets/spaces in order to load/unload goods. There have also been more big rigs that idle for hours at a time (often overnight), more public streets blocked by loading/unloading procedures. At the same time, there has been clear and continuous increase in vibration, infrasound, and ambient and percussive noises felt at my residence. I now experience all of the above noises (to varying degrees) 24x7 inside my home."

*Aaron Buchholz*

926 57<sup>th</sup> St., homeowner since 2011

"Since around October 2013, our perception is that Suprema's business is expanding, with earlier and later hours of operation, and intensified intensified use of the surrounding public streets for their activities, six days per week. When we first moved in, we barely noticed the 4 to 7 am Delivery truck loading which seemed to occur only once or twice per week. Likewise, initially the 18-wheel semi truck unloading on 57<sup>th</sup> St Seemed to occur mainly on Sundays and sometimes again mid-week. Since the new unpermitted facilities were built, we are woken Monday through Friday as early as 4 am by extremely loud delivery truck unloading in the open yard. On Sundays and now most days throughout the week the number of semis unloaded has increased from fewer than five per day starting at 8 or 9 am to easily eight to ten semis per day starting at 7 am or even earlier."

*Kim Lucas and Chris Bray*

968 57<sup>th</sup> St., homeowner since 2013

EXHIBIT U: NEIGHBOR SUBMITTED EVIDENCE OF EXPANSION

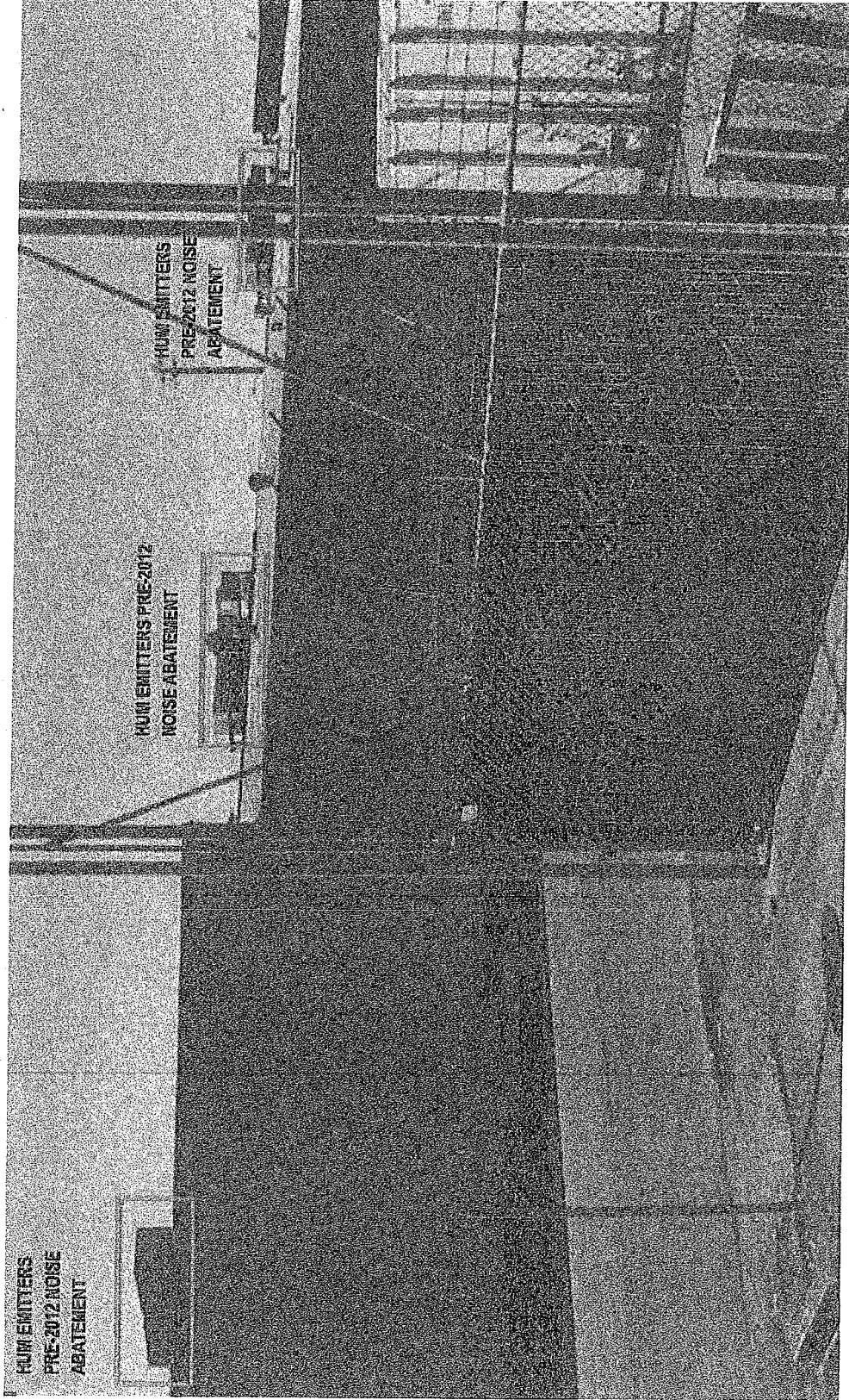
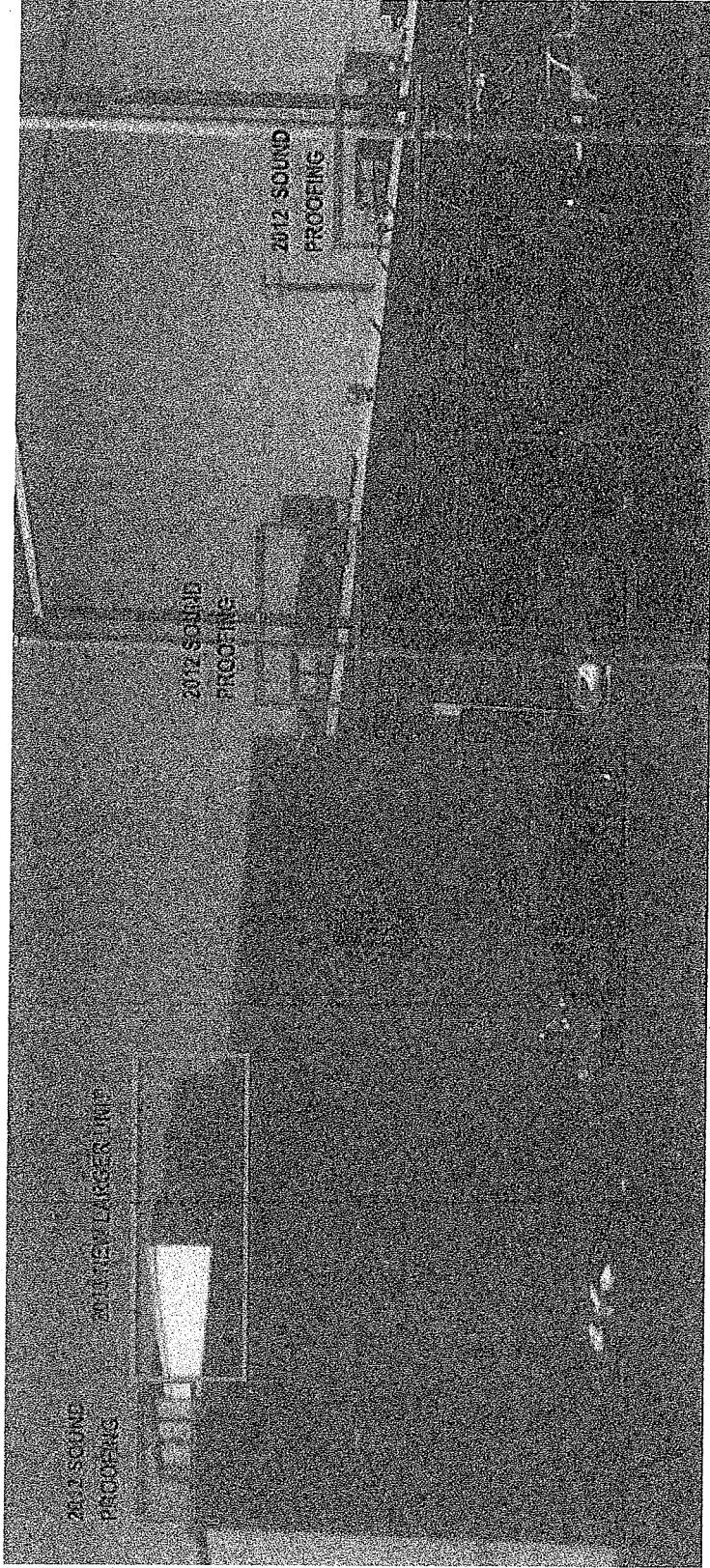




EXHIBIT U: NEIGHBOR SUBMITTED EVIDENCE OF EXPANSION





## EXHIBIT V

<https://aca.aecfa.com/oakland/>, accessed 2/19/2018

Filed Date	Record Number	Record Type	Address	Description	Project Name	Status	Short Notes
8/1/2017	1703959	Nuisance	955 57TH ST, Oakland CA 94608	LARGE LEVELS OF NOISE COMING FROM A COMPANY THAT IS WASHING VEHICLES WITH A LOUD MACHINE SYSTEM.		Pending Inspection	
3/15/2016	1600161	Activity Zoning Complaint	955 57TH ST, Oakland CA 94608	Constant fixed noise coming from industrial freezer unit.		Referred	
7/3/2015	1502322	Housing Habitability Complaint	955 57TH ST, Oakland CA 94608	Retaining damaged brick wall; work without permit.		Closed	Retaining damaged brick wall; work without permit.
4/21/2015	1501359	Activity Zoning Complaint	955 57TH ST, Oakland CA 94608	Noise complaint - loading and unloading merchants causing a lot of noise between 7am - 9pm		No Violation Found	Noise complaint - loading and unloading merchants causing a lot of noise between 7am - 9pm
4/1/2015	1501101	Housing Habitability Complaint	955 57TH ST, Oakland CA 94608	Refrigeration unit at side of building installed without a permit and leaking water onto neighboring property. Complainant/neighbor at 965 57th St to provide access.		Violation Verified	Refrigeration unit at side of building installed without a permit and leaking water onto neighboring property. Complainant/neighbor at 965 57th St to provide access.
12/29/2014	1404453	Blight Complaint	955 57TH ST, Oakland CA 94608	Large amount of glass along the side of the property, cleaning vehicles in open parking lot, chemicals are washing into the gutter.		Abated	Large amount of glass along the side of the property, cleaning vehicles in open parking lot, chemicals are washing into the gutter.
10/31/2014	1403899	Zoning Complaint	955 57TH ST, Oakland CA 94608	Refrigeration unit on roof causing constant loud noise (24 hour operation)		Violation Verified	Refrigeration unit on roof causing constant loud noise (24 hour operation)
11/25/2013	1305668	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	BUILDING ADDITIONS WITHOUT PLANNING APPROVAL OR BUILDING PERMITS	Enforcement Record	Closed	BUILDING ADDITIONS WITHOUT PLANNING APPROVAL OR BUILDING PERMITS
11/18/2013	1305577	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	CONSTRUCTION DEBRIS ON PROPERTY	Enforcement Record	Abated	CONSTRUCTION DEBRIS ON PROPERTY
11/15/2013	1305560	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	INDUSTRIAL / OPERATION NOISE OCCURS DURING DAYS & NIGHTS & WEEKENDS.Possible expansion of non conforming activity	Enforcement Record	Violation Verified	INDUSTRIAL / OPERATION NOISE OCCURS DURING DAYS & NIGHTS & WEEKENDS.Possible expansion of non conforming activity
11/14/2013	1305530	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	THE PROPERTY ACROSS FROM 955 57TH ST, LOWELL SIDE- CONSTRUCTION DEBRIS	Enforcement Record	Pending Investigation	THE PROPERTY ACROSS FROM 955 57TH ST, LOWELL SIDE- CONSTRUCTION DEBRIS
7/24/2013	1303769	Enforcement/Private Property/Facility Complaint/Zoning	955 57TH ST, OAKLAND CA	REMODELING PROPERTY, REPLACING WINDOWS W/O PERMITS	Enforcement Record	Violation Verified	REMODELING PROPERTY, REPLACING WINDOWS W/O PERMITS
5/23/2013	1302831	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	GRAFFITI ON BUILDING ACROSS FROM 951 AILEEN ST	Enforcement Record	Abated	GRAFFITI ON BUILDING ACROSS FROM 951 AILEEN ST
4/8/2013	1301700	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	GRAFFITI	Enforcement Record	Open	GRAFFITI
2/22/2013	1301057	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	MASSIVE GRAFFITI ON AILEEN ST SIDE OF PROPERTY	Enforcement Record	Open	MASSIVE GRAFFITI ON AILEEN ST SIDE OF PROPERTY
12/5/2012	1206541	Enforcement/Private Property/Facility Complaint/Zoning	955 57TH ST, OAKLAND CA	BARBED-WIRE FENCING AT PROPERTY, GRAFFITI ALSO.	Enforcement Record	Non-Actionable	BARBED-WIRE FENCING AT PROPERTY, GRAFFITI ALSO.
6/4/2012	1202612	Enforcement/Private Property/Facility Complaint/Housing	955 57TH ST, OAKLAND CA	GRAFFITI ON THE SIDE OF THE BUILDING. PEELING PAINT.	Enforcement Record	Open	GRAFFITI ON THE SIDE OF THE BUILDING. PEELING PAINT.
5/7/2012	1202067	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	BROKEN CEMENT SLAB, SECTION OF SIDEWALK MISSING, PILE OF DIRT W/ GLASSGRAFFITI, BARBED WIRE, BROKEN WINDOWS ALSO AT PROPERTY	Enforcement Record	No Violation Found	BROKEN CEMENT SLAB, SECTION OF SIDEWALK MISSING, PILE OF DIRT W/ GLASSGRAFFITI, BARBED WIRE, BROKEN WINDOWS ALSO AT PROPERTY
4/25/2012	1201846	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	CONSTITUENT COMPLAINT REGARDING INDUSTRIAL NOISE BUZZING OR HUMMING.	Enforcement Record	Intake - Completed	CONSTITUENT COMPLAINT REGARDING INDUSTRIAL NOISE BUZZING OR HUMMING.
12/7/2011	1107458	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	GRAFFITI ON REAR OF PROPERTY, TRASH AND DEBRIS	Enforcement Record	Abated	GRAFFITI ON REAR OF PROPERTY, TRASH AND DEBRIS
11/22/2011	1107300	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	TRASH, DEBRIS, GRAFFITI	Enforcement Record	No Violation Found	TRASH, DEBRIS, GRAFFITI
9/27/2011	1106529	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	TRASH, DEBRIS AND GARBAGE ALL AROUND PROPERTY.	Enforcement Record	Abated	TRASH, DEBRIS AND GARBAGE ALL AROUND PROPERTY.
6/28/2010	1004272	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	BROKEN CEMENT SLAB, SECTION OF SIDEWALK MISSING, PILE OF DIRT W/ GLASSGRAFFITI, BARBED WIRE, BROKEN WINDOWS ALSO AT PROPERTY	Enforcement Record	Abated	BROKEN CEMENT SLAB, SECTION OF SIDEWALK MISSING, PILE OF DIRT W/ GLASSGRAFFITI, BARBED WIRE, BROKEN WINDOWS ALSO AT PROPERTY
3/3/2010	1001286	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	LARGE QUANTITIES OF BROKEN GLASS ALONG THE LOWELL AND AILEEN STREETSIDES OF BUILDING AND SIDEWALKS.	Enforcement Record	Abated	LARGE QUANTITIES OF BROKEN GLASS ALONG THE LOWELL AND AILEEN STREETSIDES OF BUILDING AND SIDEWALKS.
2/17/2010	1000826	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	COMMERCIAL BUILDING - GRAFFITI ALL OVER THE BUILDING, ESPECIALLY ON THE LOWELL SIDE OF THE BUILDING, BROKEN GLASS LEFT ON PREMISES, NO SIDEW	Enforcement Record	No Violation Found	COMMERCIAL BUILDING - GRAFFITI ALL OVER THE BUILDING, ESPECIALLY ON THE LOWELL SIDE OF THE BUILDING, BROKEN GLASS LEFT ON PREMISES, NO SIDEW
12/3/2009	906967	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	COMMERCIAL BUILDING - GRAFFITI ON ALL SIDES OF THE BUILDING.	Enforcement Record	Abated	COMMERCIAL BUILDING - GRAFFITI ON ALL SIDES OF THE BUILDING.
8/26/2009	905362	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	REFRIGERATION UNIT ON TOP OF PROPERTY CAUSING LOUD NOISE	Enforcement Record	No Violation Found	REFRIGERATION UNIT ON TOP OF PROPERTY CAUSING LOUD NOISE
8/18/2008	806037	Enforcement/Private Property/Facility Complaint/Blight	955 57TH ST, OAKLAND CA	REFRIGERATION GENERATOR POSSIBLY ATTACHED TO BLDG MAKING LOUD NOISE	Enforcement Record	No Violation Found	REFRIGERATION GENERATOR POSSIBLY ATTACHED TO BLDG MAKING LOUD NOISE

