This AGENDA contains a brief general description of each item to be considered. The posting of the recommended actions does not indicate what action may be taken. If comments come to the City Council without prior notice and are not listed on the AGENDA, no specific answers or response should be expected at this meeting per State law.

Pursuant to the Government Code Section 54954.3 (The Brown Act), members of the public shall be afforded the opportunity to speak on any agenda item of interest to them provided they are first recognized by the presiding officer. Members of the public wishing to be so recognized are requested to submit a completed speaker card to the City Clerk prior to the consideration of the item.

Those wishing to address the Council on any matter for which another opportunity to speak is not provided on the AGENDA but which is within the jurisdiction of the City Council to resolve may come forward to the podium during the “COMMUNITY FORUM” portion of the AGENDA.

Members of the public have the right to speak on any item on this agenda. Those wishing to address the Council: 1) during the Community Forum are limited to three minutes pursuant to Vallejo Municipal Code Section 2.02.310; 2) on a Consent Calendar item are limited to three minutes pursuant to Vallejo Municipal Code Section 2.02.310; and an Action Calendar item are limited to five minutes pursuant to Vallejo Municipal Code Section 2.02.420.

Notice of Availability of Public Records: All public records relating to an open session item, which are not exempt from disclosure pursuant to the Public Records Act, that are distributed to a majority of the City Council will be available for public inspection at the City Clerk's Office, 555 Santa Clara Street, Vallejo, CA at the same time that the public records are distributed or made available to the City Council. Such documents may also be available on the City of Vallejo website subject to staff's ability to post the documents prior to the meeting. Information may be obtained by calling (707) 648-4527, TDD (707) 649-3562.

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Vallejo City Council Chambers ADA compliant. Devices for the hearing impaired are available from the City Clerk. Requests for disability related modifications or accommodations, aids or services may be made by a person with a disability to the City Clerk's office no less than 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof.

Both the May 30th and June 10th meetings are scheduled to begin at 5:00 p.m. with a tentative ending time of 12:00 a.m., and will be held in the Council Chambers at 555 Santa Clara Street, Vallejo, CA. Overflow seating will be available in both the Joseph Room located on the Second Floor and the Vallejo Room located on the First Floor of the John F. Kennedy Library, 505 Santa Clara Street, Vallejo, CA. There will be no seating available on the First Floor of City Hall. The tentative schedule for both meetings will be as follows:

4:30 p.m. – Rooms open for seating; speaker cards available and accepted**
5:00 p.m. – Meeting begins
7:30 p.m. – End of speaker card acceptance
7:30 p.m. – (Tentative) – 30 minute dinner break
12:00 a.m. – (Tentative) – Meeting ends (subject to the discretion of the City Council)

**No speaker cards will be accepted on June 10th if the public hearing for the item is closed on May 30th.

Staff will be available in all three seating locations to assist the public in finding available seating, distribute and collect speaker cards, and enforce room capacities. The Council Chambers has a maximum seating capacity of 195 persons; the Joseph Room has a maximum seating capacity of 150 persons; and the Vallejo Room has a maximum seating capacity of 350 persons.

Speaker cards will be available at all three locations and may be turned into to staff at all three locations. During the public hearing portion of the meeting, names will be called in groups of five to eight at a time to allow speakers time to walk from the two overflow rooms to the Council Chambers. At the Mayor’s discretion, speakers may be limited to less than five (5) minutes due to the large number of anticipated speakers. Please note that speakers may not give any part of their time to another speaker.
CALL AND NOTICE OF SPECIAL MEETING
AT 5:00 PM
OF THE VALLEJO CITY COUNCIL
MAY 30, 2019

TO THE MEMBERS OF THE VALLEJO CITY COUNCIL:

You are hereby notified that I do hereby call the Vallejo City Council in special session to consider only the matters stated on the agenda listed below.

NOTICE: Members of the public shall have the opportunity to address the City Council concerning any item listed on the agenda before or during consideration of that item. No other items may be discussed at this special meeting.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. ACTION CALENDAR
   A. VALLEJO MARINE TERMINAL LLC AND ORCEM CALIFORNIA, PROJECT APPEAL OF PLANNING COMMISSION DENIAL
      Recommendation: Adopt a resolution (Attachment 1) making findings and upholding the Planning Commission’s denial of the Vallejo Marine Terminal, LLC (VMT) and Orcem California, Inc (Orcem) Project (VMT/Orcem Project).
      Contact: Afshan Hamid, Planning Manager (707) 648-4382
      afshan.hamid@cityofvallejo.net

5. ADJOURNMENT

Dated: Wednesday, May 22, 2019

Bob Sampayan, Mayor

I, Dawn Abrahamson, City Clerk, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Vallejo City Council, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 5:00 p.m., Wednesday, May 22, 2019.

Dated: Wednesday, May 22, 2019

Dawn G. Abrahamson, City Clerk
DATE: May 30, 2019
TO: Mayor and Members of the City Council
FROM: Afshan Hamid, Planning Manager
Planning & Development Services
SUBJECT: VALLEJO MARINE TERMINAL LLC AND ORCEM CALIFORNIA, PROJECT APPEAL OF PLANNING COMMISSION DENIAL

RECOMMENDATION
Adopt a resolution (Attachment 1) making findings and upholding the Planning Commission’s denial of the Vallejo Marine Terminal, LLC (VMT) and Orcem California, Inc (Orcem) Project (VMT/Orcem Project).

REASONS FOR RECOMMENDATION
The VMT/Orcem Project is not compatible with its surrounding neighborhoods and would impose unacceptable significant and unavoidable environmental air quality, height, cultural resource, greenhouse gas, noise, transportation and traffic impacts on Vallejo residents.

- Impact 3.2-2: Operation of the proposed project result in an exceedance of the Bay Area Air Quality Management District (BAAQMD) NOx threshold
- Impact 3.2-4: The proposed project would exceed the BAAQMD threshold for NOx emissions
- Impact 3.4-2: Implementation of the proposed project would result in a significant impact on historic architectural resources due to the loss of the Sperry Flour Mill Historic District associated with demolition of the flour mill, grain silos, and dock
- Impact 3.6-1: The proposed project would exceed the BAAQMD CEQA level of significance of 10,000 metric tons carbon dioxide equivalent per year
- Impact 3.6-2: It cannot be guaranteed that the proposed project would be consistent with the overarching objective of the City’s Climate Action Plan (CAP)
- Impact 3.6-3: It cannot be guaranteed that the proposed project would be consistent with the overarching objective of the City’s CAP to achieve the reduction targets as established for 2020 and 2035, or the state’s GHG reduction goals for 2030 and 2050 because the City’s adopted CAP does not cover marine and rail operations
- Impact 3.12-2: The proposed project would cause substantial delays and queues at rail crossings (delays of over 1 minute during peak hours, or queues that block upstream intersections during the day and early evening when traffic volumes are at or near their peak hour levels) relative to delays and
queues without the project.

- Impact 3.12-5: The proposed project would have a substantial effect on emergency access, based on the potential delays generated by train crossings at the grade crossings in Vallejo, American Canyon, and crossings further north

In addition, despite Council’s direction to staff to finalize the EIR so that Council can consider certifying it, applicants have ceased providing city staff with information and documents that are necessary to finalize the EIR.

BACKGROUND AND DISCUSSION

Project Application

VMT and Orcem applied as joint-applicants on September 5, 2013 for a cement processing plant project. There are two components to the application, each one described further below. The VMT application was executed by Blaise Fettig and the Orcem application was executed by Steve Bryan. Per City requirements, Blaise Fettig also signed both applications on behalf of VMT as the property owner. The project as proposed requires specific entitlements under the Vallejo Municipal Code: a Major Use Permit (VMC §16.34.040(B)(1)), Site Development Plan (VMC §16.90.80), Height Exception (§16.80.90), and certification of a Final Environmental Impact Report under CEQA.

Project Location

The site of the proposed project occupies approximately 31.4 acres located at 790 and 800 Derr Street in the southwestern portion of the City of Vallejo, California, frontline the Mare Island Strait. The site includes ~26 acres owned by VMT and ~4.8 acres of public trust land leased from the City. This combined project site is regionally accessible to vehicular traffic from Interstate Highways 80 (I-80) and 780 (I-780) via State Highway 29 (SR-29 or Sonoma Boulevard), Curtola Parkway and Lemon Street, to Derr Street. It is also accessible for all transportation via the Union Pacific rail line network operated by California Northern Railroad that extends along the Vallejo waterfront, as well as for shipping transportation via the adjoining proposed deep-water terminal included as part of the VMT component of the project.

