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VIA E-MAIL AND OVERNIGHT MAIL

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Re: Comments on the Draft Supplemental Environmental Impact Report for the Oak Knoll Mixed Use Community Plan Project, SCH No. 1995103035; (Case Number: PLN15378, PLN15378-PUDF01, ER15-004)

Dear Ms. Klein:

We are writing on behalf of **Oakland Residents for Responsible Development** regarding the August 2016 Draft Supplemental Environmental Impact Report (“DSEIR”) prepared for the Oak Knoll Mixed Use Community Plan Project (“Project”). The Project is located on approximately 188 acres of land at 8750 Mountain Boulevard on the former Oak Knoll Naval Medical Center Property. The Project proposes construction of 935 residential units, a “Village Center” with 72,000 square feet of neighborhood serving retail and commercial uses, and relocation of the historic Club Knoll building for commercial uses (10,000 square feet) and community space (4,000 square feet). The Project would also include restoration of Rifle Range Creek, approximately 83 acres of open space, and trails, paths and bicycle routes.

In 1996, the Oak Knoll Naval Medical Center property was subject to a Final Reuse Plan, pursuant to federal military base reuse procedures. A 1998 Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of Naval Medical Center Oakland (“1998 EIS/EIR”) was prepared to

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assess the potential effects of the Final Reuse Plan. The 1998 EIS/EIR was subsequently certified and the Final Reuse Plan was adopted. The current DSEIR assesses whether the proposed Project would result in new significant environmental effects or substantially increase the severity of previously identified significant effects.

As set forth below, the DSEIR does not comply with the requirements of the California Environmental Quality Act (“CEQA”). The City of Oakland (“City”) may not approve the Project until the errors in the DSEIR are corrected and a revised document is recirculated for public review and comment.

I. STATEMENT OF INTEREST

Oakland Residents for Responsible Development (“Oakland Residents”) is an unincorporated association of individuals and labor unions that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Alan Guan, Risi Agbabiaka, Peter Lew, Bridgette Hall, Tanya Pitts, **UA Plumbers and Pipefitters Union, Local 342, International Brotherhood of Electrical Workers Union, Local 595, Sheet Metal Workers Union, Local 104,** and their members and their families; and other individuals that live and/or work in the City of Oakland and Alameda County.

Individual members of Oakland Residents and the affiliated unions live, work, recreate and raise their families in Alameda County, including the City of Oakland. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Oakland Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. SUMMARY OF THE DSEIR'S INFORMATIONAL AND ANALYTICAL DEFICIENCIES

As these comments will demonstrate, the DSEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.”¹

Substantial evidence indicates that the Project is likely to cause significant adverse impacts. The DSEIR is legally defective due to its failure to adequately identify, evaluate and mitigate these potentially significant impacts. The errors and deficiencies of the DSEIR include the following:

1. The DSEIR fails to adequately disclose, evaluate and mitigate biological resource impacts;
2. The DSEIR fails to adequately disclose, evaluate and mitigate the Project's air quality impacts;
3. The DSEIR fails to adequately disclose, evaluate and mitigate the Project's greenhouse gas impacts; and
4. The DSEIR fails to disclose, evaluate and mitigate the Project's inconsistency with the City's traffic policies.

The DSEIR must be withdrawn and revised to address these errors and deficiencies. Because of the substantial omissions in the information disclosed in the DSEIR, revisions necessary to comply with CEQA will be, by definition, significant. In addition, substantial revision will be required to address impacts that were not disclosed as potentially significant in the DSEIR. Accordingly, the revised DSEIR must be recirculated for additional public comment.²

¹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

² Pub. Resources Code § 21091.1; 14 Cal. Code Regs. (“CEQA Guidelines”) § 15088.5.

We prepared our comments with the assistance of biological resources expert Scott Cashen and air quality experts at SWAPE. Mr. Cashen's comments are attached to this letter as Exhibit A and his *curriculum vitae* is attached as Exhibit B. SWAPE's comments are attached to this letter as Exhibit C and the *curricula vitae* of the experts who prepared SWAPE's comments are attached as Exhibit D.