EXHIBIT V

<https://aca.accela.com/oakland/> : accessed 2/19/2018

Filed Date	Record Number	Record Type	Address	Description	Status	Short Notes
8/7/2017	1703432	Zoning Complaint	949 57TH ST, OAKLAND CA 94608	Noise from truck washing and equipment is too loud.	CE Inspection Schedule	
7/20/2017	1703203	Activity Zoning Complaint	949 57TH ST, OAKLAND CA 94608	Washing trucks in parking lot on Sundays	Referred	
5/24/2016	1601870	Activity Zoning Complaint	949 57TH ST, OAKLAND CA 94608	Washing trucks in violation of performance standards and noise level. Storage of pallets and shipping containers on site	Abated	
4/21/2015	1501360	Zoning Complaint	949 57TH ST, OAKLAND CA 94608	Commercial Truck washing using sprays etc. and entering the storm drain on Sundays. High noise level in parking lot.	Cancelled (Error in Entry)	Commercial Truck washing using sprays etc. and entering the storm drain on Sundays. High noise level in parking lot.
2/27/2014	1400973	Blight Complaint	949 57TH ST, OAKLAND CA 94608	Graffiti on a retaining wall and on a fence (at N/E corner of Aileen and Lowell St. There is also razor and/or barb wire around the fence.	Non-Actionable	Graffiti on a retaining wall and on a fence (at N/E corner of Aileen and Lowell St. There is also razor and/or barb wire around the fence.
11/14/2013	1305531	Enforcement/Private Property/Facility Complaint/Housing	949 57TH ST, OAKLAND CA	BUSINESS ACROSS THE STREET IS DUMPING CONSTRUCTION WASTE INTO THE PUBLIC RIGHT OF WAY- POSSIBLE NO	Abated	BUSINESS ACROSS THE STREET IS DUMPING CONSTRUCTION WASTE INTO THELOT & IT'S OVERLAPPING INTO THE PUBLIC RIGHT OF WAY- POSSIBLE NO
12/5/2012	1206542	Enforcement/Private Property/Facility Complaint/Zoning	949 57TH ST, OAKLAND CA	BARBED-WIRE FENCING AT PROPERTY	Non-Actionable	BARBED-WIRE FENCING AT PROPERTY
6/28/2010	1004277	Enforcement/Private Property/Facility Complaint/Blight	949 57TH ST, OAKLAND CA	OVERGROWN WEEDS, TRASH & DEBRIS, GRAFFITI	Violation Verified	OVERGROWN WEEDS, TRASH & DEBRIS, GRAFFITI

EXHIBIT V

<https://aca.accela.com/oakland/>; accessed 2/19/2018

File Date	Status	Record Number	Record Type	Address	Description
3/10/2015	Expired	B1501029	Non-Residential Building - Alteration	955 57TH ST, Oakland CA 94608	Replace second floor exterior plaster with brick veneer over plaster compatible with existing first floor. Add interior wall at 2nd floor to create storage room
1/22/2015	Expired	B1500317	Non-Residential Building - Alteration	955 57TH ST, Oakland CA 94608	Replace 12 windows on commercial building. DRX150095
12/2/2013	TBD	B1304577	Building/Non-Residential/Building/Alteration	955 57TH ST, OAKLAND CA	Build steel canopy with panels; concrete recessed truck dock and 10' steel gate. #1303769.
12/2/2013	TBD	B1304583	Building/Non-Residential/Building/Alteration	955 57TH ST, OAKLAND CA	Replace window, dry wall ceiling and walls.
9/25/2013	Inspections - Suspended	B1303653	Building/Non-Residential/Building/Alteration	955 57TH ST, OAKLAND CA	New masonry wall. Begins 48" from property line (set back flush with adjacent property's home). Masonry wall to be brick (facing the business) and stucco (side facing adjacent residential property). Wall to be 10' tall. Purpose of wall is to buffer existing industrial use from adjacent residential use.
2/22/2013	Permit issued	X1300471	Building/Public Infrastructure/Excavation/NA	955 57TH ST, OAKLAND CA	Repair/replace sewer lateral and EXCAVATE in PUBLIC RIGHT-OF-WAY. Overflow device may be needed. Call PWA INSPECTION prior to start: 510-238-3651. 4th FLOOR.
2/22/2013	Permit issued	SL1300586	Building/Private Infrastructure/Sewer Lateral/NA	955 57TH ST, OAKLAND CA	Repair/replace sewer lateral and EXCAVATE in PUBLIC RIGHT-OF-WAY. Overflow device may be needed. Call PWA INSPECTION prior to start: 510-238-3651. 4th FLOOR.
12/21/2012	Final	B1204377	Building/Non-Residential/Building/Alteration	955 57TH ST, OAKLAND CA	Add sound attenuation panels around 3 rooftop HVAC units accessible by outdoor ladders/forklift to roof. #1201846. DRX121189

## EXHIBIT W

From this text conversation and your email, it seems clear that despite your best efforts to control the big rigs arriving at Suprema after hours and running their refers, it still is occurring on a regular basis. Parking is okay, the refer noise is not okay. Since the noise and vibration are an ongoing nuisance, not just an occasional event, I don't think it's fair for you to expect those of us who live here and do not work for Suprema to continue to try to do enforcement.

That said, I also understand the logistical challenges you face given the huge number of drivers many of whom do not get the instructions from their dispatcher. This is the reason why I suggested that we both urge the City again to post signs to see if that would help. I also hope that you would post your own private signs on your warehouse wall on Lowell St, especially if the City again tells us that they cannot post signs.

While we wait to see if the City can help out by posting signs, I and other neighbors need you to understand the following:

- Big rigs arrive at all hours of the night and run their refers. This is happening far more frequently than once a month.
- Many neighbors, myself included, have tried calling the police but they rarely come and even if they do it can be hours later. This leaves us having to put up with the noise and vibration all night long.
- We as residents should not be expected to patrol the streets or go out in the middle of the night to speak with drivers. I have met many nice truck drivers over the last few years, but a few have not been so nice.
- We as residents should not be expected to pass out flyers to drivers at any time. (Instead, I would suggest you post that information on large signs on your warehouse wall.)
- Even if there was a flyer to pass out, what would it say, since according to you there is no approved location in Oakland where they can park and run their refers all night?

Regarding the big rig running it's refer that I called you about around 2 am Sunday morning, this driver told me that he had been here late Friday or Saturday but left since Suprema was closed, and returned some time Saturday evening. I wasn't home until 1:30 am, when I went out to speak with the driver. He said that he couldn't keep the refer off all night and that he couldn't leave because he has restrictions on how many miles he can put on his odometer with \$150,000 worth of frozen meat. I can't stay home all the time in order to call you at a decent hour. That's just how it goes and what we get to live with.

When I got home tonight around 10 pm there was a big rig parked on Stanford running it's refer close to homes on both sides of the street: 966 Stanford on the north side and the new lofts at 967 Stanford on the south side. Dee King, TX 005B671. The driver had pulled up onto the curb destroying the grass strip. He was not visible in the cab and I didn't knock on his door. I took photos (attached) and called the police (incident number 1012 for Oct 24). All of this takes time to do and it is not something that I or anyone else should have to do over and over again. I would like to know if this big rig is/was waiting to deliver at Suprema.

Thanks,  
Kim

### Text conversation between MJ and KL, Sunday Oct 23:

MJ: We charged him a fine of \$ 100.00 for parking overnight with the reefer on . Good work Thxs Mj

KL: The driver said he was very sorry but had no instructions from suprema for where to park. Do you give the drivers appointment times? Why not also tell them not to arrive outside of business hours and where they can legally park and run their refer engine overnight? This driver tried to call for instructions but the office was closed. Why not post a sign on suprema's front door and on the Lowell street warehouse wall with instructions on where to park overnight?

## EXHIBIT W



kim lucas <klucas1111@gmail.com>

### Overnight Parking

kim lucas <klucas1111@gmail.com>

Tue, Oct 25, 2016 at 2:08 PM

To: "Klein, Heather" <HKlein@oaklandnet.com>, "Ranelletti, Darin" <DRanelletti@oaklandnet.com>, "Minor, Gregory" <GMinor@oaklandnet.com>, "Miller, Scott" <SMiller@oaklandnet.com>, "Candell, Chris" <CCandell@oaklandnet.com>, "Quesada, Bill" <BQuesada@oaklandnet.com>, "Valeska, David" <dvalaska@oaklandnet.com>, "Bee, Maria" <MBee@oaklandcityattorney.org>, "Fierro, Rocio" <RFierro@oaklandcityattorney.org>, "Ferran, Elias" <EFerran@oaklandnet.com>, Angela Gennino <agennino@gmail.com>, Ronald Washington <Mrsamod47@gmail.com>, "Chun, Peter" <PChun@oaklandnet.com>, Peter R Russo <prusso@gmail.com>, "dkalb@oaklandnet.com" <dkalb@oaklandnet.com>

Here is the exchange between Miguel Jara and me regarding the big rig that ran it's refer overnight on Saturday next to multiple homes, and another big rig that most likely was delivering to Suprema that was running it's refer late last night on Stanford between homes on both sides of the street.

Clearly, Suprema is unable to control the big rig traffic coming into our neighborhood at all hours of the day and night. It is not my job, or any neighbor's job, to do patrols, give instructions to drivers, and do enforcement. This has been going on for many years and we have provided more than enough documentation for the City to do something about it.

Thanks,  
Kim

----- Forwarded message -----

From: kim lucas <klucas1111@gmail.com>

Date: Tue, Oct 25, 2016 at 11:46 AM

Subject: Re: Overnight Parking

To: Marcela Jara <mmjara@comcast.net>

Cc: Steve Hassing <sjh@hassinglaw.com>, "Minor, Gregory" <GMinor@oaklandnet.com>, "Chun, Peter" <PChun@oaklandnet.com>

I already gave you the exact location of the truck, it's licence plate number, carrier name, and photos of all of these, plus the DOT and other identifiers on the side of the truck. As a courtesy to you/Suprema as the potential destination of this truck and to the neighbors who had to listen to this truck idle and run it's refer last night, I collected documentation and called the police. You or your staff should know if a truck from Dee King from TX delivered to you today.

On Tue, Oct 25, 2016 at 11:28 AM, Marcela Jara <mmjara@comcast.net> wrote:

Is there evidence that this truck was going to deliver to us. If so please provide me with photos, carrier name or other, so I can contact them. Was this truck parked on Lowell St.?