Project Summary

The VMT project component would re-establish industrial uses on 26.52 acres, designated as the VMT site located at 790 and 800 Derr Street. The VMT component would involve the removal of a deteriorated timber wharf and construction of a modern deep-water terminal, including wharf improvements, laydown area, and trucking and rail connections, primarily servicing the import and export of bulk and break-bulk commodities. Construction of the terminal would require fill and dredging activities in the water. Some construction elements, such as demolition of the former General Mills Warehouse Building and connected Bakery Bulkhouse, and construction of rail improvements, are tied to market demand. In addition to the construction and operation of this modern terminal, the VMT component would reuse several of the existing buildings formerly occupied by General Mills. Buildings and structures to remain would be used by VMT for administrative office and commercial office consistent with the City’s Intensive Use zoning district. VMT
terminal is anticipated to handle a wide variety of commodities including feed grains, manufactured steel, timber, lumber, rock, aggregate, ores, granulated blast furnace slag (GBFS), portland cement clinker material, pozzolan, gypsum, limestone, portland cement, gypsum and other related materials.

The Orcem component of the project would involve construction and operation of an industrial facility for the production of GBFS, a high performance, lower-emission alternative for the traditional portland cement material used in most California construction projects. The Orcem component would involve construction of approximately 73,000 square feet of buildings, equipment, and enclosures, together with outdoor storage areas, on a 4.88-acre portion of the former General Mills plant site leased from VMT. The Orcem component of the project would operate as a General Industrial Use because it does not involve use of radioactive materials, petroleum refining, or the manufacture of explosives, and would not result in high levels of sewage discharge.

Planning Commission

On February 27, 2017, the applicant appeared before the Planning Commission. City staff recommended denial of the joint-applicant VMT/Orcem Project to Planning Commission based on concerns about significant and unavoidable air quality, height, cultural resource, greenhouse gas, noise, transportation and traffic impacts.

On March 6, 2017, the Planning Commission denied the project (Planning Commission Documents). The Draft Final EIR was not completed or certified under CEQA (Cal.Code.Regs.tit.14§15270). The applicants requested an appeal of the Planning Commission’s decision from City Council.

May 2017 City Council Appeal

On May 30, 2017 and June 1, 2017, the City Council received the staff report and reviewed the Planning Commission’s decision of denial at an appeal hearing. Staff recommended to City Council the following:

- Deny the applicant's appeal and uphold the Planning Commission's decision to deny the Major Use Permit and Site Development Plan.
- Deny the applicant's request to direct corrections of alleged errors in the uncertified Draft Final EIR
- Deny the applicant's request to schedule a separate City Council hearing to certify the amended Final EIR

Staff re-iterated concerns related to significant and unavoidable air quality, traffic, cultural resource, height, greenhouse gas, noise, transportation, and traffic impacts. Staff detailed the issues of:

- negative neighborhood character
- substantial daily truck trips and the impact on the local community's transit to and from work and school
- the new rail traffic and the significant delays for emergency vehicles at City intersections and vehicle response time
• previous and current General Plan policies regarding pedestrian and bicycle access on Sonoma Boulevard and Lemon Street
• negative impacts associated from truck traffic for pedestrians to Grace Patterson Elementary School
• impact on the physical capacity and infrastructure of City streets
• incompatibility with the City's General Plan Waterfront Policy 1 for enjoyable public access
• degradation of the visual appearance of the waterfront

An appeal hearing at City Council was held on May 30, 2017 and June 1, 2017. City Council neither upheld nor rescinded the Planning Commission denial, but rather requested that staff finish the FEIR and bring a final project description back to Council for consideration (City Council Resolution).

**Revised Project Description and Significant Impacts**

Since the June 1, 2017 City Council meeting, the City’s contracted environmental consultants and applicant's project manager Dick Loewke worked on a project description which underwent multiple revisions and was provided to the City on October 13, 2017. The “Revised Operations Alternative” (ROA) became the project description (Project Description). This was finalized and posted by the City October 30, 2017.

The negative effects on neighborhood character from proposed truck trips remains a concern, as the revised project directs 233 round trips (or 442 one-way daily trips, per 2018 “Revised Operations Alternative”, or ROA) in a low-density, single-family residential neighborhood. Lemon Street, the main route for trucks headed to and from points east and north, is a locally-serving roadway providing access to homes and small businesses. The high volume of trucks arriving to and departing from the project site on a 24-hour basis would substantially increase noise, traffic, and generate air emissions that would negatively alter the character of the existing residential neighborhoods along Lemon Street and Sonoma Boulevard and would have a harmful effect on the desirability of the neighborhood and the character.

The increased truck traffic would also result in negative impacts to pedestrian access to educational and recreational facilities in the area. Lemon Street is used as a route to access Grace Patterson Elementary school, which is within 0.3 miles of the project site, and Lake Dalwigk Park, which is located on Lemon Street. The heavy truck traffic has the potential to change the physical character of the street and make it more difficult for pedestrians, including children, to cross Lemon Street and Sonoma Boulevard as they travel by foot to and from school and the park.

The new rail traffic associated with the Project would create significant delays at City intersections, and the revised ROA would still generate trains with an estimated 50 rail cars. Although this is a reduction from the previous 77 cars, this reduction in train length would result in an increase in the frequency of trains. The proposed ROA would cause substantial delays and queues at rail crossings of over 1 minute, with a total estimated response time of 11.16 minutes. The Project would negatively impact emergency services, and the Vallejo Fire Department would require additional funding to maintain acceptable levels of emergency response and inspection services City-wide.

During the ROA finalization, the City and applicants' team also discussed the process for finalizing the FEIR and if re-circulation was necessary. During the same period, the City discussed a rent tolling agreement and
rent for the VMT and City Lease (VMT/City Lease). At this time, environmental consultant agreements indicated a negative balance and additional funds were required to complete the environmental review. In November 2017, staff provided Council an update and request for consultant contract extensions. This request was denied by Council because the applicants were in arrears. Council directed staff to obtain all outstanding debts from the applicants. Negotiations on updating the reimbursement agreement and funding took two months to resolve. On January 9, 2018, City Council authorized the City Manager to execute amendments to consultant agreements that would allow for the completion of the FEIR. Council approved the scopes of services and required any changes return to Council for approval as well as a full deposit from the applicants if any subsequent scope amendments were necessary.

Since January of 2018, series of different events have prevented the City from being able to finalize the DFEIR. A series of communications from State regulatory agencies called into question the sufficiency of the Final Draft EIR. Staff believes that these issues must be responded to and addressed in order to move forward. The City solicited VMT’s assistance and collaboration. However, a lack of participation in the response and funding necessary to do this has resulted in a permanent pause with regard to project processing. Key issues raised by regulatory agencies are set forth below. For a more extensive timeline and overview please see the timeline in attachment 3. Staff has summarized the key outstanding issues that remain and reasons as to why the VMT/Orcem Project joint-application appeal is being recommended for denial.

California Department of Justice – Attorney General alleges that the DFEIR is inadequate and says the Environmental Justice Analysis is misleading

On November 7, 2018, Xavier Becerra, Attorney General of the State of California, submitted a letter to the City alleging that the DFEIR was inadequate. The letter alleged that the DFEIR violates CEQA because it does not consider the correct environmental setting and cumulative impacts. Further, the letter contains other serious allegations including that the revised air quality analysis is flawed and underestimates the project’s air quality impacts, that the DFEIR’s mitigation measures for other project impacts are inadequate, unlawfully deferred, and unenforceable, that the Environmental Justice Analysis is flawed and misleading and that he DFEIR fails to consider the already existing pollution burden and other potential risks due the Project site being in a sea-level rise inundation zone. Also challenged was the Revised Air Analysis which was said to underestimate diesel particulate matter pollution—and resulting increased cancer risk—from docked ships' diesel engines. Lastly, while commending the City for performing an Environmental Justice Analysis (EJA), that AG viewed the EJA as misleading because (1) its demographic analysis obscures the Project’s impacts on nearby low-income, minority communities; and (2) it fails to consider the existing pollution burden on nearby communities. (See letter from Xavier Becerra).

Following receipt of the Attorney General letter, City staff met with the joint applicants’ legal counsel, Miller Starr Regalia on how to best addresses the Attorney General’s concerns. All parties agreed that it was desirable to address these concerns seriously. It was decided that an updated EJA would be the appropriate vehicle, as there was significant overlap between the EJA and the cumulative air quality analysis in the DFEIR. Additionally, staff took a closer look at the mitigation conditions to ensure that a responsible party was
identified and a feasible mechanism existed and found that existing language did not fully identify which party would be responsible for carrying out the conditions.

Since that meeting in late 2018, there has been no update to the EJA because Orcem won't execute the required agreement and VMT will neither execute the agreement or provide funding. An EJA generally seeks to answer the question "Would any significant adverse human health or environmental effect of the project disproportionately affect minority of low-income persons?" (See Executive Order 12898 and CEQA guidance 1997). Upon further review and analysis of the Attorney General's letter, staff concurs that the original EJA, which was prepared in February 2016 by Land Economics Consultant, LLC under the direction of Dudek (the City's FEIR consultant), is outdated, incorrect, and does not fully address the Attorney General's current concerns.