III. CEQA REQUIRES THE DISCLOSURE OF ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS AND THE INCORPORATION OF ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO BELOW A LEVEL OF SIGNIFICANCE

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.³ Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR").⁴ An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the environment but also informed self-government."⁵

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁶ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.⁷ In addition, an adequate EIR must contain the facts and analysis necessary to support its conclusions.⁸

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures and through the consideration of environmentally superior alternatives.⁹ If an EIR

³ CEQA Guidelines § 15002, subd. (a)(1).

⁴ See, e.g., Pub. Resources Code § 21100.

⁵ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

⁶ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁷ Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).

⁸ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

⁹ CEQA Guidelines § 15002, subds. (a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of*

identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹⁰ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹¹ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

As discussed in detail below, the DSEIR fails to meet either of these two key goals of CEQA. The DSEIR fails to adequately and completely describe the Project and the Project setting and fails to disclose and evaluate all potentially significant environmental impacts of the Project. In addition, it proposes mitigation measures that are unenforceable, vague or so undefined that it is impossible to evaluate their effectiveness.

IV. THE DSEIR FAILS TO DISCLOSE, EVALUATE AND MITIGATE ALL POTENTIAL IMPACTS TO BIOLOGICAL RESOURCES

The DSEIR fails to adequately evaluate the Project's impacts on biological resources. The DSEIR fails to disclose key baseline information, fails to evaluate impacts from all Project activities, fails to support significance findings with substantial evidence and improperly relies on inadequate, vague or unenforceable mitigation to reduce impacts below a level of significance. A revised DSEIR must be prepared to adequately address these issues and incorporate additional mitigation.

A. The DSEIR Fails to Disclose the Biological Value of the Coast Live Oak Woodlands on the Project Site

The DSEIR is legally inadequate because it fails to establish the environmental setting of the Project resulting in inadequate disclosure and assessment of the Project's potentially significant impacts on biological resources. In particular, the DSEIR fails to disclose the habitat value of oak woodlands on the Project site.

Supervisors (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 400.

¹⁰ Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

¹¹ Pub. Resources Code §§ 21002-21002.1.

The environmental setting, or baseline, refers to the conditions on the ground and is a starting point to measure whether a proposed project may cause a significant environmental impact.¹² Describing the environmental setting is a prerequisite to an accurate, meaningful evaluation of environmental impacts. Without this information, an appropriate analysis cannot be made, effective mitigation cannot be designed, and alternatives cannot be considered. Furthermore, the failure to provide a proper baseline precludes the public from meaningfully evaluating the scope of potential biological impacts that may result from the Project activities.

The DSEIR discloses the existence of these oak woodlands, but fails to establish their habitat value. The Project site contains 28.89 acres of coast live oak woodlands.¹³ Oak woodlands have the richest wildlife species abundance of any habitat in California, with over 330 species of birds, mammals, reptiles, and amphibians depending on them at some stage in their life cycle.¹⁴ Wilson and others (1991) suggest California oak woodlands rank among the top three habitat types in North America for bird richness.¹⁵

The Biological Resources Assessment (“BRA”) that was prepared for the Project states: “[t]he oak woodland habitat in the Project Area, including the riparian woodland, is generally of medium to low quality due to the fragmented nature and the abundance of non-native, invasive species.”¹⁶ The statement that the habitat is medium to low quality is not supported by evidence. Habitat quality is defined by the ability of the area to provide conditions appropriate for individual and population persistence.¹⁷ Measuring habitat quality requires collecting data on critical resources (e.g., food and nest sites) and demographic variables (e.g., reproductive output and survival).¹⁸ The Applicant’s biological resources consultant, WRA, did not measure those variables. Therefore, the statement that oak woodland habitat at the Project site is “medium to low quality” is arbitrary and misleading to the public and decisionmakers.

¹² *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.

¹³ BRA, Figure 2.

¹⁴ Cashen Comments.

¹⁵ Cashen Comments.

¹⁶ BRA, p. 40.

¹⁷ Cashen Comments.