Thanks Mj

On Tue, Oct 25, 2016 at 12:07 AM, kim lucas <klucas1111@gmail.com> wrote:

Hi Miguel, incident #1012

I'm pasting the text conversation we had Sunday afternoon below with our initials indicating who said what. Please especially note the parts I've highlighted in yellow in the text conversation and your email from Sunday evening.

## EXHIBIT W

KL: Also, I don't work for suprema. I'm one of many inconvenienced neighbors who have to go out in the middle of the night to ask truck drivers to leave. The drivers are also inconvenienced when they don't get appointments or instructions. I didn't expect you to fine the poor driver who had never been here before. I was hoping you would contact the driver and tell him where he could park overnight. Collecting \$100 simply benefits you, not the neighbors and drivers who suffer.

MJ: That's what they all say. Did truth is that the nearest truckstop is about an hour away and some of these guys just choose to come in. One last thing I only have the companies carriers phone number they never give me the driver's phone number.

KL: Okay. So once they decide to just come in isn't there a place in west Oakland where they can legally park overnight? I thought Greg Minor or someone in the city had mentioned that. If there is, could you tell us the address and put a sign on suprema's door so we can tell them where to go? If they stay here overnight we can't sleep with the noise and vibration. And this is happening more often recently...

MJ: There is no legal place for them to park in Oakland

KL: So is the plan to stop accepting deliveries from a carrier company if they repeat the violation? What do other companies like suprema who are right next to homes do to stop this?

MJ: I don't know all I know is that the best thing to do is for the city to put up signs for bidding overnight parking for big rigs

KL: I agree. We have tried going to the neighborhood meetings with police and asking them to patrol Lowell street but they say they don't have time. And we have tried to get the city traffic department to put up signs and they say they can't because Lowell street has no curbs and sidewalks to put the signs on. Can you please ask the city again to put up signs? I will ask again too. Would you be willing to put signs on your warehouse wall saying no overnight parking with any engines running? We would greatly appreciate your efforts on this as it's becoming worse.

MJ: I will email the city asking them once again to put up signs for

KL: Thank you. Would you be willing to have signs made for your warehouse wall? Maybe the city could advise you on the exact wording for the signs with the municipal code that prohibits idling and refer running close to homes. There are also state laws that prohibit idling.

MJ: I will do this conversation with an email address in the city and my lawyer Steve Hassing to work things out

KL: Thanks. The traffic engineer we have tried to work with is Peter Chun.

On Sun, Oct 23, 2016 at 6:51 PM, Marcela Jara <mmjara@comcast.net> wrote:

Hi Kim

Clearly you have more pull with the City of Oakland than we do. I think if you ask the City to put up signs that say it is illegal to park big rigs overnight, the City will most likely will listen to you. If they were able to put up signs all across Lowell St. prohibiting idling why couldn't they use the same poles to post signs posting that is illegal to park big rigs overnight.

This will finish fixing the problem you have with drivers who don't read their directions. Plus, with those signs put up, you can call the cops and have them move all drivers that illegally parked there. This will probably won't be necessary because anybody coming in with the intention to park will probably end up moving once they read the signs.

I know this will be much more effective than our existing efforts. Terminating multiple offenders has not worked. On an average a carrier can carry anywhere from 50 to 100 different drivers. If I built a history with a carrier and the drivers learn all special instructions to deliver to Suprema, I will have to start from scratch if I pick up a new carrier. Fines only help drivers remember when they return again to deliver. I



EXHIBIT W

have never lined up the same driver. So lining seems to be somewhat effective but it does not help with first offenders.

The City of Berkeley have such signs put up all across Bayshore Street, and I never see anyone parked overnight on that street, and Bayshore St. is right next to the freeway. In theory they should have a bigger problem than we do but they don't because nobody wants to pay a fine from the police department.

You mention that this driver arrived on Saturday. Next time this happens, please call me immediately. This will give us the opportunity to PREVENT him from parking overnight.

I can call their dispatcher or with your help, I can talk to the driver to ask him to move. If none of this works out, I can drive up and make him move. Calling me at 2:00am when he had been there for all of this time does not make any sense.

You can ask Mario to supply you with flyers that have all special instructions so you could hand them over to the drivers when they arrive. You can also tell them that if they don't move, we will not receive them the next day, and we won't as long as we can verify that the driver was told to move and they choose not to.

Just for your information, it is not illegal for them to park overnight. What is illegal for them to do is to run the reeferers once they get there assuming that they have the old reefer units. You should know that there are new trucks that have new reeferers units that meet all city requirements. This reeferers do not exceed noise levels and are equipped with smog emission filters that allow them to run their reeferers.

With this being said, I still rather have all trucks come in during working hours. In the pass there had been too many break-ins on trucks that were parked overnight and the police was never able to do anything about it.

We will continue to work with all carriers to minimize overnight parking. I will like to point out that we now average about one truck per month in the pass year. Since we do not have any plans to move in the near future, I think is best that we find solutions together and work together to have a better working/living environment for everybody.

PS. Posting sings is what we need on top of everything else. Check out SMC-ROUTE.COM We notify on a weekly basis all disputers who call in for appointments. Most likely and most of the time driver do not bother to read their instructions. This instructions are written on their ledgers. We asked all of our vendors to write them on all the drivers ledgers.

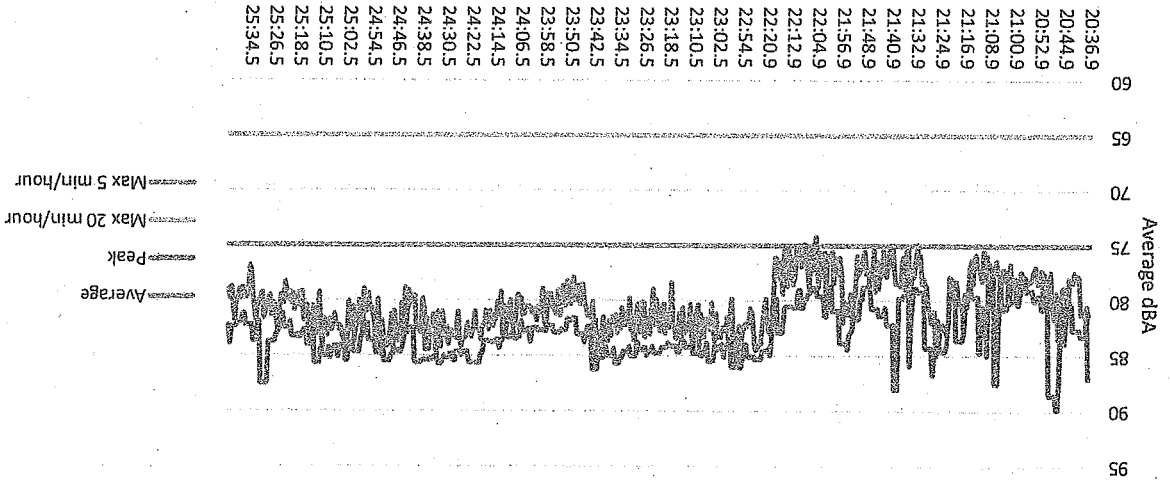
Thanks

Miguel

Suprema Meat

**EXHIBIT X**

Generator and pump to reclaim run off from wash  
Residential property line at 946 Aileen St  
10:20:37 to 10:25:59 am  
5/14/16



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED CIVIL

SUPREMA MEATS, INC., a )  
California Corporation and )  
955-57th LLC, a California )  
Limited Liability Company, )

Plaintiff, )

VS. )

Certified Transcript

CASE NO.  
RG-15787127

THE CITY OF OAKLAND, a Municipal )  
Corporation, )

Defendant. )

DEPOSITION OF MIGUEL JARA, JUNIOR

JANUARY 23, 2019

REPORTED BY:

KATHERINE WYATT, CSR, RPR, RMR

CSR NO: 9866

JOB NO. 32073

Pages 1 - 66

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

UNLIMITED CIVIL

SUPREMA MEATS, INC., a )  
California Corporation and )  
955-57th LLC, a California )  
Limited Liability Company, )

Plaintiff, )

VS. )

CASE NO.  
RG-15787127

THE CITY OF OAKLAND, a Municipal )  
Corporation, )

Defendant. )

The deposition of MIGUEL JARA, JUNIOR, taken on behalf  
of the Defendant, at Oakland City Attorney, One Frank Ogawa  
Plaza, 8th Floor Conference Room, Oakland, California  
94612, beginning at 1:00 o'clock p.m., on Wednesday,  
January 23, 2018, before KATHERINE WYATT, Certified  
Shorthand Reporter, No. 9866.

A P P E A R A N C E S

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FOR THE PLAINTIFF:

LAW OFFICES OF STEVEN J. HASSING  
BY: STEVEN J. HASSING, ESQUIRE  
425 Calabria Court  
Roseville, California 95747  
916.677.1776  
sjh@hassinglaw.com

FOR THE DEFENDANT:

Oakland City Attorney  
BY: CHRISTINA LUM, ASSISTANT CITY ATTORNEY  
One Frank Ogawa Plaza, 8th Floor Conference Room  
Oakland, California 94612  
510.238.3601  
clum@oaklandcityattorney.org

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I N D E X

Witness Name	Page
MIGUEL JARA, JUNIOR	
Examination by MS. LUM	5

E X H I B I T S

Exhibit	Description	Page
1	Deposition Notice (5 pages)	6
2	Compliance Plan (9 pages)	20
3	Draft Conditions of Approval (2 pages)	62
4	Draft Conditions of Approval (6 pages)	62

1 Q. In Oakland. Correct?

2 A. Yes.

3 Q. So do you have a position? Well, I'll withdraw  
4 that. What are your duties as owner?

5 A. Well, I supervise all the people that work for  
6 me.

7 Q. How many employees do you have?

8 A. Close to 40.

9 Q. Do they all work at the facility at 977-57?

10 A. Yes.

11 Q. And what are the day-to-day business activities  
12 of Suprema?

13 A. Okay. I receive the drivers around 4:00 a.m. in  
14 the morning. They get their paperwork, and they get the  
15 instructions, and they go out to deliver. That's how the  
16 day starts.

17 Then, around 4:30, two warehouse guys come in,  
18 and they build routes for the second batch of trucks that  
19 are going to deliver.

20 When they are done, the next batch of drivers  
21 come in, and they load their trucks at 7:00 a.m. in the  
22 morning, and they take those routes.

23 And after seven, we are ready. You can say we're  
24 already open because we start. Customers can come in after  
25 seven, too. So after that, around eight the rest of the

1 warehouse comes in together with the accounting staff and  
2 the sales staff.

3 And salespeople start taking orders for the next  
4 day, and warehouse people start getting ready to pick up,  
5 to take orders. Once enough sales are done where they can  
6 build routes, they send the routes. The office sends the  
7 routes to the warehouse, and they start building routes.

8 And as they are building routes, they are loading  
9 the trucks. That would be the last phase of the activities  
10 during the day.

11 They do that with six routes. And once they are  
12 done, which is from -- that activity starts like from  
13 twelve to five. And after they are done loading the last  
14 truck, the trucks are all parked. We close the facilities,  
15 and we're done for the day.

16 Q. Okay. What time does the facility close?

17 A. It closes when we're done. It could be -- but an  
18 average hour on a daily basis it's 5:00 o'clock.

19 Q. So the drivers that come in in the morning, are  
20 they Suprema employees?

21 A. Yes, they are.

22 Q. The warehouse people are also Suprema employees?

23 A. Yes, they are.

24 Q. And when you said "after seven," that's 7:00 a.m.  
25 That's when Suprema opens and starts receiving customers?



1           A.    Customers and product.

2           Q.    And product.  And who are the customers for  
3  Suprema?

4           A.    Who are the customers?  Can you be more specific?

5           Q.    I guess I'm kind of trying to figure out what  
6  type of customers Suprema has.  Are they restaurants or  
7  just people on the street walking in to buy something?

8           A.    It's everything.  And I have neighbors that are  
9  customers.  I have taco trucks that are customers.  I have  
10 restaurant owners that are customers.  I have supermarkets  
11 that are customers.  I have other meat distributors that  
12 are customers.

13          Q.    And they just walk into the facility and buy  
14 meat, or how does that work?

15          A.    Correct.  Yes.

16          Q.    Do they have to -- do they order things in  
17 advance?

18          A.    Sometimes they do.  Sometimes they just walk in  
19 and do a walk-in order.

20          Q.    Okay.  So I'm trying to get an idea if a customer  
21 walks in, is there something they can look at, the products  
22 that they look at they decide, or do they just talk to  
23 somebody?

24          A.    They just talk to somebody.  They have no  
25 displays of the product.

1 Q. So there's like a list of product for people to  
2 look at?

3 A. Basically, they know what they want.

4 Q. Okay. And how are you able to break down how the  
5 proportion of your customers are? How many are neighbors  
6 and how many are like restaurants, supermarkets,  
7 businesses?

8 A. Well, I can give you a rough idea.

9 Q. That's okay.

10 A. There's -- I guess I would not be the most  
11 qualified person because I don't do will calls. But I know  
12 at least five neighbors. There could be more. But since  
13 I'm not at that window I will not be the person to give you  
14 that number.

15 And then, you're asking for a breakdown of  
16 customers, in general, or for the will call only?

17 Q. Or say if you have 100 percent of customers, how  
18 many percentage -- how much percentage is like individual  
19 neighbors, and what's the percentage --

20 A. But I'm asking if you want the will call once or  
21 for all the customers at Suprema.

22 Q. When you say "will call," you mean like walk-up  
23 customers?

24 A. Yes, you just asked about that.

25 Q. Okay. All customers?

1           A.    I guess I try as best as I can to have a 50/50  
2 food service and retail. And the retail stands for stores,  
3 supermarkets. And food service stands for restaurants and  
4 taco trucks and other sources.

5                    But now there's a new category, which is  
6 providing service to other distributors. So the volume  
7 for -- and that's volume sales, I would call it. And  
8 that's grown to be about 20 percent. Retail is probably  
9 50 percent. And 30 percent would be restaurants.