On January 22, 2019, staff recommended, and City Council agreed, that the EJA be updated so that the City Council does not base any decision on potentially incorrect information. In addition, an EJA contains information that is directly relevant to a CEQA analysis, to the extent both reports seek to identify and understand significant, adverse environmental effects. While an EJA specifically is not directly required under CEQA, an EJA was prepared for this project in an effort to inform and understand the City's environmental justice responsibilities as part of any project.

Environmental justice is an evolving area, and consultants may differ on the assumptions and metrics used for an EJA analysis. However, the Attorney General's letter identified specific methodology that staff believes should be utilized in an updated EJA. One of the methodologies involves the environmental setting, or surrounding area, for both the EJA and the CEQA cumulative analysis. The Attorney General states that the VMT/Orcem Project's "Environmental Setting" and impact area should be all of Vallejo, rather than the general population of the larger county or state.

Despite the city attorney's office communications with the law firm Miller Starr Regalia in November of 2018 in order to collaborate on a response to the Attorney General's letter, no firm commitment from VMT on funding or EJA parameters or methodology was obtained. Staff moved forward and finalized text for a Scope of Work for the updated EJA from Stantec for an amount of $45,556. Orcem provided for half the funding of the EJA, but has since modified the language of the reimbursement agreement (see attachment 10) to state that the City would reimburse Orcem for the amount deposited. This language was not acceptable to the City so the reimbursement agreement was not finalized. Orcem also did not execute the agreement as discussed. VMT did not provide any funding or sign any agreements to release funds or to proceed with the EJA, and thus the City's contract with Stantec was also not executed.

**Bay Area Air Quality Management District (BAAQMD) finds that it could not permit the project based on its Health Risk Assessment and lack of application from VMT.**

On May 8, 2018, staff and the applicant met with Bay Area Air Quality Management District (BAAQMD) to ensure that the FEIR fully addressed air quality concerns. Subsequently, the applicant determined a more robust analysis was needed, and undertook additional analysis to the ROA. Ramboll Environ (Ramboll), the applicants’ air quality consultant, engaged with iLanco, City’s air quality consultant, to update modeling.
Ramboll proposed significant changes to the assumptions, which required additional time for BAAQMD and City consultant’s review. Ramboll continued to address BAAQMD concerns regarding the data for the air quality and HRA, and received the final data in October 2018. In January 2019, iLanco and Ramboll informed the City that BAAQMD was taking the data and running the models to determine if BAAQMD could confirm the findings.

On March 4, 2019, Greg Nudd, Deputy Air Pollution Control Officer with BAAQMD (see Letter from BAAQMD), submitted a letter to the City detailing its position on the project. BAAQMD identified the City of Vallejo as a priority community with high exposure to air pollution under Assembly Bill 617, and as a disproportionately-impacted community with a high exposure and health burden than other communities in the Bay Area. Vallejo residents are exposed to higher levels of air pollution than other communities in the Bay Area. The Project as proposed will increase air pollution and increase the health burden placed on the community from toxic air contaminants, including diesel particulate matter, a known carcinogen. BAAQMD also identified significant safety impacts to pedestrians and bicyclists from traffic hazards and exposure to diesel particulate matter due to the substantial increase in daily truck trips generated by the Project.

BAAQMD stated that, as proposed, they would not be able to permit the project. The potential increase in cancer risk from the stationary sources would require Orcem to install Best Available Control Technology for Toxics on all sources of significant risk.

BAAQMD also stated that only a partial permit application for the Orcem project has been received, and that a full application that articulates the VMT component of the project, which could generate additional impacts at the site, has not been evaluated. Based on the above, BAAQMD would not be able to approve the project.

**California State Lands Commission states that proposed project area may encroach into the City’s granted lands.**

On November 15, 2018, Reid Boggiano, Granted Lands Program Manager with the California State Lands Commission with the State of California, submitted a letter to the City (see letter from Ca State Lands Commission). The State Lands Commission (SLC) oversees the management of sovereign public trust lands and assets by legislative grantees who manage these lands on behalf of the State. The SLC noted that the proposed project area seemed to encroach on the City’s granted lands and requested that staff examine the validity of the City's lease to VMT and requested further information about VMT’s sublease with Orcem. To date, VMT has refused to provide a copy of that lease.

VMT, as landowner of part of the project site, and a long-term tenant of city-owned land on the other part of the project site, has site control for the joint applicant project.

The City Attorney’s office provided the State Lands Commission letter to VMT’s real estate attorney Ms. Krista Kim. On January 2, 2019 representatives of VMT and Orcem, their joint counsel Miller Starr Regalia, and City staff met to attempt to define the project area in order to address the State Lands Commission letter.

Additionally, information provided by a member of the public led staff to question VMT as to the location and
existence of a sublease with Orcem. In response to the city’s questions, VMT produced a title report and memorandum of lease between VMT and Orcem.

A closer look at the title report revealed to staff that the text appeared to create some significant overlap between the property description of property belonging to the city, as described in the original (1991) lease between the City and General Mills and property referred to as ‘Parcel 1’ in the title report, which describes this parcel as belonging ‘in fee’ to VMT. To be sure, the description for Parcel 1 as described in the title report does attempt to exclude at least 1 legislative grant. However, since there does not appear to be a single map drawing that contains references to the location of the City’s interest or VMT’s interest as part of the application, and where State Lands’ interest lies, clarification on this issue has been challenging.

As recently as May 17th, VMT’s attorney indicated that they would contact their title company and seek clarification to provide to the city. To date, however the city has not been provided this clarification. The lack of clarity affects a designation of who would be responsible to fund and address mitigation conditions imposed upon approval of a project entitlement. Land use entitlements are legally said to “run with the land”. Thus the landowner would be ultimately responsible for ensuring that they are adhered to. Likewise, mitigation conditions in the mitigation and monitoring program would need to be funded by the land owner. Lastly, because VMT has been unwilling to provide a copy of its lease to Orcem, nor documents explaining the perceived encroachment onto city land, a response to State Lands’ Commission is outstanding.

2018 Revised Operations Alternative (ROA) Still Incomplete:

The goal of the ROA is to provide a preferred alternative to the proposed project that would accomplish the applicant’s objectives, and would reduce the potential environmental impacts associated with the project. Two components of the ROA are the Fleet & Equipment Management Plan (FEMP) and the Barge Preference Implementation Strategy (BPIS). Staff has not yet received a comprehensive management and implementation plan for these components. The analysis did not rely on these components to reduce project impacts, as substantive details to support the analysis was not provided.

Fleet and Equipment Management Plan (FEMP):

Implements newer and lower-emission technologies for trucks, front loaders, and other powered equipment. The 2018 ROA does not quantify this element and does not take credit for potential reduction associated with this element.

Barge Preference Implementation Strategy (BPIS):

VMT has stated it would prioritize the movement of goods through the terminal by barge over rail or trucks, with a 25% usage goal. Transport via barge could reduce air emissions compared to transport via truck and rail. This is a market-based preference program, and potential air impact reductions due to this program are not quantified and the 2018 ROA analysis does not take credit for these potential reductions.

VMT states that they will develop a BPIS for inclusion in the Mitigation Monitoring and Reporting Program
which will require annual monitoring and reporting of barge traffic by tonnage, as a percentage of terminal volumes. While this was not provided to the City for review, its’ implementation cannot be guaranteed and therefore has not been quantified. Thus, it has no effect on the project's expected impacts as analyzed in the DFEIR.

Without confirmation in writing from VMT on the actual permitted activities, the City cannot tie the BPIS and FEMP to mitigation measures and any potential impacts have not been analyzed. VMT state that they will implement a BPIS for mitigation, however, an actual strategy was never provided. ROA does not modify VMT operations part of the project, and may trigger further CEQA review of the project.

**Public Works Mitigation Measures for Street Impacts**

There are two mitigation measures in the DFEIR related to trucks and pedestrian safety. MM3.12-3 and MM3.12-4, require future transit-related improvements and an assessment of the current condition of Lemon Street. On January 2, 2019 and January 22, 2019, the City requested the applicant's cooperation on deposits for the review of mitigation measures and development of a fair share allocation as determined by Public Works. Without agreement on the costs, impacts and cost-sharing allocation, the City cannot assess the costs and impacts of these mitigation measures contained in the DFEIR. The City asked for but did not receive the requested deposits.

MM-3.12-3 provides for safe movement of project trucks along with other existing pedestrian, bicycle, and vehicular traffic on Lemon Street between the project site and Sonoma Boulevard and through the intersection of Lemon Street/Sonoma Boulevard. In the DFEIR, the improvements are required to be completed prior to issuance of certificate of occupancy. MM-3.12-4 identifies design and construction improvements on Lemon Street between the project site and Curtola Parkway to provide for safe movement of pedestrians and bicycles consistent with the applicable General Plan policies.