¹⁸ *Id.*

The effects of fragmentation and exotic (non-native) species on habitat quality depend on the species being evaluated, and thus cannot be generalized. Because plants exhibit some redundancy in ecosystem function, exotic plant species can substitute in part for natives in performing a range of ecosystem functions, including wildlife support.¹⁹ Indeed, in some cases native wildlife species preferentially select exotic plants over native ones.²⁰ Nevertheless, the statement that the oak woodland habitat at the site is medium to low quality due to fragmentation and the abundance of exotic species conflicts with the description in the BRA, which states:

The eastern and southeastern portions of the Project Area are characterized by steep, hilly topography with relatively undisturbed, natural vegetation types, including coast live oak (*Quercus agrifolia*) woodland, California sagebrush (*Artemisia californica*) scrub, and native purple needlegrass (*Stipa pulchra*) grassland.²¹

and

In the northeastern and southeastern portions of the Project Area, larger, more contiguous stands of oak woodland occur. Some of these larger stands appear to predate development in the Project Area and have a higher diversity of native plant species compared to elsewhere in the Project Area. The overstory is composed of dense coast live oak with occasional California bay.²²

Almost a thousand large oak trees occur on the Project site (859 trees with dbh > 18").²³ Coastal oak woodlands are comprised of slow growing, long-lived trees. As a result, succession requires a long time. The actual time is variable and depends on local environmental conditions; however, development of large, mature trees requires 60 to 80 years.²⁴ Large, mature oak trees are especially important to wildlife because they provide key structural elements and characteristics (e.g.,

¹⁹ *Id.*

²⁰ *Id.*

²¹ BRA at p. 4 [emphasis added].

²² BRA at p. 18.

²³ DSEIR, Appendix A to Appendix Q.

²⁴ Cashen Comments.

cavities, caching sites, and suitable substrates for raptor nests, among others) that are not available in smaller trees.²⁵

By failing to adequately disclose the habitat value of the Project setting, the public and decisionmakers are not provided sufficient information to assess the significance of the Project's impacts to these mature oak woodlands.

In addition to failing to establish the habitat value of the oak woodlands on the Project site, the DSEIR also fails to describe the regional setting in sufficient detail to allow meaningful assessment of the cumulative impacts threatening the affected oak woodlands. Urbanization and agricultural development have eliminated approximately one-third of California's oak woodlands.²⁶ Of the oak woodlands that remain, only 40% are protected (e.g., in parks).²⁷ However, even those that are protected from development are susceptible to numerous threats. In many cases, existing oak woodlands are not regenerating naturally (i.e., young trees are not establishing to replace older trees as they senesce and die).²⁸ In addition, the pathogen responsible for "Sudden Oak Death" started attacking California oaks in 1985 and became a full-scale epidemic by 1999.²⁹ Thus, Californians continue to lose their oak woodland heritage, even at sites that are protected from development. The DSEIR, however, fails to disclose this regional setting and fails to evaluate the Project's cumulative impact to coast live oak woodlands in the region.

The DSEIR needs to be revised to establish the cumulative threats to the coast live oak woodlands in the region (e.g., percentage that remain in Oakland and in Alameda County, and the rate at which existing woodlands are being lost). Without this regional context it is impossible for the public and decisionmakers to understand the relative importance of the oak woodlands on the Project site, and consequently, the cumulative significance of the Project impacts to those woodlands.

B. The DSEIR Fails to Disclose and Evaluate Impacts from All Project Features

The DSEIR is also inadequate because it fails to disclose and evaluate biological impacts from all Project components. CEQA requires an EIR to evaluate

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

the “whole of an action” which is being approved, including *all* components and activities that are reasonably anticipated to become part of the Project.³⁰ Here, the DSEIR fails to disclose and analyze the direct, indirect, and cumulative biological impacts associated with construction and operation of: (a) the hiking trail through the Hardenstine parcel, (b) the hiking trail through the preserved hillside grassland, and (c) Oak Knoll Memorial Park.³¹

Construction of these features would have direct impacts on habitat. In addition, they would indirectly impact biological resources by promoting recreation in places where it does not currently exist. Recreation and human presence in general, can have negative ecological impacts to ecosystems, plants, and wildlife.³² Those impacts can include: trampling, soil compaction, erosion, disturbance (due to noise and motion), pollution, nutrient loading, and the introduction of exotic plant species.³³ Corridors such as trails can also impact plant and animal species by causing habitat fragmentation and adverse “edge effects.”³⁴ In addition, the construction of the trails and park may result in the removal or destruction of additional biological resources.³⁵

This incomplete evaluation precludes the County from dismissing the likelihood of potential impacts.³⁶ Because the City has failed to investigate, disclose or evaluate the potential impacts from these Project activities, the City lacks substantial evidence to support a determination that the Project’s activities will not result in significant impacts on biological resources.