10                   And since the neighbors are very few, you can put  
11 .0000 something.

12           Q.    Okay. So it's a small percentage?

13           A.    Yes.

14           Q.    So the trucks that come in and out of Suprema,  
15 are all of the trucks owned by Suprema?

16           A.    The trucks that deliver for Suprema are all owned  
17 by Suprema.

18           Q.    Okay.

19           A.    The trucks that deliver to Suprema, none are  
20 owned by Suprema.

21           Q.    How many trucks do Suprema own?

22           A.    About 14.

23           Q.    And you're familiar with the compliance plan that  
24 was signed in 2014?

25           A.    Yes.

1 Q. Did you have 14 trucks before the compliance  
2 plan?

3 A. No.

4 Q. How many trucks did you have then?

5 A. Could have been eight or ten.

6 Q. What kind of trucks are they?

7 A. Bobtails.

8 Q. All of them?

9 A. Yes.

10 Q. And that was the case before the compliance plan,  
11 as well?

12 A. Yes.

13 Q. And you said you supervise about 40 employees  
14 now; is that correct?

15 A. Yes.

16 Q. Is that the case before the compliance plan?

17 A. No.

18 Q. How many employees did you have, did Suprema have  
19 before the compliance plan?

20 A. About 30.

21 Q. And then you mentioned, so let me know if I have  
22 this right. You said that you currently have about

23 30 percent of your business is food service, 50 percent  
24 goes to retail and 20 percent to other distributors.

25 Right?

1           A.    Yes.

2           Q.    Okay.  And then, you mentioned that previously  
3 you were trying -- you were aiming for 50 percent food  
4 service, 50 percent retail?

5           A.    Correct.

6           Q.    When did that change?

7           A.    About three years ago.

8           Q.    And why was that?  Why did that change happen?

9           A.    Opportunities came up.

10          Q.    How long has Suprema been at 977-57th Street  
11 (sic)?

12          A.    Since 1996.

13          Q.    Since 1996?

14          A.    Correct.

15          Q.    But there was a business at that location before  
16 1996?

17          A.    Yes.

18          Q.    What was the business there?

19          A.    What was the business name?

20          Q.    Sorry.  What was the business that was at that  
21 location prior to 1996?

22          A.    It was a fish distributing company.




23          Q.    Were you involved in that other company?

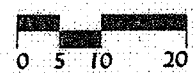
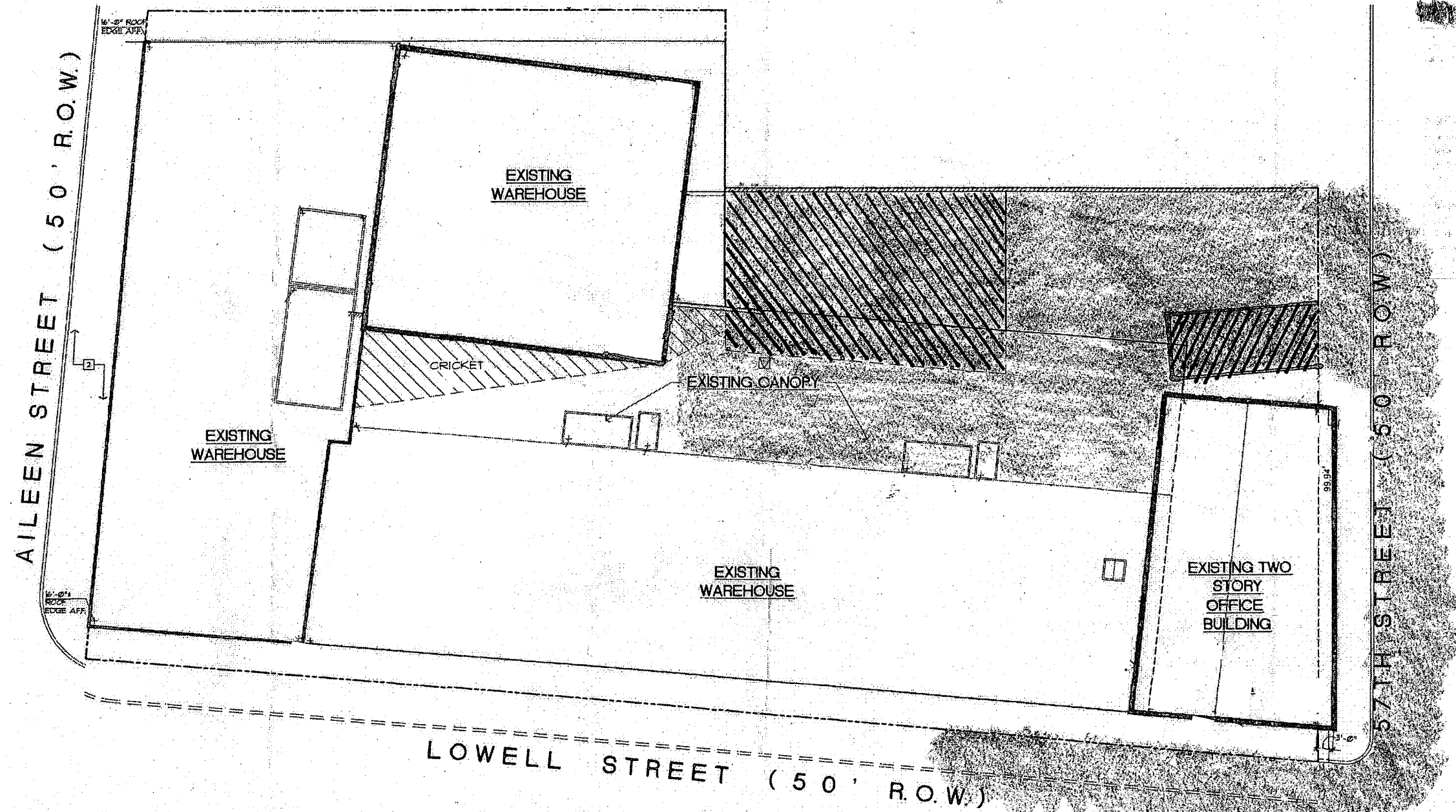
24          A.    No.

25          Q.    So when Suprema started in 1996 at this facility,

LEGEND

Annotated Site Plan for Staff Report

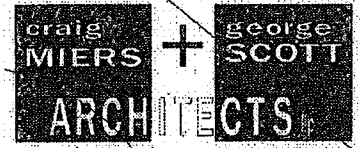
-  Canopy
-  Unloading/Loading Dock
-  Loading Area



**SUPREMA- OAKLAND** (DESIGN REVIEW PERMIT)  
 OAKLAND, CALIFORNIA  
 SUPREMA MEAT COMPANY

M+S JOB NO.: 4.233  
 MARCH 31, 2015 ~~DECEMBER 10, 2014~~ ~~OCTOBER 7, 2014~~

EXISTING ROOF PLAN **P7**



3333 North Shore Drive, Suite 200  
 Fremont, CA 94555  
 510.745.0000  
 510.745.2200 mobile  
 510.745.0077 fax  
 www.miersandscott.com

**Administrative Appeal Hearing,  
City of Oakland**

City of Oakland,

vs.

Suprema Meats, Inc.  
955 57<sup>th</sup> St.  
Oakland, CA 94608

Building Services Complaint No.  
1303769

APN: 015 – 1298 – 009 – 00

Trial Date: August 12, 2015

**Order and Fine for  
Violation of Compliance Plan**

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**Findings of Fact**

The City of Oakland requested exhibits A through J be entered into evidence. The defendant requested exhibits 1 through 12 be entered into evidence. These exhibits are documents, videotapes, and photographs which accurately reflected the conditions at Suprema Meats, Inc. All the exhibits were entered into evidence, although exhibits G 3–5 were entered for the limited purpose of supporting the city of Oakland's decision that there was probable cause to conclude that the defendant had violated the compliance plan.

Exhibit A is a Google map of 955 57<sup>th</sup> St., Oakland, CA 94608.

Exhibit B is a copy of the compliance plan entered into the defendant and the city of Oakland on or about October 20, 2014. Inter alia, it states:

*“6. Not later than one month from the execution date of this compliance plan, Owner(s) agree to discontinue all delivery staging activities (i.e. movement of vehicles, equipment, and product it into position for loading), vehicle loading and unloading activities, and vehicle and equipment maintenance activities at Suprema's 57<sup>th</sup> Street open loading facility between the hours of 9 pm and 7 am (daily).*

Exhibit C is a copy of a notice of compliance plan violation dated February 17, 2015. These alleged violations were not subject to the hearing because the defendant agreed to pay the \$8000.00 Fine, prior to the hearing.

Exhibit D is a copy of the notice of the compliance plan violation dated June 23, 2015. Parties stipulated that the \$500 fine for June 12 was no longer in issue. This letter assesses \$11,500.00 in penalties on various dates for “9 pm – 7 am Forklift Activity in violation of paragraph 6”



Exhibit E is a CD of videos "Suprema NOV, June 2015".

Exhibit F is the is a copy of the notice of the compliance plan violation dated July 23, 2015. This letter assesses \$11,500.00 in penalties on various dates for "9 pm – 7 am Forklift Activity in violation of paragraph 6 and O.M.C. 1.08".

Exhibit G1 is a CD of videos "Suprema NOV, July 2015"

Exhibit G2 are emails starting from Kim Lucas to Gregory Minor with the date of July 14, 2015

Exhibit G3 is a declaration of Mandip Dhillon

Exhibit G3 is a declaration of Mandeep Kaun

Exhibit G3 is a declaration of Gerald Herbert

Exhibit H are various emails from Gregory Minor to Michael Jara

Exhibit I is an email from Marcela Jara and Rachel Flynn

Exhibit 1 is defendant's copy of the compliance plan

Exhibit 2 is a August 25, 2014 email from the Quesada to Jara

Exhibit 3 is a letter from attorney Hassing to Quesada

Exhibit 4 is a September 16, 2014 email from the city to defendant

Exhibit 5 is an October 8, 2014 email from the city to defendant

Exhibit 6 is a copy of a May 10, 1955 application for permit

Exhibit 7 is a city account details report dated July 28, 2014 showing that defendant obtained its business license on or about June 1, 1996

Exhibit 8 are sound graphs prepared by defendant's sound expert

Exhibit 9 is the resume of defendant's sound expert

Exhibit 10 is a January 1, 2014 email from Gennino to Jamerson

Exhibit 11 is a January 17, 2014 email from Gennino to Jamerson

Exhibit 12 is an email from Candia to Jonsson

**Witnesses called by the City:**

Kim Lucas of 268 57<sup>th</sup> St., Oakland, CA testified that she was awoken almost every early morning by noises emanating from defendant's business. Her videotapes of forklift activity were helpful and entered into evidence. I found her to be a credible witness, although clearly not a disinterested one. She testified that she has owned her residence for a couple of years along with her husband. If defendant is forced to relocate; presumably, the Lucas property would go up in value.

Mandip Dhillon lives right next door to defendant's business. It cannot be over emphasized how close defendant's business and his residence are. He testified that he and his children have been awoken almost every early morning by noises emanating from defendant's business. He testified that along with his family, his brother and parents also live in the same house. I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would go up in value.

Mandeep Kaun, Mandip Dhillon's wife, lives right next door to

defendant's business. She testified that she and her children have been awoken almost every early morning by noises emanating from defendant's business. She also testified that her young children may be experiencing significantly poorer health because of being awoken in the early morning hours. She testified that she had lived there since approximately 2011. I found her to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would go up in value.

Gerald Herbert lives right across the street from defendant's business. It cannot be over emphasized how close defendant's business and his residence are. He testified that he is awoken almost every early morning by noises emanating from defendant's business. He testified that he is considering moving because the noise after his one-year lease expires. I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, this property would be more desirable to rent.

Gregory Minor, is an assistant to the city administrator in charge of nuisance abatement. He testified, inter alia, regarding his decision to assess penalties against defendant for compliance plan violations along with violations of OMC 1.08. I found him to be a very credible witness.

**Witnesses called by the defendant:**

Miguel Jara Jr. testified on behalf of the defendant Corporation. He testified that he was the president and owner of the meat distributor and had been for some 20 years. (The business obtained a business license for the 9552 7<sup>th</sup> St. location on or about June 1, 1996.) He testified that he employed approximately 30 workers. He testified regarding his agreement to enter into the compliance plan. He also testified that on the dates cited, no product was moved.

I found him to be a credible witness, although clearly not a disinterested one. If defendant is forced to relocate; presumably, his business would suffer the expense of moving and possibly increased cost for the land used by the business.

Derek L. Watry testified as an expert witness on behalf of the defendant Corporation. He testified that he was the president and CEO of Wilson Ihrig and Associates, a firm of acoustic and vibration consultants. He testified that he tested the sound emitted by various activities of defendant. He further testified that at no time during his testing did defendant exceed the levels of noise prescribed by Oakland's noise code. I found him to be a credible expert witness, although clearly not a disinterested one. He was hired to testify for the defendant and it should be emphasized that he is not percipient witness on any of the dates the city wishes to enforce penalties for excessive noise.

Bradley Scott, B.A., M.A. testified as an expert witness on behalf of the defendant Corporation. He testified that he was professor of English for Golden Gate University for some 20 years. He testified as to how the compliance plan should be interpreted from the standpoint or normal use of the English language. I found him to be a credible expert witness, although clearly not a disinterested one. He was hired to testify for the defendant.

Chris Candell was called as a percipient witness by the defendant Corporation. He testified that he works for the city of Oakland in the area of noise readings. He testified that he tested the sound emitted by various activities of defendant, on August 27, 2014, April 21, 2015, and June 2, 2015 and at no time during his testing did defendant exceed the levels of noise prescribed by Oakland's noise code. On June 2, 2015 he recorded voice levels from 4:54 AM to 6:05 AM. During his testing, he recorded noise levels of 37 dB, 47.7 dB, 46 dB, and 48.2 dB. I found him to be a very credible percipient witness.

