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Via First Class Mail & Electronic Mail

Alameda County Board of Supervisors
delivered to Alameda County Planning Department
224 West Winton Avenue, Room 111
Hayward, CA 94541

RE: Project PLN2019-00024 - Appeal of Notice of Determination

Dear Supervisors Miley, Carson, Chan, Chauhan, Haggerty, Lopez, and Valle,

Please consider the community's appeal to not allow project PLN2019-00024, and withdraw the County's untimely Notice of Determination (NOD). The community wishes to stop this development or to drastically reduce its development intensity as required by laws, ordinances, policies, and goals, including the Castro Valley General Plan Biological Resources Overlay Zone.

The County has accordingly issued an untimely NOD for the Eden Housing development in Castro Valley, and the NOD must be withdrawn. The issuance of the NOD evinces an intent to illegally predetermine that the project should be approved before the CEQA process is complete. Accordingly, we write to request that the NOD be withdrawn, and all project operations and/or construction pursuant to the project be halted immediately.

The SRD has been suspended by operation of law due to the pending appeal. Per Alameda County Municipal Code § 17.54.70, "[a]n appeal may be taken to the board of supervisors within ten days after the date of any order made by the planning commission, the planning director, or the board of zoning adjustments...[f]iling such notice shall stay all proceedings in furtherance of the order appealed from."

Accordingly, withdrawal of the NOD is appropriate. CEQA requires that a NOD be filed only "after [an] approval or determination becomes final." Pub. Res. Code § 21152(a); *see also* CEQA Guidelines § 15075(d). Because the Planning Commission's decisions have been timely appealed to the Board of Supervisors, final "approval" of the Project has not yet occurred. CEQA Guidelines § 15352(a) (defining "approval" as decision "which commits the agency to a definite course of action in regard to a project"). Only after holding a public hearing and conducting a *de novo* review of the Planning Commission's actions may the Board of Supervisors reach a final decision on the Project. *See* Gov. Code §§ 65903 (appellate body "may reverse or affirm, wholly

or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision, or determination as should be made, and such action shall be final”), 65905 (requiring appellate body to hold public hearing on appeal of CUP approval). The Planning Commission’s actions are no longer final and cannot be given any legal effect. *Cf. McAllister v. County of Monterey*, 147 Cal. App. 4th 253, 274 (2007) (*de novo* appellate review “takes the place of and completely nullifies” prior county decision); *Alta Loma School Dist. v. San Bernardino County Com. on School Dist. Reorganization*, 124 Cal. App. 3d 542, 555-556 (1981) (judicial review must await final decision of appellate body following *de novo* review).

A NOD filed prior to final Project approval is legally invalid. *See Coalition for Clean Air v. City of Visalia*, 209 Cal. App. 4th 408, 423-25 (2012); *County of Amador v. El Dorado*, 76 Cal. App. 4th 931, 965 (1996). Indeed, in a recent case strictly construing CEQA’s notice requirements, the California Supreme Court recognized that an agency may not “file a [NOD] *in advance of* an actual project approval, then proceed unmolested to approve the project at its leisure, free of environmental challenges.” *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 501 n.10 (2010) (emphasis in original). Moreover, the existence of the NOD evinces an intent to illegally prejudge/predetermine that the project should be approved before CEQA process is complete. As the Supreme Court has noted, “The full consideration of environmental effects CEQA mandates must not be reduced ‘to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.’” *Save Tara v. City of West Hollywood* (2008) 45 C4th 116, 135, citing *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.

CEQA, the CEQA Guidelines, and the controlling case law all make clear that the CUP and NOD lack any legal effect. Nonetheless, in the interest of avoiding any unnecessary costs or misunderstandings related to the validity or effect of the NOD, I request that the County formally withdraw the NOD pending resolution of the appeal and final County action on the Project.

The communities within and surrounding Castro Valley demand the complete review of the Eden Housing development under the law. We urge the Board of Supervisors and Planning Commission to fully consider the project’s impacts on the community’s enjoyment of open space and the natural resources of Ruby Meadow.

Sincerely,



Jason R. Flanders
ATA Law Group
On behalf of
Grove Way Neighborhood Association
Friends of San Lorenzo Creek