C. The DSEIR Fails to Disclose and Mitigate Impacts to the Oakland Star-Tulip

The DSEIR’s finding that the Project would not have a significant impact on the Oakland star-tulip is not supported by substantial evidence. Furthermore, the DSEIR improperly relies on inadequate, voluntary and unenforceable mitigation to mitigate impacts to the Oakland star-tulip.

³⁰ CEQA Guidelines §15378.

³¹ See DSEIR, Figures 3-10 and 3-11. See also BRA, Figure 8.

³² Cashen Comments.

³³ Cashen Comments.

³⁴ Cashen Comments.

³⁵ Cashen Comments.

³⁶ See *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1378-1379; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

According to the DSEIR, the proposed Project “has the potential to permanently impact an estimated 723 individuals of Oakland star-tulip due to planned grading and conversion of suitable habitat to developed areas.”³⁷ The DSEIR states that the Oakland star-tulip is a special status plant species.³⁸ The DSEIR provides no evidence the Applicant has implemented design measures in an attempt to avoid impacts to the species. The Project may thus result in the removal of all 723 of these plants.

The Oakland star-tulip is a “locally significant species with limited distribution and is considered “fairly endangered” in California.³⁹ Nonetheless, the DSEIR concludes that the loss of Oakland star-tulip on the Project site is not significant given the regional prevalence of the species.⁴⁰ In support of this finding, it states: “[r]eported occurrences of Oakland star-tulip in the Project vicinity document observations in Alameda and Contra Costa counties ranging from a single plant to populations of over a thousand, though most records describe smaller concentrations of under 100 individuals (Calflora 2016a, Calflora 2016b).”⁴¹ While it is correct that “most records describe smaller concentrations of under 100 individuals,”⁴² the DSEIR fails to establish how this supports its conclusion that impacts to a population of over 723 individuals would not be significant. In contrast to the population on the Project site, most recorded populations are extremely small – often indicating just “1+” individuals.⁴³ Populations of the size found on the Project site are very rare. There are only a few recorded populations of over 500 individuals.⁴⁴

Based on this information, the administrative record does not support the DSEIR’s conclusion that impacts to a population of 723 individuals, one of just a few recorded populations with over 500 plants, are not of significant impact. Indeed, under the DSEIR’s analysis, every population of Oakland star-tulip in the Project vicinity could be eliminated without any mitigation. No evidence in the record supports the City’s assumption that the threshold of significance for impacts to the

³⁷ DSEIR at p. 4.3-18.

³⁸ DSEIR at p. 4.3-14.

³⁹ DSEIR at p. 4.3-15.

⁴⁰ DSEIR, p. 4.3-47.

⁴¹ DSEIR, p. 4.3-18.

⁴² Cashen Comments.

⁴³ Cashen Comments.

⁴⁴ Cashen Comments.

Oakland star-tulip is greater than 723 individual plants. The DSEIR must be revised and recirculated to disclose this potential impact.

The proposed adoption of Mitigation BIO-1 does not rectify this error. Mitigation BIO-1 is neither mandatory nor sufficient to reduce impacts below a level of significance. The DSEIR states: “[w]ith Recommendation BIO-1, to which the Project sponsor has agreed, localized impacts to Oakland star-tulip could be substantially reduced through salvage and relocation of a portion of the population for reintroduction elsewhere on the Project site or into established populations in the Project vicinity.”⁴⁵ While the DSEIR lists “Recommendation BIO-1” in the summary of mitigation measures, the DSEIR makes clear from the statement above and from its designation as a “recommendation that this is only a voluntary measure to be performed at the applicant’s discretion, not an enforceable mitigation measure. There is no guarantee that the Applicant will not change its mind or transfer the Project to a subsequent developer who has made no such commitment.

CEQA requires that public agencies adopt “feasible” mitigation measures that must “actually be implemented.”⁴⁶ Nonbinding measures cannot be relied upon to mitigate potential impacts.⁴⁷ Accordingly, Recommendation BIO-1 must be amended to provide mandatory mitigation obligations before it can be relied upon to reduce the Project’s impacts to the Oakland star-tulip.