Bill Casada, zoning inspection supervisor for the city of Oakland was called as a witness by defendant Corporation. He testified that his understanding of the compliance agreement was that no forklift movement was to be allowed from 9 PM to 7 AM. He testified as to how the compliance plan had gone through through various drafts, until the final draft was agreed to. I found him to a very credible witness.

## Findings of Fact

The defendant and the City of Oakland entered into a compliance plan on or about October 20, 2014 . Inter alia, it states:

*"6. Not later than one month from the execution date of this compliance plan, Owner(s) agree to discontinue all delivery staging activities (i.e. movement of vehicles, equipment, and product it into position for loading), vehicle loading and unloading activities, and vehicle and equipment maintenance activities at Suprema's 57<sup>th</sup> Street open loading facility between the hours of 9 pm and 7 am (daily)." Suprema Meats, Inc. entered into a compliance plan with the City of Oakland to, inter alia, reduce the amount of noise created by the meat distributor.*

I find from the video-graphic and other evidence that there was equipment (a forklift) being moved to position product for loading, and/or there was movement (by hand) of product into position for loading on the following dates:

1. On June 19, 2015, boxes were being moved at approximately 4:15 AM,
2. On June 25, 2015, a man was moving a box at approximately 4:13 AM,
3. On July 2, 2015, boxes were being moved at approximately 4:15 AM,
4. On July 3, 2015, boxes were being moved at approximately 4:19 AM,
5. On July 9, 2015, boxes were being moved at approximately 4:15 AM,

6. On July 13, 2015, boxes were being moved at approximately 4:16 AM.

Any sound made relatively close to someone at 4 o'clock may awaken that person especially if that person has good hearing, such as a child, or is a light sleeper. It may interfere with the comfortable enjoyment of property; however, not every sound constitutes an actionable nuisance even at 4 o'clock in the morning. I could not determine from the evidence presented whether the sound generated was objectively offensive, on the various dates cited. However, on June 2, 2015, Chris Candell, an employee of the city, measured the noise levels from about 4:54 AM until about 6:05 AM. He found no noise code violation. Consequently I find that the defendant did not exceed reasonable noise levels on June 2, 2015, at least during the times tested.

### **Conclusions of Law**

Suprema Meats, Inc. has violated the compliance plan on the foregoing six dates. The City of Oakland's assertions, that the operations of the defendant also violate Oakland municipal code section 1.08, were unproven. The City of Oakland should have used its noise ordinance to prosecute the defendant if there was probable cause that the noise exceeded legal limits.

Under the city of Oakland's interpretation, any noise at 4 o'clock in the

morning could be interpreted as being offensive to the senses so as to interfere with the comfortable enjoyment of life or property under Oakland Municipal Code § 1.08.

In fact, all of the complaining witnesses live extremely close to the defendant and some of them actually live right next door to the defendant. The City of Oakland has a noise control ordinance. This ordinance should have been used for any alleged noise complaint violations. The fact that it was not used was clear error and/or an abuse of discretion. The City of Oakland has adopted local noise regulation as O.M.C. §8.18.010.

On the one date, cited by the city that the City of Oakland had one of its sound technicians measure the noise produced by the defendant, the City of Oakland's sound technician determined that there was no noise code violation. This would appear to explain why the City of Oakland is attempting to prosecute defendant for noise under the general nuisance ordinance, O.M.C. §1.08, rather than the much more specific, local regulation, O.M.C. §8.18. They simply did not have evidence to go forward against the defendant under O.M.C. §8.18. The City of Oakland cites *City of Bakersfield v. Miller* (1966) 64 Cal. 2d 93, 100. Consequently they should be aware that where the municipal legislature has determined that a defined condition or activity is not a nuisance (e.g. under O.M.C. §8.18) it would be the usurpation of the legislative power for a court to



arbitrarily allow enforcement merely because in its independent judgment the noise caused by the violation was significant. In other words, Oakland has adopted O.M.C. §8.18. If there is no noise code violation under that ordinance, it would be a usurpation of the City of Oakland's legislative power to allow this tribunal or any individual, working on behalf of the city, to supplant his or her independent judgment of what constitutes sufficient noise to be a nuisance. Nothing in this opinion, prevents the city, in the future, from sending out a sound technician to determine whether the defendant is violating O.M.C. §8.18 and proceeding accordingly.

Since no nuisance was proven under O.M.C §1.08, There is no need to determine whether California Civil Code § 3482.6 is controlling. (See also *Mohilef v. Janovici* (1996) 51 Cal. App. 4<sup>th</sup> 267, 306-7; 58 Cal. Rptr, 2d. 721.)

In this particular case the City is requesting \$1000.00 per day as a civil penalty. The City, having proved the violation of the compliance plan, is entitled to charge a \$3500.00 nuisance case fee under Oakland Master fee schedule section B- 10.

**Order**

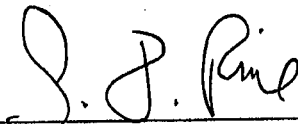
The appeal of defendant is hereby denied, in part.

For violations of the agreed compliance plan:

**Suprema Meats Inc. is hereby ordered to pay a total fine of \$9500.00 to the City of Oakland.** (\$3500.00 under Oakland Master fee schedule section B- 10. AND \$6000.00 for the six days it violated the compliance plan). Neither party is awarded attorney's fees or costs, other than the fine above. This order goes into effect 35 days after mailing of the order.

Dated: November 9, 2015

By:

  
\_\_\_\_\_  
S. D. Rine  
City of Oakland Hearing Officer







Call 65-1930





























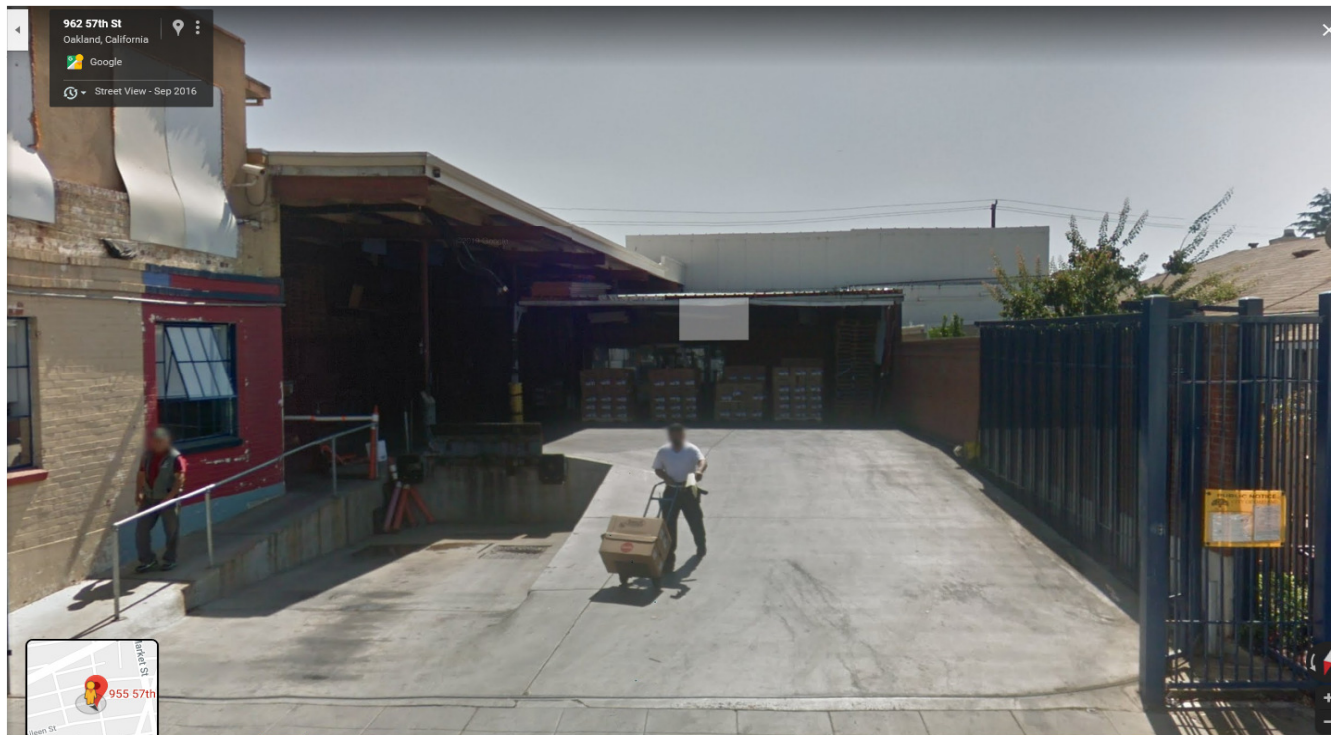


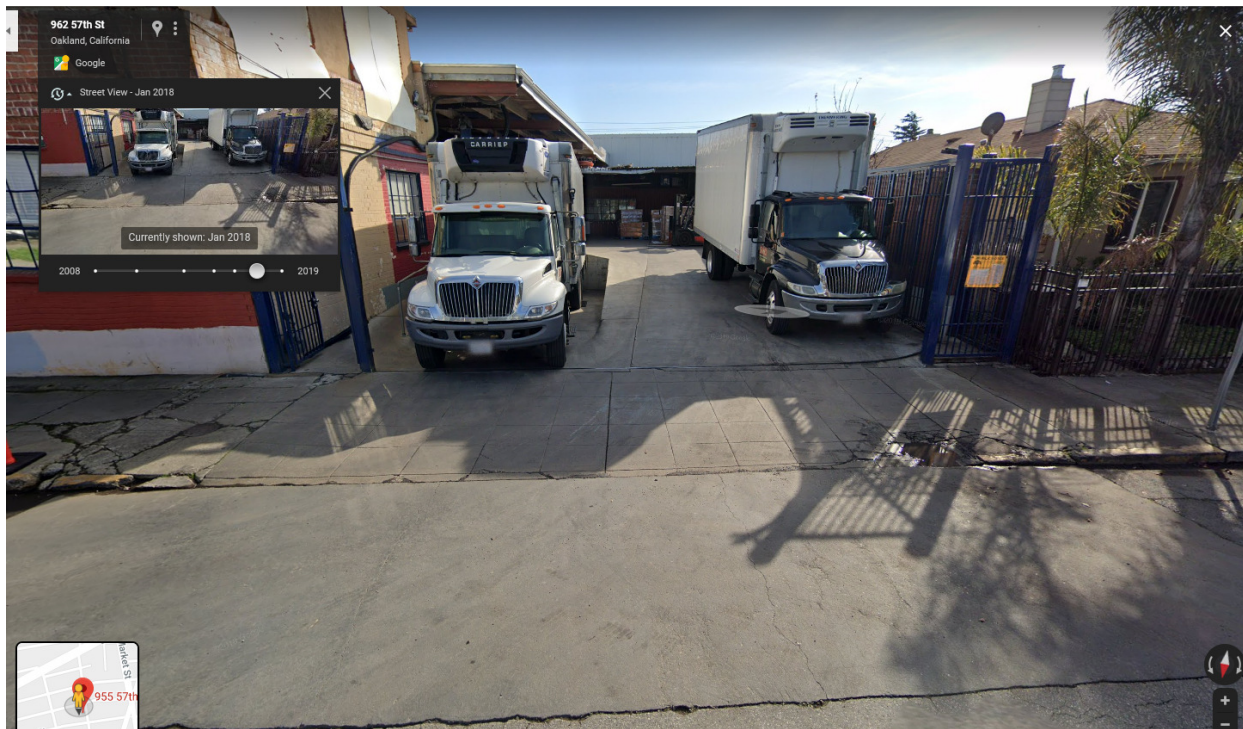
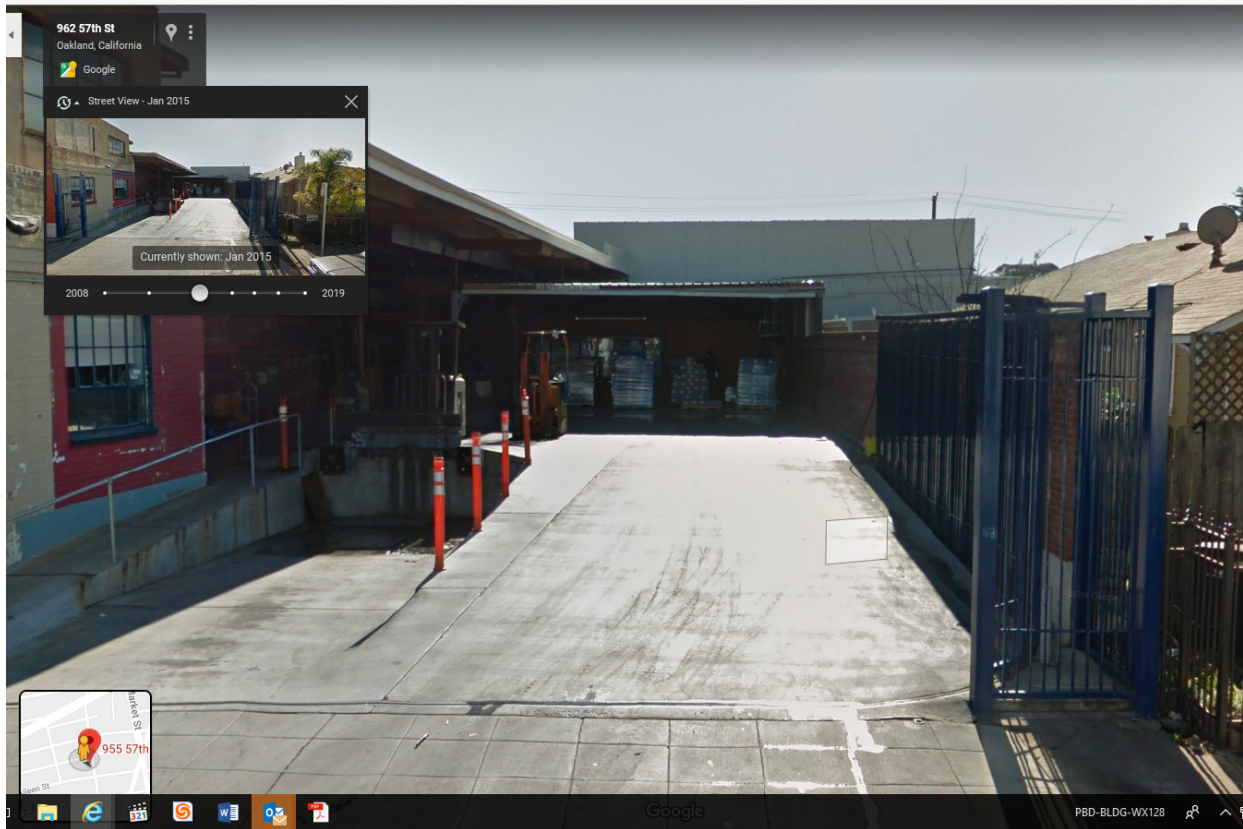