The above mitigation measures would have an impact on City costs, with added municipal service costs such as wear and tear on City Streets from project related truck traffic. Without the participation of the applicant, the costs are not known at this time. As proposed, the project will discourage alternative modes of transportation and discourage walking and cycling due to safety concerns and exposure to diesel particulate matter. It should be noted the lack of enforcement mechanisms to address these impacts (such as a negotiated agreement to undertake construction) have also been specifically identified as concerns by both the Attorney General and BAAQMD. Therefore, some collaboration and agreement on approach, and some additional analysis of the impacts needs to occur prior to the completion of the EIR to respond to these agencies.

**Height Exception**

The proposed site development plan does not conform to the height requirements of Vallejo Municipal Code (VMC) Section 16.24.060. The height limit in the Intensive Use zone district is 75 feet, but the project includes structures that exceed this limit for a proposed storage silo and elevator at 131’ - 6”, a processing mill at 97’ - 5”, a filter at 97” - 5”, and a raw material storage building at 82’ - 7”. Pursuant to VMC Section 16.80.060, the applicant requires an exception to the height regulations. On February 27, 2017, the Planning Commission denied the request, and a height exception was not considered. On March 18, 2018 the City’s environmental
consultants informed the applicants’ project manager Dick Loewke that an exception would be required as part of consideration to City Council. As staff is recommending denial, the exception has not been analyzed. The VMT/Orcem Project as proposed has height impacts that conflict with the character of the surrounding neighborhood. It is not consistent to necessary findings as required by VMC for a Major Use Permit or Site Development Plan.

**VMT’s Non-responsiveness and Abandonment of Appeal**

As noted in the timeline attached to this report, VMT has been asked to collaborate on numerous occasions, and has failed to respond to direct City requests to provide necessary documentation and information to complete reports (including the FEIR), to confirm and execute funding agreements, and to respond to questions and concerns from other public agencies. The non-responsiveness of VMT has prevented the City from completing the EIR or providing adequate answers to concerns raised by other government agencies. VMT’s principals were specifically asked to let the city know whether it had abandoned its appeal, and their response was that they could not take a position on whether or not they had abandoned their appeal. However, VMT’s inactions and lack of responsive communications on matters that are crucial to bringing this project to completion have indicated to staff that VMT is not pursuing its appeal of the project denial. Thus the City believes that VMT has abandoned its appeal of the Planning Commission’s 2017 denial of the project applications. Nevertheless, VMT has been noticed of this hearing, and is capable of making a different statement.

The City has requested from VMT, but not received:

1. **Assignment & Assumption Agreement and indemnification or other documentation showing authority to act and execute contracts**

   Since November 2018, City staff has requested that Mr. Varela and Mr. Gilmartin provide either an assignment and assumption agreement or other document demonstrating that they are authorized to make binding decisions on behalf of VMT. A search of the Secretary of State’s business entity site revealed that VMT is an LLC that is managed by another LLC: Valentina Holdings. According to its 2016 filing with the SOS, Valentina Holdings is supposed to be managed by a manager and its purpose is to do ‘any lawful act’ for which an LLC may be organized’. However, a Secretary of State search by staff in January of 2019 revealed that both VMT and Valentina Holdings were on 'suspended' status meaning they had no authority to conduct business in California while suspended. On multiple occasions, the City requested evidence that VMT’s new leaders, Alan Varella and William Gilmartin provide documentation showing authority to act on behalf of VMT and that VMT’s new LLC member-manager was in good standing and able to conduct business in California. VMT failed to provide any such information. In preparation for this staff report, staff once again reviewed the Secretary of State website and found that both VMT and Valentina Holdings are now ‘active’ and appear able to legally transact business as of April 16, 2019. However, The City still requires evidence from Mr. Varella, as CEO of Valentina Holdings that he has the authority to make decisions on behalf of VMT and will be bound by previous and future agreements on this project. This is particularly important because if the LLC is bound to a contract, members are liable for the actions of the LLC only to the extent that they are invested in the LLC with their capital contribution. This means that a member can only be responsible for the amount
of money they contributed when they became a member of the LLC. Limited liability is one of the key features of this business form.

2. On January 21, 2019 a letter from Mr. Gilmartin was received stating that Dick Loewke, Miller Starr Regalia, and Orcem are not authorized to, and do not represent VMT (see letter from Mr. Gilmartin).

3. On April 9, the City Attorney’s office was notified by Miller Starr Regalia that they no longer represent VMT or Orcem. The City Attorney’s office has requested from Orcem to clarify who their current project legal counsel is. No response has been received.

VMT has not provided the necessary clarification on who will be responsible for various conditions, including indemnification. Without their participation, certain mitigation measures within the FEIR do not seem feasible.

4. **Executed reimbursement agreement to update the EJA**

The City has been unable to update the EJA and fully respond to the Attorney General’s concerns outlined in their November 7, 2018 letter without an executed reimbursement agreement from VMT. The City is unable to analyze the air quality and cumulative impact sections to the FEIR without an updated EJA (see Fourth Amendment to Agreement).

5. **Cooperation in furnishing data and information to City requests to complete the FEIR**

The City has requested data, documentation, executed agreements, and other information in order to fully evaluate the environmental impacts and complete the FEIR. This includes a BPIS, FEMP, accepting mitigation and monitoring measures, and establishing cost-sharing allocations to address fiscal impacts. To date the City has not received the required information and collaboration to complete the FEIR (see Draft FEIR).

6. **Answers and information to respond to the State Lands Commission and City concerns relating to property ownership.**

The City and State Lands have both requested information required to clarify a title discrepancy.

Not only is VMT not providing clarification, in an email from Ms. Kim dated on April 9, 2019, she stated VMT does not have the obligation to meet with the State Lands Commission or provide any additional resources to the matter, and that the burden lies on the City to resolve its own concerns. Ms. Kim provided an updated letter on May 14, 2019 restating facts and statements already provided by VMT regarding this matter. The City is in the process of conducting its own survey and title report. Our surveyor is continuing to coordinate efforts with the State Lands Commission surveyor to map out lands granted to the City by the state. The most recent report is included as a link (see Survey of Lands).

7. **Data and information required to update and corroborate the EIA**
The City updated EIA with data and information that has not been confirmed by VMT or Orcem, making it difficult to fully assess the impacts of the proposed project. Those findings are summarized below. At the direction of City Council staff engaged Keyser Marston Associates (KMA) to conduct a current analysis with updated information. The applicants did not provide any substantive information and responded only through references back to existing public documents and the previous FGC economic impact study. VMT has not provided clarity as to if it wants to pursue the VMT/Orcem Project.

Because the City has not received communications from VMT on whether or not it wants pursue the appeal, the City cannot process the major use permit applications without confirmation from VMT (as the property owner) that it consents to the proposed uses. The City also cannot confirm if Orcem is a legal tenant of VMT to submit an application for development of the property.

Since November 2018, the City Attorney’s office has contacted, via email or phone, VMT, Orcem, Miller Starr Regalia, and Ms. Kim specifically requesting documents required to process the VMT/Orcem Project, clarify VMT site encroachment issues raised by State Lands Commission, funding to complete the EJA (and the necessary reimbursement agreement), and data from VMT. Neither VMT nor Orcem have submitted adequate information to the City on these issues. Rather, at the March 26, 2019 in person meeting with the City staff, Mr. Varela stated that VMT and Orcem have no legally binding contract. This statement conflicts with a reference to a memorandum of lease the City has discovered, but the City has still not received any clarification or confirmation regarding the respective property interests of the parties. (See timeline of communications).

VMT has ceased collaborating with both the City and Orcem. VMT has expressly informed the City that Orcem does not represent its interests or speak on VMT’s behalf. Per City requirements, without confirmation of VMT’s authorization as the land owner of the major use permit application, the City cannot process Orcem’s application. (See, e.g., Vallejo Muni. Code § 16.82.020; Major Use Permit Guidelines.) Indeed, the City has not been able to identify and obtain a valid lease between VMT and Orcem that would support Orcem’s “interest in the application”, per the City’s requirements. (Vallejo Muni. Code § 16.82.020(a).) Accordingly, without VMT’s participation and authorization, the City cannot issue entitlements to Orcem.

VMT/Orcem Project FEIR Cannot Be Certified and VMC findings for entitlements cannot be made.

As VMT has abandoned the appeal (and the City cannot determine if Orcem is a tenant of VMT on the project site at this time), the City cannot make the required findings for the Major Use Permit or the Site Development Permit, or otherwise move forward with a project on VMT’s property. Without any entitlements to be issued, the City also has no basis or reason to certify the FEIR and cannot ensure that the requirements of CEQA are satisfied. (CEQA Guidelines § 15090.)

The EIR identifies numerous mitigation measures to be implemented to avoid significant environmental impacts of the Project. These proposed mitigation measures require VMT’s execution and funding of various agreements for monitoring and compliance, including require hiring of personnel and annual reporting. Both the Attorney General and BAAQMD raised concerns specifically related to emissions and mitigation measures needed to address significant environmental impacts, stressing the need to that feasible and enforceable
measures must be implemented. The BAAQMD comments raised similar concerns as the Attorney General concerning the truck traffic generated by the VMT/Orcem Project and the negative health impacts to a disadvantaged neighborhood. BAAQMD also noted they cannot permit the project as proposed because they have still not received the necessary permits from VMT to continue forward.