Even if it were mandatory, Recommendation BIO-1 would be inadequate to reduce Project impacts below a level of significance. Recommendation BIO-1 indicates the applicant would salvage at least 50% of the Oakland star-tulip bulbs. The applicant would then replant the bulbs within the Project site, *or* make the bulbs available to a reputable organization (e.g., East Bay Regional Park District, East Bay Chapter of the California Native Plant Society, U.C. Berkeley Botanical Garden, or Merritt College Horticultural Department).⁴⁸ There are several problems with this mitigation.

First, it would only mitigate a fraction of the impacted plants. An attempt to salvage 50% of the Oakland star-tulip bulbs would still mean a net loss of 361

⁴⁵ DSEIR, p. 4.3-47.

⁴⁶ *Federation of Hillside and Canyon Associations v. City of Los Angeles*, *supra*, 83 Cal.App.4th at 1261; see Pub. Resources Code § 21002.1, subd. (b).

⁴⁷ *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 385.

⁴⁸ *Id.*

plants—an amount greater than the vast majority of Oakland star-tulip populations in the area. In addition, Recommendation BIO-1 suggests a success criterion of 0.5:1, meaning that the actual net loss could be as much as 542 plants. Accordingly, the net loss of Oakland star-tulip bulbs would still be significant even if this voluntary mitigation was implemented.⁴⁹

Second, the option to make the bulbs available to a reputable organization is not equivalent to the requirements set forth for replanting the bulbs on the Project site. Donating the bulbs (instead of replanting them on-site) would completely eliminate the plant from the Project area. Furthermore, that option does not: (a) set forth any guidelines or requirements for what the “reputable organization” does with the donated bulbs; (b) require the Applicant to fund any replanting efforts by the reputable organization; and (c) impose any success criteria (or even any requirement to plant the bulbs) on the organization that receives the bulbs. As a result, all 723 Oakland star-tulips could be lost even if the Applicant complies with Recommendation BIO-1.⁵⁰

In contrast, under Recommendation BIO-1, if the Applicant elects to replant the bulbs within the Project site, it would need to: (a) prepare and implement a monitoring plan; (b) consult with the “appropriate agencies” prior to the start of local construction activities; (c) achieve success criteria at the bulb relocation sites; (d) implement contingency measures if success criteria are not achieved; and (e) prepare monitoring reports that include justification for any deviations from the monitoring plan.⁵¹ Given the vast difference in the level of effort and money between these two options, it is extremely likely that the Applicant would select the bulb donation option.

Due to the issues described above, the Project would have a potentially significant, unmitigated impact on the Oakland star-tulip. A revised DSEIR must be prepared to disclose this impact.

⁴⁹ Cashen Comments.

⁵⁰ Cashen Comments.

⁵¹ DSEIR, pp. 4.3-47 and -48.

D. The DSEIR Fails to Adequately Disclose, Evaluate or Mitigate Impacts to the Purple Needlegrass Grassland Community on the Project Site

The DSEIR is also inadequate because it fails to adequately disclose, evaluate or mitigate the Project's direct and cumulative impact on the loss of purple needlegrass grassland community. The Project site contains 17.52 acres of purple needlegrass grassland, of which 7.04 acres were planted in areas where buildings were demolished in the Project area.⁵² Purple needlegrass grassland is considered a sensitive natural community in California.⁵³ The DSEIR's analysis of impacts to this sensitive natural community contains a number of fundamental errors.

First, the DSEIR distinguishes the naturally occurring purple needlegrass community from the planted one. It then arbitrarily treats the former as a sensitive natural community, but not the latter. The DSEIR fails to justify the rationale for this distinction. According to California Fish and Wildlife Code section 1901, the term "native plant" means: "a plant growing in a wild uncultivated state which is normally found native to the plant life of this state." Purple needlegrass is native to the Project site, and the areas that were planted after buildings were demolished are now in a "wild uncultivated state."⁵⁴

The DSEIR does not support its finding that the "planted" section of the purple needlegrass community is not a sensitive natural community with any analysis or evidence. The DSEIR does not cite any guidelines that indicate it is acceptable to ignore the sensitivity of a natural community if the vegetation in that community was originally planted. It also cites no studies showing that "planted" communities have no biological value.