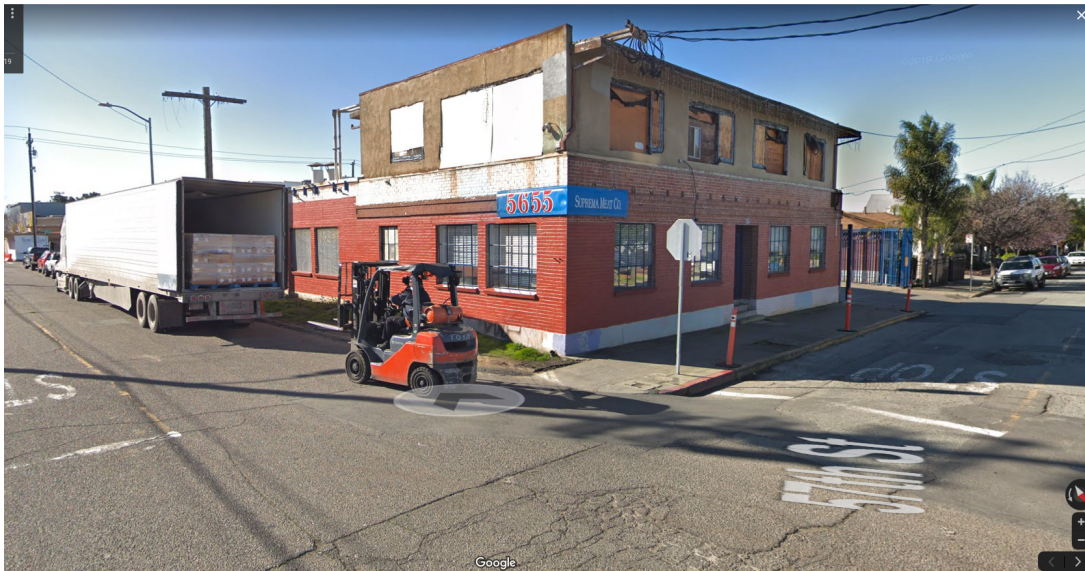




# Google Street View Pictures













**Picture from Appeal 2 Documents and December 22, 2015 Papadimos Group Noise Study**







**SMC**

Supreme Mail Co.  
CA 134698





Suprema Meat Co.

355

STOP

THERMO KING

SMC

6278382



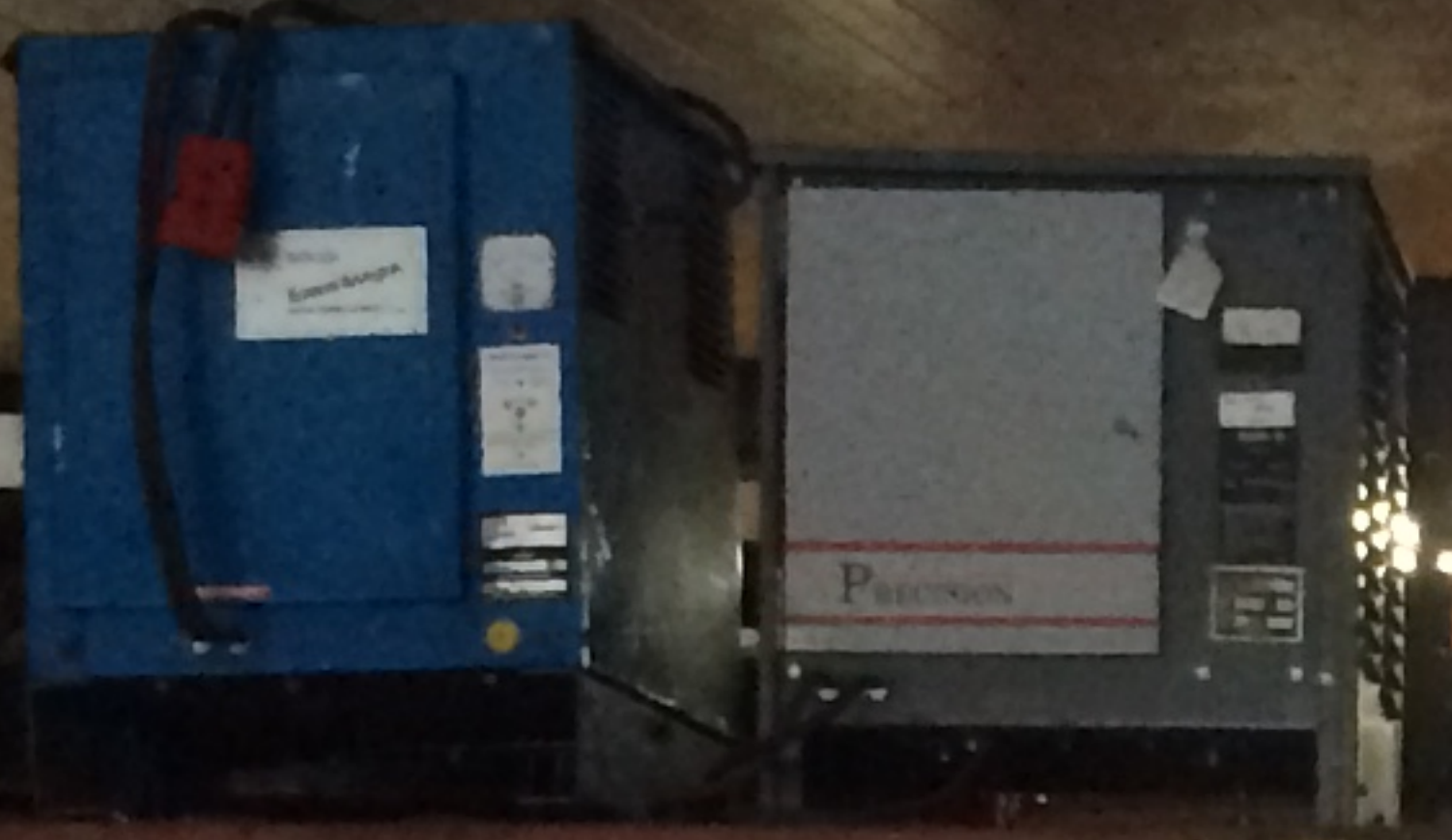
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26

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## **Proposed Revised Conditions of Approval**

This approval is subject to the following Conditions of Approval:

Revisions proposed after the decision letter was provided are in double underline and/or ~~strikeout~~ text

### **1. Approved Use**

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, letter, and plans dated March 31, 2015 and submitted on April 2, 2015, as amended by the following conditions of approval. Any additional use or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation for the approved plans, Conditions of Approval or use shall be require prior approval from the Director of Planning and Building or designee. This action by the Zoning Manager includes the following:

- I. Denial** of a Minor Variance to reduce side yard setback where 5 feet is required and 0 feet is proposed under Oakland Municipal Code Chapter 17.148 for the unpermitted expansion of the canopy structure;
- II. Approval** of a Minor Conditional Use permit for Open Non-Residential Facilities (unpermitted loading dock) under Oakland Municipal Code Chapter 17.134, and partial approval for the unpermitted expansion of the canopy (see I., above);
- III. Approval** of a Regular Design Review permit for the unpermitted loading dock and entry sliding gate/fence. It also includes approval for a new dock along Lowell Street and exterior alterations to the building under Oakland Municipal Code Chapter 17.136.

### **2. Effective Date, Expiration, Extensions and Extinguishment**

This Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire in **one (1) calendar year** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

### **3. Compliance with Other Requirements**

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

### **4. Minor and Major Changes**

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be

reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

**5. Compliance with Conditions of Approval**

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City’s Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

**6. Signed Copy of the Approval/Conditions**

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

**7. Blight/Nuisances**

The project site shall be kept in a blight/nuisance-free condition on an ongoing basis. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

**8. Indemnification**

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called “City”) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys’ fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

**9. Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

**10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

**11. Compliance Matrix**

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

**12. Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement (“p-job”) permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

**13. Graffiti Control****Requirement:**

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
  - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
  - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
  - iii. Use of paint with anti-graffiti coating.
  - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
  - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:

- i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
- ii. Covering with new paint to match the color of the surrounding surface.
- iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **14. Lighting**

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **15. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)**

Requirement: The project applicant shall implement all of the following applicable air pollution control measures during construction of the project:

- a. Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. Pave all roadways, driveways, sidewalks, etc. within one month of site grading or as soon as feasible. In addition, building pads should be laid within one month of grading or as soon as feasible unless seeding or soil binders are used.
- e. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- f. Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.
- h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations (“California Air Resources Board Off-Road Diesel Regulations”).
- i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer’s specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- j. Portable equipment shall be powered by electricity if available. If electricity is not available, propane or natural gas shall be used if feasible. Diesel engines shall only be used if electricity is not available and it is not feasible to use propane or natural gas.



When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **16. Asbestos in Structures**

Requirement: The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.

When Required: Prior to approval of construction-related permit

Initial Approval: Applicable regulatory agency with jurisdiction

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

#### **17. Archaeological and Paleontological Resources – Discovery During Construction**

Requirement: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.

In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.

In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**18. Human Remains – Discovery During Construction**

Requirement: Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**19. Construction-Related Permit(s)**

Requirement: The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

**20. Hazardous Materials Related to Construction**

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following:

- a. Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction;
- b. Avoid overtopping construction equipment fuel gas tanks;
- c. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d. Properly dispose of discarded containers of fuels and other chemicals;
- e. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and
- f. If soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City and applicable regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **21. Erosion and Sedimentation Control Measures for Construction**

Requirement: The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **22. Site Design Measures to Reduce Stormwater Runoff**

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged to incorporate appropriate site design measures into the project to reduce the amount of stormwater runoff. These measures may include, but are not limited to, the following:

- a. Minimize impervious surfaces, especially directly connected impervious surfaces and surface parking areas;
- b. Utilize permeable paving in place of impervious paving where appropriate;
- c. Cluster structures;
- d. Direct roof runoff to vegetated areas;
- e. Preserve quality open space; and
- f. Establish vegetated buffer areas.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

## **23. Source Control Measures to Limit Stormwater Pollution**

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged to incorporate appropriate source control measures to limit pollution in stormwater runoff. These measures may include, but are not limited to, the following:

- a. Stencil storm drain inlets "No Dumping – Drains to Bay;"
- b. Minimize the use of pesticides and fertilizers;
- c. Cover outdoor material storage areas, loading docks, repair/maintenance bays and fueling areas;
- d. Cover trash, food waste, and compactor enclosures; and
- e. Plumb the following discharges to the sanitary sewer system, subject to City approval:
- f. Discharges from indoor floor mats, equipment, hood filter, wash racks, and, covered outdoor wash racks for restaurants;
- g. Dumpster drips from covered trash, food waste, and compactor enclosures;
- h. Discharges from outdoor covered wash areas for vehicles, equipment, and accessories;
- i. Swimming pool water, if discharge to on-site vegetated areas is not feasible; and
- j. Fire sprinkler test water, if discharge to on-site vegetated areas is not feasible.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

#### **24. Construction Days/Hours**

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

#### **25. Construction Noise**

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.

- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

## **26. Extreme Construction Noise**

### ***a. Construction Noise Management Plan Required***

Requirement: Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

### ***b. Public Notification Required***

Requirement: The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.

When Required: During construction

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

## **27. Construction Activity in the Public Right-of-Way**

### ***a. Obstruction Permit Required***

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. ***Traffic Control Plan Required***

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. ***Repair of City Streets***

Requirement: The project applicant shall repair any damage to the public right-of way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**28. Construction and Demolition Waste Reduction and Recycling**

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at [www.greenhalosystems.com](http://www.greenhalosystems.com) or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

**29. Underground Utilities**

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**PROJECT SPECIFIC CONDITIONS****30. Semi-truck Delivery Management Plan (operating hours)**

*Within 90-days of final Zoning Approval for unpermitted improvements (i.e. this permit)*

The applicant shall schedule appointments to unload big-rig (semi-truck) deliveries one at a time along the Lowell Street dock between 7 am and 5 pm. No big-rig trucks delivering to Suprema may arrive anywhere on Lowell Street or within the immediate area prior to 7:00 am. Additional or early-arrival trucks must be held in reserve outside the residential area until the dock is clear. Trucks that are not being unloaded must remain at a lawful off-site location such as designated truck stops near the Port or freeways. No semi-trucks shall idle for longer than 2 minutes.<sup>1</sup> The applicant shall implement this delivery management plan with all delivery vendors.