Without VMT’s participation to develop and enforce feasible mitigation measures to address these impacts, the Project cannot be approved. (Pub. Resources Code, § 21080.) Mitigation measures identified in the FEIR to address environmental impacts of the Project must be enforceable through conditions of approval, contracts or other means that are legally binding. (Pub. Resources Code, § 21081.6(b).) Without any entitlements, the City would not have a legal mechanism to ensure that the applicant would implement the mitigation measures to address the environmental impacts of the Project. (Id.) To the extent VMT is currently not participating or seeking any entitlements, these mitigation measures would not be legally enforceable and would violate CEQA.

Feasible in this context means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (Cal. Code Regs, Tit.14 Section 15364).

The informational deficiencies based on VMT’s lack of cooperation and responsiveness also prevents the City from completing the EIR process. CEQA requires an FEIR to be completed in compliance with the law. Any project that results in one or more significant environmental effects should have an environmental document that supports written findings addressing the effects and an explanation of the rationale for each finding. (Cal. Code Regs. tit.14 § (15091(a)) It is also required that the findings be supported by substantial evidence (Cal. Code Regs.tit.14 § 15091(b)). City Council should only approve an FEIR after the findings are made determining that the project will not have a significant effect on the environment, or eliminated or substantially lessened all significant effects on the environment where feasible (Cal. Code Regs.tit.14 § 15092). Alternatively, a statement of overriding considerations can be made.

Without the funding from VMT (and the request from Orcem for a refund) for the EJA, the executed reimbursement agreement, participation from VMT on mitigation measures, and data from VMT on the fleet management and barge implementation plans, the FEIR is incomplete. It cannot be brought to City Council for certification under CEQA for project approval. Certification of an incomplete CEQA FEIR could put the City at risk for litigation by the Attorney General (who would also likely represent BAAQMD and the State Lands Commission). Accordingly, in accordance with Planning Commission action in 2017, and for the reasons cited in this staff report, City staff recommends City Council find the FEIR cannot be finalized under CEQA, and
uphold the denial of the VMT/Orcem Project along with VMT’s abandonment of the appeal.

Staff has provided the attached resolution (attachment 1) stating why the findings cannot be made to issue the necessary findings for entitlement. The VMT/Orcem Project as proposed requires: a Major Use Permit (VMC §16.34.040(B)(1)), Site Development Plan (VMC §16.90.80), Height Exception (§16.80.90). Due to the project location and impacts associated with the heavy truck traffic, new rail, pedestrian access/safety, noise, air quality, and height, the VMT/Orcem Project is not compatible to the neighborhood character and surrounding uses. The findings cannot be made to issue any of these VMC permits.

**Draft Final Environmental Impact Report (DFEIR) was released to the public**

On March 26, 2019, the City, under the California Public Records Act, exercised its discretion to make public the unfinished draft FEIR for the project on the City website. The published version is not ready for approval as environmental documents do not yet achieve compliance with CEQA. There are certain mitigation measures that require the participation, acknowledgement and agreement from the applicant in order for the City, as the lead agency, to certify the document.

**Economic Impact Analysis (EIA)**

The applicant prepared and submitted a Fiscal and Economic Impact Study prepared by Field Guide Consulting (FGC) dated November 7, 2014, and subsequently updated on February 25, 2018. The purpose of the study was to identify the potential fiscal and economic benefits generated by the projects. In December 2018, the City contracted with Keyser Marston Associates (KMA) to peer review the FGC. Staff requested data from the applicant several times in order to fully update and confirm the impacts - on December 20, 2018, January 3, 2019, January 7, January 11 - but the applicants did not provide any substantive information and responded only through references back to existing public documents and the previous FGC economic impact study.

On January 20, 2019, at the direction of City Council, staff contracted with KMA in the amount of $24,000 to prepare an independent fiscal and economic impact analysis (see Economic Impact Analysis). A summary of the KMA analysis is provided below, and a more detailed report is attached to this report.

**City of Vallejo General Fund Fiscal Impacts**

Without emergency response cost-recovery payment agreements negotiated and executed between the applicant and the City, net annual General Fund revenue to the City is projected at approximately $56,000 per year. The study includes alternative scenarios, which assumes that the Project would provide for an annual cost-recovery payment to address increased emergency response costs necessary to maintain fire department response times given gate down-times at rail crossings from Project rail traffic, the Project could generate a net annual fiscal impact to the City of $498,000. However, this required the applicant’s participation and agreement otherwise this would have an impact on City revenues.
Approximately 75% of revenues are derived from the Project’s electricity and natural gas consumption which generates utility user tax and franchise fee revenue for the City General Fund. General Fund service costs are estimated to total $103,000 per year and consist primarily of maintenance and repair of City streets to address wear and tear from truck traffic, and are not part of the emergency response cost-recovery payment scenario envisioned.

**Construction Jobs**

Construction of the project is estimated to result in a total of 58 construction jobs on the Project site. Of this total, roughly 11 jobs are estimated to be with Vallejo-based contractors or 13 jobs if indirect and induced “multiplier” effects are included. Over half of the project cost, per the applicant, is the purchase of equipment that is imported from overseas or from elsewhere in the U.S., which mutes the level of construction employment that occurs locally.

**Permanent Jobs**

Once the project is fully completed and nears operating capacity, on-site employment is projected to reach an estimated 154 jobs. This consists of 106 jobs related to operation of the marine terminal, including vessel unloading, 20 jobs in Orcem plant operations, 20 administration and sales jobs, and 8 jobs for Vallejo-based truck drivers. In addition to on-site jobs, 61 indirect and induced jobs are projected to be generated through business expenditures such as fuel purchases, restaurant, retail, and other household spending by on-site workers.

**Economic Output**

The term “economic output” corresponds to the gross revenues of local businesses. In total, it is estimated that the Project would result in a 1.6% increase over the current $6.4 billion in economic output for the City of Vallejo. Over 75% of the increase comes from the value of ground granulated blast furnace slag production.

**FISCAL IMPACT**

The staff recommendation is for denial, and therefore no fiscal impact is anticipated.

**ENVIRONMENTAL REVIEW**

Pursuant to California Environmental Quality Act (Public Resources Code Section 21000, et seq. (“CEQA”)), Pub. Res. Code Sec. 21080(b)(5) and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.) Section 15270, a project that is denied or rejected is exempt from the requirements of CEQA. The Project is exempt from CEQA and the requirement of certifying a FEIR when it is denied for approval.

Pursuant to California Environmental Quality Act (Public Resources Code Section 21000, et seq. (“CEQA”)), Pub. Res. Code Sec. 21080(b)(5) and the State CEQA Guidelines (California Code of Regulations, Title 14,
Sections 15000, et seq.) Section 15091(a) and (b) requires that a FEIR shall only be certified after findings are made and supported by substantial evidence. The Project’s FEIR cannot be certified as there is not rationale for the findings that can be supported by substantial evidence.

ATTACHMENTS

1. VMT Reso of Denial of Appeal 5.21

CONTACT
Afshan Hamid, Planning Manager (707) 648-4382
afshan.hamid@cityofvallejo.net
RESOLUTION NO. 19 - N.C.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VALLEJO
DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION’S
DECISION TO DENY THE JOINT PROJECT FOR VALLEJO MARINE
TERMINAL LLC AND ORCEM CALIFORNIA, INC,
AT 790 AND 800 DERR AVENUE, APN 0061-160-230

BE IT RESOLVED by the Council of the City of Vallejo as follows:

GENERAL FINDINGS:

WHEREAS, on September 3, 2013, Vallejo Marine Terminal, LLC (VMT) and Orcem, California, Inc (Orcem) filed as joint-applicants an application for the establishment of a water marine terminal and a cement processing plant at the site of a former flour milling plant at a property located at 790 and 800 Derr Avenue on a 32.55 acre proposed site (the “Project”). The Project requires a Major Use Permit, Site Development Plan, and Height Exception as established in Chapters 16.34, 16.80, 16.82, and 16.90 of the Vallejo Municipal Code, and as the Intensive Use district is the City’s heaviest industrial district; and

WHEREAS, on March 6, 2017, the Planning Commission denied the Major Use Permit and Site Development Plan applications; and

WHEREAS, an appeal was filed to the City Council by Miller Starr Regalia on March 15, 2017, and executed by Mr. Dick Loewke on March 16, 2017, representing VMT and Orcem, the appellants, and

WHEREAS, City Council on June 1, 2017, directed City staff to work with joint-appellants to finalize the FEIR and bring the Project back for its consideration; and