Furthermore, the assumption that planted communities cannot be sensitive natural communities directly contradicts the widely accepted practice (by both state and federal resource agencies) of accepting the creation or restoration of sensitive natural communities as mitigation for impacts to naturally occurring ones.⁵⁵ Indeed, the DSEIR proposes the enhancement and *creation* of oak woodland (a sensitive natural community) as mitigation for the Project's significant impact on

⁵² BRA, Figure 2 and p. 15.

⁵³ Cashen Comments.

⁵⁴ Cashen Comments.

⁵⁵ Cashen Comments.

the naturally occurring oak woodland.⁵⁶ The City concludes this would reduce the impact to a less-than-significant level (i.e., because the created natural community replaces the impacted one).⁵⁷ If a created natural community sufficiently replaces a naturally occurring one, the two communities are functionally equivalent.⁵⁸ As a result, the City cannot view the oak woodland that would be created by the Project as a sensitive natural community, without also viewing the previously created purple needlegrass community as a sensitive one.

The DSEIR's refusal to characterize the created purple needlegrass community as a sensitive natural resource is not supported by substantial evidence and violates CEQA's requirement to accurately disclose the project setting. This failure renders public comment and review meaningless since the public is not provided the basic information about the Project necessary to understand and assess the Project's impacts. It also results in a failure to assess all project impacts and in significance findings that are not supported by substantial evidence.

The DSEIR's evaluation of the purple needlegrass community is also inadequate because it relies on unsupported claims regarding the regional setting of the purple needlegrass community. The DSEIR provides the following discussion of native purple needlegrass grassland in the Project region:

purple needlegrass grassland is relatively common in the Project vicinity with an estimated several hundred acres occurring in parks and open space areas within a 5-mile radius of the Project site (e.g. at Knowland Park, Anthony Chabot/Fairmont Ridge, Skyline Serpentine Prairie Preserve, and Upper San Leandro Reservoir/Las Trampas Ridge). At least 250 acres of needlegrass grassland have been mapped at three sites in the Project vicinity (Fairmont Ridge, Knowland Park, and Skyline Serpentine Prairie). No detailed mapping has been conducted at other sites, but it is likely that there are many more acres of purple needlegrass grassland in the vicinity.⁵⁹

This information is not supported by evidence. Specifically, the DSEIR does not say *who* estimates several hundred acres (of purple needlegrass grassland) occur in parks and open space areas within a 5-mile radius of the Project site, *how*

⁵⁶ DSEIR, p. 4.3-68.

⁵⁷ *Id.*

⁵⁸ Cashen Comments.

⁵⁹ DSEIR, p. 4.3-68.

the estimate was made, or *when* it was made. The DSEIR also assumes, without any supporting evidence, that the purple needlegrass grasslands in these parks and open space areas are secure. To the contrary, monitoring data collected by researchers at U.C. Berkeley indicate a widespread decline in purple needlegrass at parks managed by the East Bay Regional Park District.⁶⁰

Similarly, the DSEIR does not provide evidence to substantiate the statement that: “at least 250 acres of needlegrass grassland have been mapped at three sites in the Project vicinity.” Furthermore, the statement that “it is likely that there are many more acres of purple needlegrass grassland in the vicinity” is speculation, which does not constitute evidence under CEQA.

Even if this were accurate, the DSEIR also lacks substantial evidence to support its assumption that the existence of other, larger purple needlegrass communities in the area would somehow render the purple needlegrass community on the Project site unimportant and unworthy of protection or mitigation. Currently only 1% of California’s native grasslands remain, and as a result, California grasslands are among the 21 most-endangered ecosystems in the United States.⁶¹ The DSEIR provides no biological justification for its claim that impacts to the purple needlegrass community on the Project site would not be significant.

The DSEIR also lacks substantial evidence to support its claim that the purple needlegrass communities in nearby parks and open spaces are “generally of much higher quality than the habitat found in the Project site, which is relatively fragmented and generally co-dominated by non-native annual grasses and forbs, with few native forbs.” The statement that occurrences in nearby parks and open spaces are generally of much higher quality than those on the Project site is not supported by evidence. While the native purple needlegrass grassland on the Project site is fragmented and co-dominated by non-native grasses and forbs, so are the native grasslands that occur in nearby parks and open spaces.⁶² Consequently, the DSEIR lacks evidence that grasslands in nearby parks and open spaces are “much higher quality.”