When Required: Within 90 days of Approval of Zoning Permit (i.e. this permit) and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

**31. Transportation Improvements**

Requirement: The applicant shall submit a plan for a new sidewalk, curb and gutter and street trees on the west side of Lowell Street between 57<sup>th</sup> Street and Aileen Street adjacent to Suprema's building and shall install such improvements to City of Oakland standards pursuant to a public-improvements project, consistent with the following:

- a) 60 foot right of way, City improvements 2015-2017
- b) 42 foot right of way curb to curb; centerline to be adjusted by City
- c) 9-foot sidewalk to be installed with applicant assistance, including street trees
- d) Utility poles to be relocated at applicant cost, in concert with utilities and City Public Works, unless this condition (Condition 31d) is waived by Public Works
- e) Applicant to post signs, consistent with Condition 30, approved by City Public Works, regarding parking and unloading of trucks (time, place, manner) to minimize effects on neighbors; these signs are to be in the right-of-way on poles.

When Required: Plan submittal required prior to building permit issuance with completion of improvements within 90 days of building permit issuance;

Initial Approval: Bureau of Building; Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

**32. Washing of Trucks**

*Ongoing*

No washing of trucks shall occur on Suprema property including the property currently owned by Suprema located across Lowell Street from the warehouse. Truck washing shall occur at commercial truck washing facilities.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

**33. Streetscape Landscaping**

*Prior to issuance of building permit (or other construction-related permit)*

The applicant shall coordinate with the Public Works Department as appropriate to determine suitable landscaping to be installed, such as street trees. As part of submittal of revised plans, the applicant shall also propose landscaping to be installed adjacent to the two-story portion of the building along Lowell Street.

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<sup>1</sup> The two-minute window noted here and in Condition 38 is consistent with the City's updated 2018 Conditions of Approval.

When Required: Ongoing  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Building

#### **34. Gate Screening**

***Prior to issuance of building permit (or other construction-related permit)***

As part of submittal of a Small Project Design Review application and permit plans, the applicant shall install a 10' gate and propose screening material such as slats or solid materials with sound attenuating characteristics, behind the gate and fence system on 57<sup>th</sup> Street, and shall install screening material upon approval and as part of this permit.

When Required: Ongoing  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Building

#### **35. Street Improvements and Loading System**

***Prior to issuance of building permit (or other construction-related permit) and ongoing***

Plans shall be revised within 30 days of approval of this permit to indicate a new dock facility to accommodate ~~for~~ at least one delivery truck along Lowell Street (east elevation), and related public Right-of-Way improvements shall be made along the property's Lowell Street frontage (from 57<sup>th</sup> Street to Aileen Street) as needed to accommodate unloading of big rig trucks (semi-tractor trailer trucks). These public improvements shall be designed to City standards and shall include a sidewalk, curb, gutter, catch basins, pavement grade adjustments and any drainage improvements as needed per and to the satisfaction of the City Engineer (see COA #27). The construction of these improvements shall occur within 180 days of final zoning approval (or from the final decision under the City Appeal procedures, if applicable). Unloading of trucks on Lowell Street shall occur directly from the truck into the east side of the building. No unloading activity is allowed on 57<sup>th</sup> Street. The applicant shall install a buzzer at the Lowell Street loading dock to address pedestrian/vehicle safety conflicts. The volume of the buzzer shall comply with the Performance Standards in Planning Code Chapter 17.120 and shall not be used prior to 7:00 am.

When Required: Ongoing  
Initial Approval: Bureau of Planning and Bureau of Building  
Monitoring/Inspection: Bureau of Building

#### **36. Truck Loading**

***Ongoing***

The applicant shall not load/unload big rig trucks (semi-tractor trailer trucks) or any other trucks within the 57<sup>th</sup> Street right-of-way.

When Required: Ongoing  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Building

#### **37. Truck Parking**

***Ongoing***

No trucks owned or controlled by Suprema Meats Inc. shall park on 57<sup>th</sup> Street.

When Required: Ongoing  
Initial Approval: N/A  
Monitoring/Inspection: Bureau of Building

#### **38. Truck Delivery Management**

***Ongoing***

The applicant agrees to discontinue all outdoor forklift movement, delivery staging activities (i.e. movement of vehicles, equipment, and product into position for loading), vehicle loading and unloading activities, and vehicle



& equipment maintenance activities at the 57th Street open loading facility between the hours of **8 pm and 7 am (daily)**. The foregoing sentence excludes the movement of pre-loaded vehicles leaving on delivery, which shall be limited as follows: Suprema shall limit all delivery activity noise generated from Suprema's 57th Street open loading facility between 8pm and 7 am (daily) to two 3-minute windows of time during which a maximum of 3 pre-loaded delivery trucks can be started and can exit the property during each of the said 3-minute windows (maximum of 6 delivery truck exits total). Said 3-minute windows shall not occur before 5:00 am. No trucks shall idle for longer than 2 minutes.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

### **39. Modification of unpermitted portion of canopy structure within 5' setback area**

#### *Prior to issuance of building permits*

Plans shall be revised within 30 days of approval of this permit to indicate the removal of the five-foot (5') section of canopy roof and any supporting appurtenances along the west perimeter of the property. Removal of the 5' section shall occur within 90 days of approval of this permit. Canopy and vertical wall elements may be constructed outside the 5' side setback and at the original 9-10' height.

When Required: Ongoing

Initial Approval: Bureau of Planning and Bureau of Building

Monitoring/Inspection: Bureau of Building

### **40. Acoustical Buffering and Noise Prevention**

The applicant shall install, with permits, acoustical buffering and baffling below metal shade structures to limit the extent of noise which bounces off the structure toward residential properties. The applicant shall follow the recommendations of the 2014~~5~~ Wilson and Ihrig noise study on file with the Zoning Manager which are incorporated herein by reference, including but not limited to:

- a. Sound barrier walls around all existing rooftop refrigeration units
- b. Seal gaps between sound barrier walls and roofs
- c. Provide airfoil fan blades on condensers
- d. Install mufflers on compressors
- e. To reduce noise from positioning loaded pallets inside the trucks with pallet jacks or forklifts, equip the delivery trucks with ½" thick 60 durometer rubber or neoprene mat, 1/8" thick steel plates over the top and hang blankets around the sides.
- f. To absorb sound radiated from underneath the bottom of the truck box, treat the walls of the loading dock with acoustical treatment.

When Required: Prior to final inspections of building permits and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

### **41. Permit Binding on Successors**

Suprema hereby agrees that the conditions stated herein will be incorporated as terms of any agreement to lease, or sell the real property, any agreement to sell purchase and sale or transfer the business operating at the site that may be entered into between them and all potential lessee/purchaser for the Property or the business. Suprema further agree that their successors in interest, assigns, heirs and transferees will be bound by obligations herein, and they likewise will attach and incorporate all conditions stated herein into any lease or purchase and sale agreement for the Property or the business.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

**42. Enforcement**

*Within 90-days of final Zoning Approval for unpermitted improvements (i.e. this permit)*

The project applicant shall install/maintain at least two (2) video cameras along Lowell Street and one (1) on 57<sup>th</sup> Street with specific locations to be approved by the Zoning Manager, to monitor truck movements as well as the other Conditions. The video tapes shall include date and time information and shall be made available to the Zoning Manager and Inspections Manager for review upon request. If the tapes disclose violations of this or other conditions, the Zoning Manager and/or Inspections Manager or designee shall require compliance and may begin revocation proceedings if more than three violations are verified in any 30-day period.

When Required: Within 90 days of Approval of Zoning Permit (i.e. this permit) and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

**43. Compliance Plan**

While this approval may address or supersede some measures within the Compliance Plan signed by the applicant on October 20, 2014, the Compliance Plan is a stand-alone document and compliance with the Plan shall still be required.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Planning and/or Bureau of Building

**Applicant Statement**

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

\_\_\_\_\_  
Name of Project Applicant

\_\_\_\_\_  
Signature of Project Applicant

\_\_\_\_\_  
Date

# Golden Gate Community Association Appeal

Case File No. PLN14-303

Suprema Meat Co.

955 57<sup>th</sup> St.



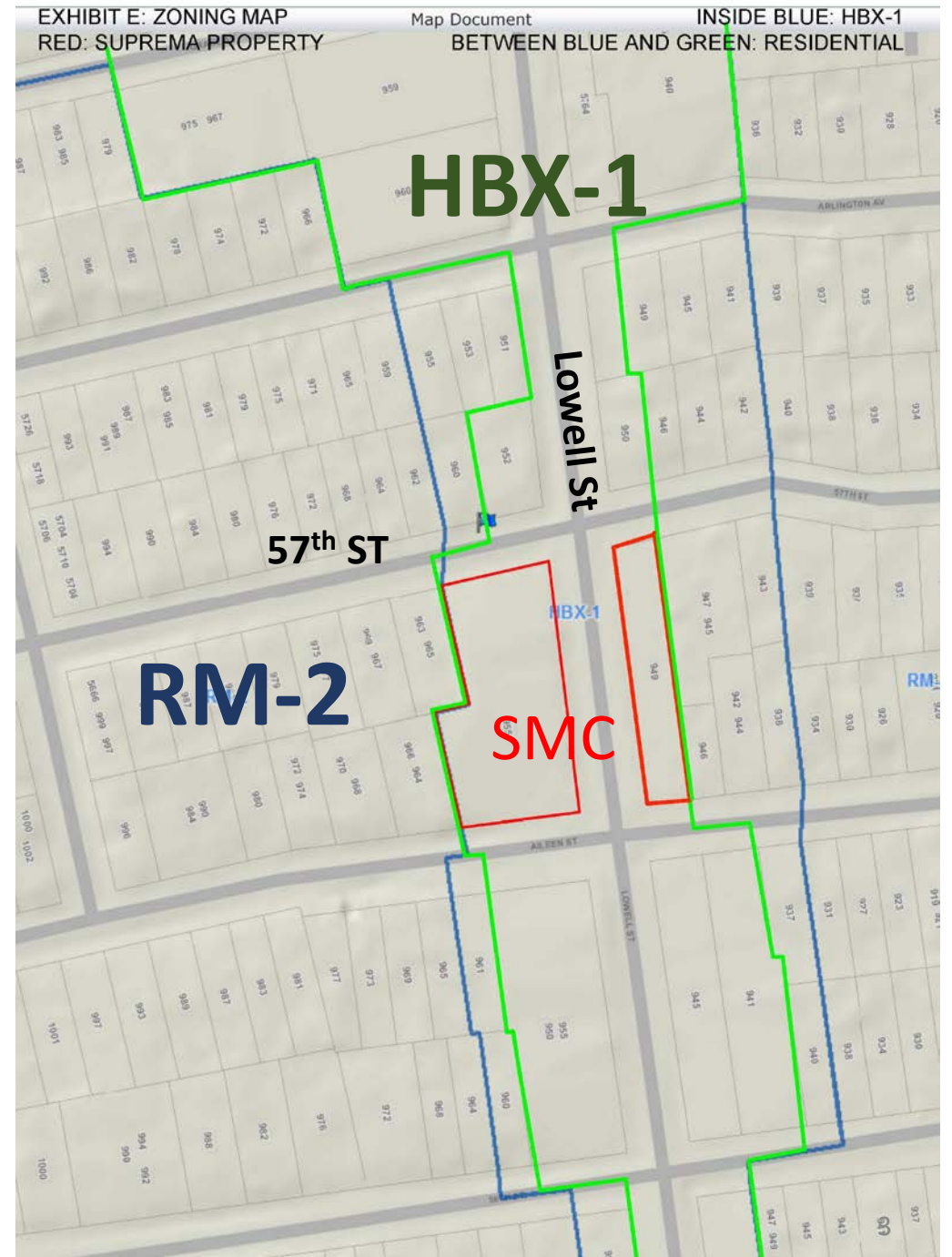
**Oakland Planning Commission Hearing**

**December 18, 2019**

# Why are we appealing Planning decision?

1. Approvals will legalize a growing public nuisance
2. City's findings that project meets CUP and other criteria are an abuse of discretion, biased in favor of Suprema
3. Conditions of approval are inadequate for addressing noise and other nuisances
4. Allows for years of additional delays through extensions, appeals, lawsuits
5. Burden of monitoring and reporting violations continues to fall on residents

Approval of CUP will only serve to prolong and legalize a public nuisance in a rapidly changing residential neighborhood



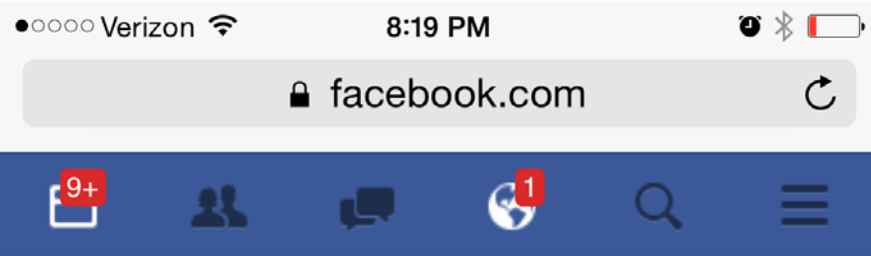
# Noise from open facility next to homes