WHEREAS, the Project that is the subject of this Resolution to City Council, includes the revisions made to the project description by the joint-appellants and include the operational changes outlined in the Revised Operations Alternative (ROA) as described in the Staff Report; and

1 All subsequent ordinance references are to the Vallejo Municipal Code unless otherwise noted.

Approved as to form:
By: [Signature]
Claudia Quintana
City Attorney
WHEREAS, following the June 1, 2017 City Council action, City and the joint-appellants continued to work collaboratively on the FEIR up until November 2018. From that time, the VMT appellants changed principals, the City received comment letters from the California Attorney General, California State Lands Commission, and Bay Area Quality Management District (BAAQMD) on the Project. City requested that the joint-appellants update the FEIR Environmental Justice Analysis (EJA), and that VMT provide documentation of assignment and assumption of the new principals; and

WHEREAS, the joint-appellants VMT and Orcem, together did not provide the necessary funding or contracts required to update the EJA or evidence of VMT’s principal’s authority to make decisions on behalf of VMT in a timely manner; and

WHEREAS, City requested all necessary items to finalize the FEIR for the Project from appellant VMT from November 2018 through April 2019 and has received no response, and thus the City is unable to finalize the Project’s FEIR or bring a finalized project description (or ROA) to City Council for certification and approval; and

WHEREAS, there is a lack of clarity and uncertainty as to the location of VMT’s property interest, and the City’s interest, and State Lands Interest due to seemingly overlapping property descriptions and a lack of a clear Project map that makes reference to current streets and APN numbers where the Project is to be entitled; and

WHEREAS, established in Chapter 16.34 of the Vallejo Municipal Code, the “Intensive Use” district is the City’s heaviest industrial district. The Project is a “Permitted Use” as outlined in the project description under the criteria of a “Heavy Industrial” use (§ 16.34.040 (B)(1)) which requires the issuance of a Major Use Permit (§ 16.34.040). All projects requiring the issuance of a Major Use Permit must be reviewed for approval or denial by the City’s Planning Commission (§ 16.82.020) and City Council upon appeal. The City Council must base its decision to approve or deny the Major Use Permit on the required findings as established in §16.82.050; and

WHEREAS, the proposed Project is also subject to approval of a Site Development Plan pursuant to §16.90.20; and

WHEREAS, in accordance with §16.90.080, the Site Development Plan is hereby submitted to the City’s City Council to be considered concurrently with the City Council’s consideration of the proposed project’s Major Use Permit application; and

WHEREAS, the City’s Development Services Director (Director) has the authority to approve or deny an application for a Site Development Plan as established in §16.90.010(D). Whenever the Director finds that the decision on any application is beyond his or her purview of authority, the application shall be forwarded to the Planning Commission for its determination (§16.90.050(D)) and to the City Council upon appeal. The Director found the Site Development Plan application for the proposed project was beyond her purview and elected to transfer her authority to the Planning Commission to render a determination on the application; and
WHEREAS, in accordance with §16.80 the Exception Regulations require an exception permit for any project that exceeds the height requirements and other measurable standards; and

WHEREAS, in accordance with Section 16.102.020 of the Municipal Code, decisions made by the Planning Commission are appealable to the City Council by the applicant or any party adversely affected by the decision; and

WHEREAS, the City of Vallejo City Council conducted a duly noticed public hearing to consider the joint-appellant Appeal on May 30, 2019 which testimony and evidence, both written and oral, was presented to and considered by the City Council; and

WHEREAS, based on recommendations, testimony and evidence in the record and provided at the public hearings, the City Council makes the following factual findings:

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

Section 1. Pursuant to California Environmental Quality Act (Public Resources Code Section 21000, et seq. (“CEQA”)), Pub. Res. Code Sec. 21080(b)(5) and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.) Section 15270, a project that is denied or rejected is exempt from the requirements of CEQA. The Project is exempt from CEQA and the requirement of certifying a FEIR when it is denied for approval.

Section 2. Pursuant to California Environmental Quality Act (Public Resources Code Section 21000, et seq. (“CEQA”)), Pub. Res. Code Sec. 21080(b)(5) and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.) Section 15091(a) and (b) requires that a FEIR shall only be certified after findings are made and supported by substantial evidence. The Project’s FEIR cannot be certified as the findings are not supported by substantial evidence.

II. FINDINGS RELEVANT TO MAJOR USE PERMIT FOR PROJECT DENIAL AND FOR DETERMINATION OF PROJECT INCONSISTENCY WITH APPLICABLE GENERAL PLAN

Section 1. In reviewing the request for a Major Use Permit, City Council considered whether the Project would satisfy the following required findings for the approval of a Major Use Permit as established in Section 16.82.05(A) and (B) which states:

“A. The location, size, design, and operating characteristics of the proposed conditional use would be compatible with adjacent uses, building or structures, with consideration given to:
   1. the project would be in harmony in scale, bulk, coverage, and density;
   2. the availability of civic facilities and utilities,
   3. the harmful effect, if any, upon desirable neighborhood character;
   4. the generation of traffic;
   5. the capacity and physical character of surrounding streets; and
6. any other relevant impact of the proposed use.

B. The impacts, as described in subsection 1-6 of this section, and the location of the proposed conditional use are consistent with the City General Plan 2040."

Section 2. Based on the written evidence in the record and the oral and written evidence and testimony provided at the public hearing(s), the City Council hereby finds and determines as follows with respect to the Major Use Permit:

A. The City Council finds that the Project would not be compatible with the adjacent uses because:

1. The Project’s operating characteristics involve a 24-hour operation of a deep-water berthing marine terminal and cement processing plant. An average of 7.5 vessels would be moored per month, including up to four deep water vessels and 3.5 barges. When vessels are moored at the wharf and are loading or off-loading, VMT operations would occur 24 hours per day, seven days per week. When vessels are not being loaded or off-loaded, VMT operations would be in two 10-hour shifts, six days per week. The Orcem component of the Project would operate on a 24-hour basis, six days per week.

2. Trucks would travel to and from the site on a 24-hour basis. The average truck trips arriving and leaving the site would range from 12 to 32 per hour during day time hours (7:00 a.m. – 10 p.m.) and from 20 to 44 per hour during the overnight hours (10 p.m. – 7:00 a.m.). This would have a substantial impact to noise to the adjacent neighborhoods.

3. The City Council finds that the Project’s operations, the noise generated by the project, the traffic generated would likely disrupt the quiet enjoyment of adjacent multi-family housing complexes and single-family residences in the project vicinity.

4. The Project is incompatible with adjacent uses, building or structures, with consideration given to harmony in scale, bulk, coverage, and density because even though the site is large enough to accommodate the proposed development it is visible from the immediately surrounding areas to the south and west and the noise, traffic generated by the Project operations impacts the nearby residences on Sandy Beach in unincorporated Solano County.

5. The Project does not raise any concerns regarding access to and availability to civic facilities and utilities.

6. Truck traffic access is required by the Project, and Lemon Street is no longer a City designated truck route.

7. The Project would not be compatible with the adjacent residential uses, and would result in harmful effects upon desirable neighborhood character, because the project site is located in an area with a mix of smaller-lot residential, commercial/industrial zoning districts and uses. The areas along Lemon Street and Sonoma Boulevard that will accommodate 95% (or 442 daily trips) of the truck traffic include low density single family residential neighborhoods with older one and two-story homes with traditional front yards. Lemon Street, the main route for trucks headed to and from points east and
north, is a locally-serving roadway with 11-foot travel lanes, 8-foot parking lanes, and 5-6-foot-wide sidewalks serving a local population of homes and small businesses. Sonoma Boulevard is a four lane State urban highway under Caltrans jurisdiction and is designed to accommodate higher levels of traffic, but also includes several single-family residences, multi-family residences, and Grace Patterson Elementary School.

8. The very high volume of trucks arriving to, and departing from, the project site 24 hours a day would substantially increase noise, traffic, and generate air emissions that would alter the character of the existing residential neighborhoods along Lemon Street and Sonoma Boulevard and would have a harmful effect on the desirability of the neighborhoods and their character. As proposed, the negative conditions brought on by the project cannot be lessened to an acceptable level without cooperation and commitments of funding from the joint-appellants.

9. The IU-zoned areas in the project vicinity include a mix of residential and commercial uses. While the commercial/industrial businesses operating in the area generate some truck traffic, they generally do not operate 24 hours a day and the number of truck trips is substantially lower. As such, the intensity of the proposed industrial activity and associated heavy-truck traffic traveling along these corridors may be considered incompatible with the existing setting from a land use context, unless the long-term vision of the area is to transition to heavy industrial uses in the area. This is not likely given that the existing commercial/industrial properties along Lemon Street are relatively narrow and lack the appropriate access and depth to accommodate redevelopment to heavy industrial operations. Therefore, the truck traffic associated with the proposed project would also result in a degradation of the existing commercial/industrial neighborhoods adjacent to the transportation corridors serving the project.