# Big rig queuing, takeover of streets as an extension of company yard



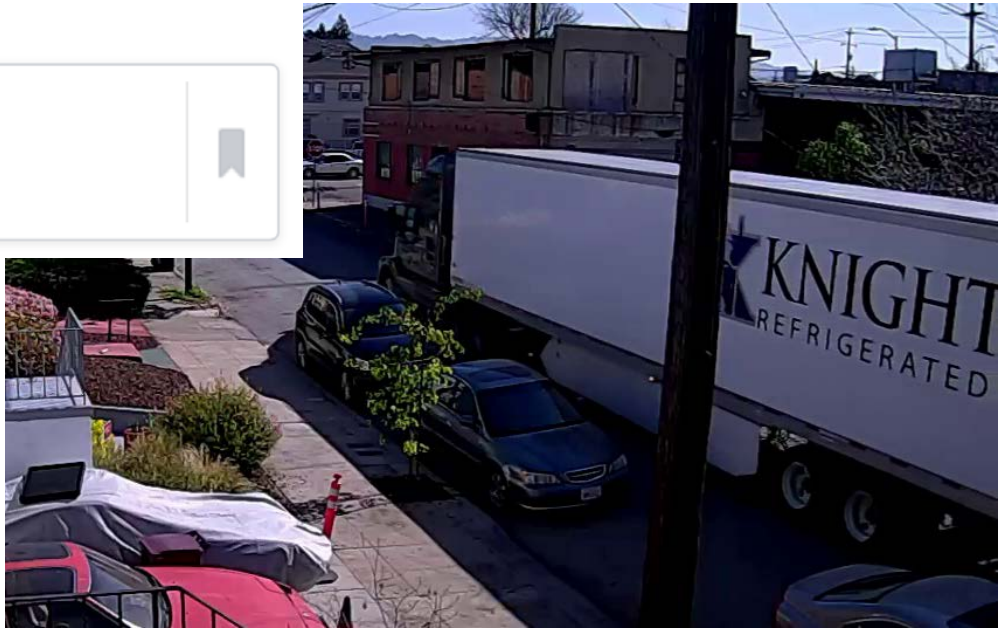
# Big rig traffic on narrow residential streets



**Bernie Dickey at Suprema Meat Co**  
March 8 at 7:03am · Oakland, CA · 🌐

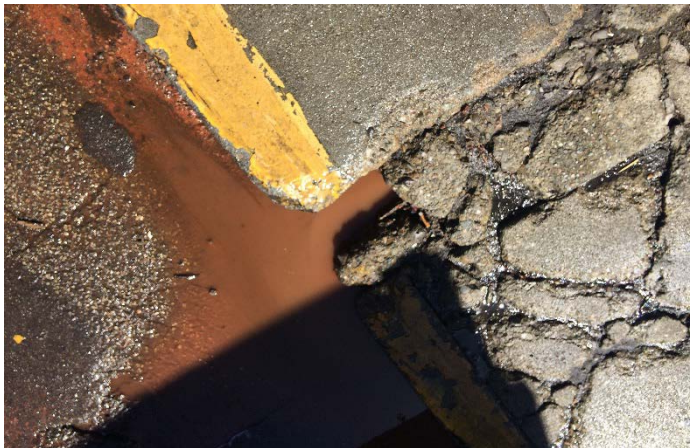
Definitely not a place this truck should be, in the middle of a old residential neighborhood in Oakland with bike paths for streets.

 **Suprema Meat Co**  
★ ★ ★ ★ ★  
Cargo & Freight





# Chronic and severe blight



# A business can't expect to expand without limit and be "grandfathered in"

- City decision claims insufficient evidence of business expansion
- Original findings of business expansion not mentioned
  - Sufficient evidence despite Suprema's refusal to provide documents
  - Rescinding determination under appeal and pressure from Suprema is not equivalent to there being insufficient evidence

# A business can't expect to expand without limit and be "grandfathered in"

- By City's own admission, Suprema's operations have not been previously restricted or monitored
  - M-30 zone required open facilities within 400 feet of a residence comply with:
    - Performance standards, including for noise
    - Screening to shield residential from industrial uses

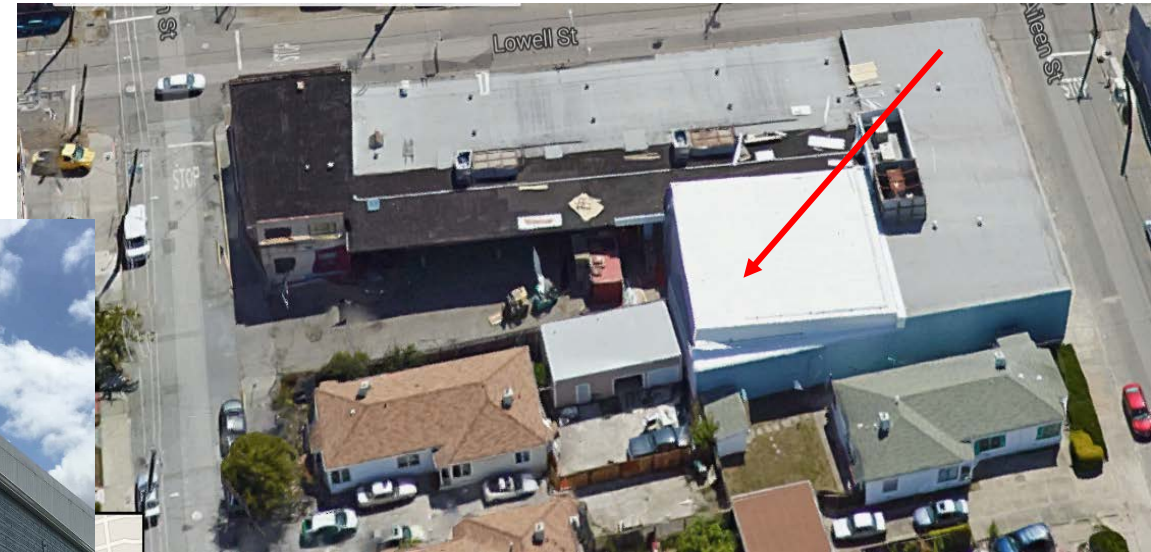
# Proposal fails to mention additional construction projects without permits

10 foot cinderblock wall built on residential property line without required 5 foot setback



# Proposal fails to mention additional construction projects without permits

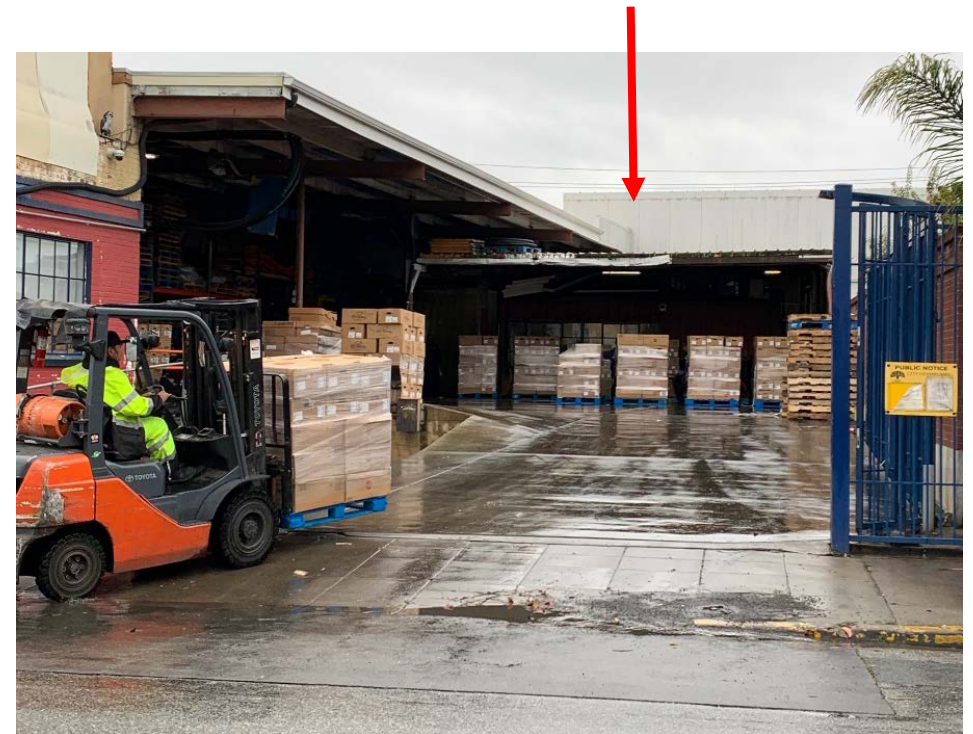
- 2800 square foot freezer with rooftop mechanical equipment
- Nearly doubled warehouse elevation on residential property line
- Appears to have replaced administrative space
- Residents deprived of City design review, public comment



# City's findings that CUP and other criteria met are an abuse of discretion, biased in favor of Suprema

- CUP/general use permit:
  - Location, size, and operating characteristics **WILL** adversely affect livability of abutting properties
  - Lowell and surrounding residential streets cannot accommodate increasingly large semi-trucks

Canopy expands warehouse  
→ increased outdoor product staging  
→ more noise





# City's findings that CUP and other criteria met are an abuse of discretion, biased in favor of Suprema

- HBX design guidelines:
  - 2,800 square foot freezer elevation, 10 foot high cinder block wall, and canopy:
    - All built on residential property line without required setback
    - Do **NOT** provide transitions from existing patterns, respecting light and air of residential properties



# City's findings that CUP and other criteria met are an abuse of discretion, biased in favor of Suprema

- Not exempt from CEQA review:
  - 2,800 square foot freezer elevation is **NOT** a “minor alteration” to immediately adjacent neighbors
  - Nothing in the conditions of approval to prevent Suprema from continuing to expand business operations
  - Increased capacity for loading delivery trucks on Lowell in addition to 57<sup>th</sup> St
  - Conditions of approval actually **increase** hours of operation from 5 pm (stated in Suprema's application) to 8 pm

# Conditions of approval, even if faithfully executed, inadequate to mitigate noise and nuisance

- Semi-truck delivery management, hours (7 am – 5 pm)
  - Not feasible, even with notification of carriers, to prevent queuing and parking overnight with refrigerator engines running
  - Require Suprema to monitor Lowell St entry points, re-direct big rigs arriving before appointment time or after hours (e.g., Stanford Ave, 57<sup>th</sup> St, 53<sup>rd</sup> St)
- Unclear what “new dock facility for at least one delivery truck along Lowell” means
  - Require new loading facility **inside** existing warehouse, consistent with compliance plan

# Conditions of approval, even if faithfully executed, inadequate to mitigate noise and nuisance

- Acoustical buffering and gate screening – open facility
  - Measures cannot adequately mitigate staging and truck loading noise that exceeds legal limits
    - Wilson & Ihrig (acoustical engineers) conducted a noise study and recommended completely enclosing open facility
- Sidewalk required only on west side of Lowell St
  - Pedestrians are expected to walk through big rig unloading area, in the path of forklifts
    - Second sidewalk is needed on east side

# Conditions allow Suprema years of further delay with extensions, appeals, and lawsuits

- Allowing Suprema to:
  - Continue operating out of unpermitted open facility next to homes
  - Avoid implementing any conditions of approval
  - Keep canopy and cinderblock wall on the residential property line
  - Avoid construction required by compliance plan to reduce nuisance
    - Lowell Street access with loading area, enclosed loading dock, sidewalk
  - Maintain current blighted conditions

# Suprema's actions to date demonstrate unwilling to work in good faith with Neighbors and City

- Ignoring letter from 30 residents requesting relief from noise and nuisance
- SLAPP threats (one filed) against residents who dare to report nuisance and violations
- Aggressively confronting and intimidating residents documenting violations
  - Noise readings, photos, videos

—  
**LAW OFFICES**  
OF  
**STEVEN J. HASSING**  
—

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

**RE: INTENDED LITIGATION**

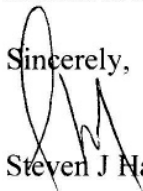
January 21, 2014

[REDACTED]

I have been retained by Suprema Meats, Inc. to prosecute litigation against you based upon tortuous interference with business relations, defamation and conspiracy. I have begun an investigation into your activities as they relate to Suprema. I will be filing the lawsuit against you---and likely against others in your group---as soon as I am able to assure Suprema that your wrongful conduct provides legal cause for the filing of a viable action.

You might want to consider ceasing and desisting further intentional and malicious actions which cause damage to Suprema.

Sincerely,

  
Steven J Hassing

cc: Suprema Meats, Inc.

# Suprema's actions to date demonstrate unwilling to work in good faith with Neighbors and City

- Forklift aggression by Suprema's owner
  - Moving a resident's legally parked vehicle down the street
  - Driving loaded forklift to resident's home to deliver threats
- Violating compliance plan about 8 months with 4-7 am truck loading in open facility
- Appealing virtually every notice of violation and fine
  - Compliance plan, City codes

# Suprema's actions to date demonstrate unwilling to work in good faith with Neighbors and City

- Filing two lawsuits against the City
  - Against hearing officer for upholding fines for 4-7 am loading based on video evidence (dismissed)
  - To get out of compliance plan (Mar 2020 settlement conference, trial set for Nov 2020)
- Submitting public records act requests for all Suprema related emails, diverting City staff and resources:
  - High level City officials from Planning, Building, Nuisance Abatement, Traffic departments
  - Over 100 residents who submitted letters opposing permits

# Burden of monitoring and reporting violations continues to fall to residents

- Requires Suprema to place cameras on Lowell and 57<sup>th</sup> St for City to monitor truck movements and compliance with conditions
  - Unlikely staff will put in time required to review hours of footage
- Conditions allow a free pass for 3 violations / month
  - If more than 3, City “may” begin revocation proceedings
  - Why are ANY violations allowed?



# Burden of monitoring and reporting violations continues to fall to residents

- City reserves right to initiate civil or criminal proceedings, alter conditions, in case of code violations or public nuisance
- Why should we expect enforcement?
  - By City's own admission, fines issued for only a small subset of compliance plan violations
  - City hasn't enforced compliance plan since May 2017, settling rather than going through with another appeal
  - City has track record of:
    - Not investigating complaint cases for years
    - Closing cases without giving a reason or claiming no violation found

# What does the community need from the PC and City?

1. Re-open investigation into business expansion – compel Suprema to open their books
2. Overturn the CUP – require the open facility to be enclosed
3. Investigate the legality of the 10 foot cinderblock wall and the 2,800 square foot freezer
4. Impose additional conditions of approval to mitigate noise and traffic
5. Revise conditions to not allow years of further delay with extensions, appeals, and lawsuits
6. Ensure City (not residents) monitors and enforces permit requirements, compliance plan, and all municipal codes, including for nuisance – no free pass for 3 violations / month