10. The project would not be compatible with the adjacent uses, with consideration given to the generation of traffic because:

   a. The technical studies analyzing the Project indicate that there will be a use of rail, trucks, and ships to transport materials and commodities to and from the project site. The Project would increase the number of truck trips along city streets by an additional 442 truck trips per day. Up to 223 round-trip trucks would travel on Lemon Street and Sonoma Boulevard. This increase in truck traffic would impact residents’ daily commutes to and from work, and students’ and families’ daily travel to and from Grace Patterson Elementary School, which is located approximately 0.3 mile southeast of the Project site.

   b. The Project would generate an estimated 50 rail cars per week between the hours of 7 a.m. to 6 p.m. The use of the railroad to import or export materials will result in temporary closures at roadway rail crossings which will affect upstream intersections in Vallejo and American Canyon. The “gate-down” time at the crossings is between 4.06 (one engine) to 4.16 (two engines) minutes which will result in substantial delays at least 28 intersections within the City. Thus, the project will detrimentally change the capacity of the streets to...
accommodate traffic during peak and non-peak hours.

c. A total response time of fourteen minutes by responding fire apparatus and emergency services due to rail car passage and congestion at rail crossings would significantly impact the average emergency vehicles responding to calls for emergency services during “gate-down” times.

d. The increase in truck trips associated with the Project will make it undesirable to navigate both Lemon Street and Sonoma Boulevard on foot and on a bicycle. The current roadway configuration on Lemon Street includes on-street parking, one lane of traffic in each direction and no separate bike lane. Sonoma Boulevard, which has four lanes of traffic and on-street parking in some areas, has incomplete cycling and pedestrian facilities in areas where there is pedestrian activity leading to and from residential neighborhoods to Grace Patterson School and commercial areas along Magazine Street. Significant areas along Sonoma Boulevard, where truck traffic from the proposed development would travel, do not contain sidewalks. On the east side of Sonoma Boulevard there are no sidewalks between Magazine Street and Sandy Beach Road, for approximately 2,048 feet. This frontage abuts Grace Patterson School. On the west side of Sonoma Boulevard, there are two significant areas without sidewalks; between the gas station/convenience store at Sonoma and Magazine Street and Bayside Village Apartments, and between New Hope Chapel and Sequoia Avenue. In total, the amount of area along the east side of Sonoma Boulevard without sidewalks equals approximately 1,724 linear feet. In addition, there are 1,660 linear foot gaps in the Class II bicycle lanes on Sonoma Boulevard.

e. Both Lemon Street and Sonoma Boulevard provide bicycle and pedestrian access to commercial uses, services and schools in the area including Grace Patterson Elementary School. The lack of facilities impacts cyclist and pedestrian safety, and a significant increase in daily truck traffic along this corridor would further decrease the perception of safety. The project would not be compatible with the adjacent uses, with consideration given to the capacity and physical character of surrounding streets/

f. The burden of the increase of heavy truck traffic along city streets substantially burdens the existing physical capacity of the infrastructure of streets and curbs due to constant and continual vibrations causing stress, fractures, and breakage to asphalt and concrete materials. The negative conditions brought on by a significant increase in extremely heavy trucks on a local street cannot, as proposed, be lessened to an acceptable level without commitments in funding and cooperation from joint-appellants.

B. The City Council finds that the Project is not consistent with General Plan 2040. The Project conflicts with the goals and policies identified and analyzed in Attachment 1 to this resolution.
III. FINDINGS RELEVANT TO SITE DEVELOPMENT PLAN FOR PROJECT DENIAL AND FOR DETERMINATION OF PROJECT INCONSISTENCY WITH THE VALLEJO GENERAL PLAN

Section 1. In reviewing the request for a Site Development Plan, the City Council considered whether the proposed Project would meet the required findings for approval as prescribed in Section 16.90.050(F) which requires the following:

“Findings Required. Prior to granting a site development plan approval, the development services director or planning commission shall find:

1. That the proposed development meets the intent and specific standards and criteria prescribed in pertinent sections of this title;
2. That the proposed development is consistent with the Vallejo general plan;
3. That the proposed development shall serve to achieve groupings of structures which will be well related one to another and which, taken together, will result in a well-composed urban design, with consideration given to site, height, arrangement, texture, material, color and appurtenances, the relation of these factors to other structures in the immediate area, and the relation of the development 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;
4. That the proposed development shall be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;
5. That the design of the development conforms in all significant respects with the proposals of any applicable district plan or development and control map which has been adopted by the city council.”

Section 2. Based on the written evidence in the record and the oral and written evidence and testimony provided at the public hearings, the City Council hereby finds and determines as follows with respect to the Site Development Plan based on the required findings as per Section 16.90.050(F) for the Project:

A. The Project does not meet the intent and specific standards and criteria prescribed in pertinent sections of the Municipal Code if the findings for the requested major use permit for the heavy industrial uses at this site as established in Section Chapter 16.34 cannot be made. As demonstrated in Part II of this Resolution above, these findings cannot be made in the affirmative.

B. The project is not consistent with adjacent surroundings as found in Section II, section (2)(A) above.

C. That the proposed development does not fully meet the intent and specific standards and criteria which serve to achieve groupings of structures which will be well related one to another and which, taken together, will result in a well-composed urban design based on the following:
1. The proposed Site Development Plan does not fully meet the intent and specific standards and criteria with consideration given to site, height, arrangement, texture, material, color and appurtenances, the relation of these factors to other commercial and industrial structures in the immediate area because:

The proposed development would replace the existing industrial structures with new buildings and structures. While the new development would be in the same general location as the existing structures and would be of a similar color, material, size and scale, the proposal includes open stockpiles of raw materials which may include limestone, gypsum, pozzolan, and GBFS. In Mode 1 and Phase 2 (GGBFS production only) there would be three stockpile areas on the Orcem site. The smallest stockpile would be located in the southern portion of the site and would be approximately 16 feet high. A second stockpile would be directly to the north of the smaller stockpile and would be approximately 26 feet high. The third and largest stockpile would be in the eastern portion of the site and would be approximately 49 feet high. The stockpiles would be partially screened by a 10-foot wall, the mill and filter building and the silos. However, the stockpiles would still be visible from the Mare Island Strait, Mare Island, Sandy Beach, the existing residences located directly above the subject site, and areas in northwestern Crockett and Rodeo. The existing viewshed from these areas would be detrimentally impacted by the presence of an intensification of open storage areas on the site. While the proposed development would be visually consistent with the predominant industrial uses located along the Mare Island’s Central Waterfront, most of the land along Vallejo’s waterfront is not used for high-intensity industrial uses, and the proposed project represents a degradation in the visual quality of the waterfront.

2. The proposed Site Development Plan does not fully meet the intent and specific standards and criteria with consideration given to the relation of the development to the total setting as seen from key points in the surrounding area because:

The Project would alter the existing visual appearance of the site by demolishing existing industrial buildings and constructing new industrial buildings and structures. The proposed Orcem buildings would replace the existing buildings in generally the same location and would be similar in scale and mass to the buildings that would be demolished. In addition, what remains of the existing waterfront wharf consisting mostly of damaged wooden piers, would be replaced by VMT. The new wharf would be larger and would create a large concrete platform structure on the waterfront. Overall the improvements to the site would alter the visual characteristics of the site and; although the changes to the site would be consistent with the high-intensity industrial viewshed found on the central waterfront of Mare Island, they would represent an intensification of industrial activities on the mainland waterfront through the addition of open stockpiles of raw materials. The changes in the viewshed resulting from the project would be most noticeable from the Mare Island Strait,
the Sandy Beach residential community and areas on the southwestern side of Mare Island. Additionally, the equipment on site is required to be screened from public view. The Project site is generally screened from major thoroughfares such as Sonoma Boulevard due to its location along the waterfront. However, the site can be seen from the Strait, from Mare Island, from the Sandy Beach residential development and from areas in northwestern Crockett and Rodeo. The Orcem Project provides screening around their portion of the site, but many of the structures are taller than the proposed screening due to their industrial nature. In addition, because of the orientation of the site along the Strait, the conveyor system serving the ships would also not be screened and would be visible from the Strait, from Mare Island, from the Sandy Beach residential development.

3. The proposed industrial development does not meet the intent and specific standards and criteria with consideration given to only elements of design which have some significant relationship to outside appearance being considered because:

The proposed development would alter the visual characteristics of the site by replacing existing industrial structures with new industrial buildings and structures. The new development would be in the same general location as the existing structures and would be of a similar size and scale, but may represent a greater intensity of visual impact due to the addition of the proposed conveyor system and new structures of a more modern design. The proposed development would be consistent with the predominantly industrial uses along some areas of the waterfront.

D. The proposed industrial development does not fully meet the intent and specific standards and criteria with consideration given to a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area because:

The site was historically developed with the General Mills (formerly Sperry) Flour Mill for over 100 years. The proposed Site Development Plan includes new industrial buildings and structures that are of a similar size and scale as the existing industrial structures on the project site, but are not designed to resemble the previous structures. The proposed project is a significant intensification of the industrial waterfront on the mainland resulting in an increase in the visibility of the site to areas directly adjacent to the site and to more distant (and less populated) areas such as northwest Crockett and Rodeo. The operational aspect of the proposal would negatively impact properties along the truck and train routes, such as Lemon Street, Sonoma Boulevard, and areas adjacent to the railroad corridor. While the proposed project may be harmonious with the few large-scale industrial operations in the vicinity of the site, the proposed project is incongruous with the adjacent residential neighborhoods. In addition, the location of the property requires the significant amount of truck and rail traffic generated by the proposed project to travel through areas that include sensitive land uses, such as residential neighborhoods. This operational aspect of the proposal is incompatible with those neighborhoods and would
result in incompatibility and potentially an impact on investment in those areas.

E. The project site is not subject to a district plan nor a development and control map beyond the current Municipal Code and the General Plan.

Section 3. Exception permit findings cannot be made to justify deviation above height limit. The structures proposed Site Development Plan exceed the height requirements in §16.34.060. The height limit in the Intensive Use zone district is 75 feet and the project includes structures that exceed this limit such as the storage silos which are 131 feet 3 inches and the vertical vent which is 164 feet 1 inch.

Section 4. The City Council finds that the Project is not consistent with General Plan 2040. The Project conflicts with the goals and policies identified and analyzed in Attachment 1 to this resolution.

IV. RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION’S ACTION TO DENY THE APPLICATION FOR A MAJOR USE PERMIT AND SITE DEVELOPMENT PLAN:

NOW, THEREFORE, LET IT BE RESOLVED that based on the findings above, the evidence and testimony, both written and oral, presented at the City Council hearing and information contained in the staff report attached hereto and incorporated herein by this reference, the City Council hereby DENIES the appeal and upholds the Planning Commission’s decision to deny the requested Major Use Permit and Site Development Plan for the VMT/Orcem Project. Further, based on the forgoing, the City Council hereby finds that this action is EXEMPT from the provisions of the California Environmental Quality Act, pursuant to California Public Resources Code Section 21080(b)(5) and the State CEQA Guidelines Section 15270.

APPEAL DENIED at a regular meeting of the City Council of the City of Vallejo, State of California, on the day of ________ 2019, by the following vote to writ
Attachment 1 to Resolution:

The Project is inconsistent with the General Plan 2040 Goals and Policies based on the findings in the resolution and the following analysis:

POLICY NBE-2.8 Infill Development. Promote infill development targets such as vacant and underutilized sites for community-desired and enhancing uses compatible with surrounding uses.

Action NBE-2.8A Identify sites suitable for redevelopment; work with property owners to promote economically feasible and community desired uses that enhance and are compatible with the existing urban fabric.

The Project is incompatible with adjacent uses, building or structures, with consideration given to harmony in scale, bulk, coverage, and density because even though the site is large enough to accommodate the proposed development it is visible from the immediately surrounding areas to the south and west and the noise, traffic generated by the Project operations impacts the nearby residences on Sandy Beach in unincorporated Solano County.

POLICY NBE-1.5 Scenic Vistas. Protect and improve scenic vistas, including views from Interstate 80 and State Route 37 in Vallejo.

Action NBE-1.5C Continue to administer the residential view district regulations intended to preserve panoramic views of the surrounding natural and human-made environment from residential neighborhoods located on hills.

POLICY NBE-4.4 Visual Continuity. Foster a cohesive and distinctive visual experience along the waterfront.

The proposed Site Development Plan does not conform to the height requirements in §16.34.060 nor the site development standards requiring equipment screening §16.70.020 of the Municipal Code. The height limit in the Intensive Use zone district is 75 feet and the project includes structures that exceed this limit such as the storage silos which are 131 feet 3 inches and the vertical vent which is 164 feet 1 inch. The equipment on site is required to be screened from public view. The Project site is generally screened from major thoroughfares such as Sonoma Boulevard due to its location along the waterfront. However, the site can be seen from the Strait, from Mare Island, from the Sandy Beach residential development and from areas in northwestern Crockett and Rodeo. The Orcem Project provides screening around their portion of the site, but many of the structures are taller than the proposed screening due to their industrial nature. In addition, because of the orientation of the site along the Strait, the conveyor system serving the ships would also not be screened and would be visible from the Strait, from Mare Island, from the Sandy Beach residential development.

POLICY NBE-5.1 Noise Control. Ensure that noise does not affect quality of life in the community.
Action NBE-5.1A Continue to require that new noise-producing uses are located sufficiently far away from noise-sensitive receptors and/or include adequate noise mitigation, such as screening, barriers, sound enclosures, noise insulation, and/or restrictions on hours of operation.

Trucks would travel to and from the site on a 24-hour basis. The average truck trips arriving and leaving the site would range from 12 to 32 per hour during day time hours (7:00 a.m. – 10 p.m.) and from 20 to 44 per hour during the overnight hours (10 p.m. – 7:00 a.m.). This would have a substantial impact to noise to the adjacent neighborhoods.

POLICY NBE-5.10 Site Safety. Ensure that affected soil, groundwater, or buildings will not have the potential to adversely affect the environment or the health and safety of site occupants.

The new development would be in the same general location as the existing structures and would be of a similar color, material, size and scale, the proposal includes open stockpiles of raw materials which may include limestone, gypsum, pozzolan, and GBFS. In Mode 1 and Phase 2 (GGBFS production only) there would be three stockpile areas on the Orcem site. The smallest stockpile would be located in the southern portion of the site and would be approximately 16 feet high. A second stockpile would be directly to the north of the smaller stockpile and would be approximately 26 feet high. The third and largest stockpile would be in the eastern portion of the site and would be approximately 49 feet high. The stockpiles would be partially screened by a 10-foot wall, the mill and filter building and the silos. Without participation of the joint-applicants with funding an monitoring, site safety cannot be assured as the stockpiles may not be monitored.

POLICY CP-1.12 Clean Air. Protect the community from harmful levels of air pollution.

The very high volume of trucks arriving to, and departing from, the project site 24 hours a day would substantially increase noise, traffic, and generate air emissions that would alter the character of the existing residential neighborhoods along Lemon Street and Sonoma Boulevard and would have a harmful effect on the desirability of the neighborhoods and their character. As proposed, the negative conditions brought on by the project cannot be lessened to an acceptable level without cooperation and commitments of funding from the joint-appellants.

POLICY MTC-1-4 Regional Transportation Planning. Ensure that Vallejo is well connected to road, rail, air, and maritime systems in support of both mobility and local economic development.

Action MTC- 1-4d Periodically review designated truck routes and enforce compliance to optimize goods movement and minimize impacts on neighborhoods and sensitive land uses.
POLICY MTC-2.1 Safety First. Prioritize pedestrian, bicycle, and automobile safety over traffic flow.

Action MTC-3.4C Regularly maintain key neighborhood connection routes to facilitate bicycle access, including through debris removal and street repair.

The increase in truck trips associated with the Project will make it undesirable to navigate both Lemon Street and Sonoma Boulevard on foot and on a bicycle. The current roadway configuration on Lemon Street includes on-street parking, one lane of traffic in each direction and no separate bike lane. Sonoma Boulevard, which has four lanes of traffic and on-street parking in some areas, has incomplete cycling and pedestrian facilities in areas where there is pedestrian activity leading to and from residential neighborhoods to Grace Patterson School and commercial areas along Magazine Street. Significant areas along Sonoma Boulevard, where truck traffic from the proposed development would travel, do not contain sidewalks. On the east side of Sonoma Boulevard there are no sidewalks between Magazine Street and Sandy Beach Road, for approximately 2,048 feet. This frontage abuts Grace Patterson School. On the west side of Sonoma Boulevard, there are two significant areas without sidewalks; between the gas station/convenience store at Sonoma and Magazine Street and Bayside Village Apartments, and between New Hope Chapel and Sequoia Avenue. In total, the amount of area along the east side of Sonoma Boulevard without sidewalks equals approximately 1,724 linear feet. In addition, there are 1,660 linear foot gaps in the Class II bicycle lanes on Sonoma Boulevard.

Both Lemon Street and Sonoma Boulevard provide bicycle and pedestrian access to commercial uses, services and schools in the area including Grace Patterson Elementary School. The lack of facilities impacts cyclist and pedestrian safety, and a significant increase in daily truck traffic along this corridor would further decrease the perception of safety. The project would not be compatible with the adjacent uses, with consideration given to the capacity and physical character of surrounding streets.

The burden of the increase of heavy truck traffic along city streets substantially burdens the existing physical capacity of the infrastructure of streets and curbs due to constant and continual vibrations causing stress, fractures, and breakage to asphalt and concrete materials. The negative conditions brought on by a significant increase in extremely heavy trucks on a local street cannot, as proposed, be lessened to an acceptable level without commitments in funding and cooperation from joint-appellants.