Finally, the DSEIR lacks substantial evidence to support its finding that the majority of the purple needlegrass community on the Project site will not be impacted by the Project and will be preserved. The DSEIR states that:

⁶⁰ Cashen Comments.

⁶¹ *Id.*

⁶² *Id.*

Additionally, the majority (6.62 of the 10.48 acres) of the purple needlegrass in the Project site, located on the steeper slopes of the northeast portion of the site, will not be impacted by development and will be preserved. As such, the Project impact to 3.86 acres of native purple needlegrass grassland would be less than significant.⁶³

The DSEIR, however, failed to disclose or analyze the impacts associated with the proposed hiking trails and Oak Knoll Memorial Park that may directly go through this “preserved community.”⁶⁴ These features would have direct and indirect impacts on the native purple needlegrass grassland.⁶⁵ Therefore, the statement that the majority (6.62 of the 10.48 acres) of the purple needlegrass at the Project site will not be impacted by development is inaccurate.

The statement that the majority of the native grassland will be “preserved” is also not supported by evidence. The DSEIR does not require a conservation easement, deed restriction, or other mechanism that would ensure the purple needlegrass grassland would be preserved and appropriately managed for conservation in perpetuity. Without enforceable mitigation, the assumption that the majority of the purple needlegrass grassland community will be preserved is speculative.

For these reasons, the City lacks substantial evidence to conclude Project impacts to purple needlegrass grassland (native *or* planted) would be less than significant. The DSEIR must be revised and recirculated to evaluate this impact.

E. The DSEIR Fails to Adequately Evaluate Cumulative Impacts to Biological Resources on the Project Site

The DSEIR is also inadequate because it fails to evaluate the Project’s cumulative biological impacts. The DSEIR acknowledges: “[t]he 1998 EIS/EIR analysis did not discuss or describe potential cumulative impacts related to biological resources.”⁶⁶ The DSEIR further acknowledges the 1998 EIS/EIR did not analyze impacts to all sensitive biological resources known to occur on the Project site. Moreover, the cumulative impacts scenario has changed considerably since 1998. This includes both the rate of urbanization in the East Bay, and the severity

⁶³ DSEIR, p. 4.3-68.

⁶⁴ See DSEIR, Figures 3-10 and 3-11. See also BRA, Figure 8.

⁶⁵ *Id.*

⁶⁶ DSEIR, p. 4.3-84.

of threats to biological resources (e.g., due to climate change). In addition, the status of some sensitive biological resources has changed substantially since 1998. For example, Sudden Oak Death has become an epidemic, and the burrowing owl (which was detected on the Project site in 1995) has continued to decline despite efforts to conserve the species and its habitat.⁶⁷

The DSEIR, however, fails to provide any *quantitative* analysis of cumulative effects. For example, the DSEIR does not quantify how much habitat existed historically, how much has been lost due to past and present projects, and how much more is expected to be lost due to reasonably foreseeable future projects. Although the DSEIR provides a list of “Active Major Development Projects” in the City of Oakland as of October 2014, that list does not identify: (a) the geographic size of the projects, or (b) the biological resources that would (or might) be affected by the projects.⁶⁸ This precludes any ability to conduct independent analysis of cumulative impacts and the Project’s corresponding contribution to those impacts.

Not only did the DSEIR fail to provide any quantitative analysis, but the *qualitative* analysis it provided is flawed and insufficient to make any conclusions pertaining to the significance of cumulative impacts to biological resources.

The DSEIR states:

Given the City’s requirement for all projects to comply with SCAs [Standard Conditions of Approval], the proposed Project would not adversely contribute to the cumulative effect when considered with other past, present, and reasonably foreseeable future development; its effect would not be cumulatively considerable.⁶⁹

The DSEIR provides no evidence that the City’s SCAs have effectively mitigated cumulative impacts. Moreover, existing evidence demonstrates the City has not required “all projects” to comply with SCAs. For example, there is substantial evidence showing the City has failed to enforce SCAs for the “California Trail Project” (on the ridgeline of Oakland’s Knowland Park), and that failure to comply with the SCAs has resulted in significant impacts to sensitive biological resources.⁷⁰

⁶⁷ California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. p. 1.

⁶⁸ DSEIR, Appendix G.

⁶⁹ DSEIR, p. 4.3-85.

⁷⁰ Cashen Comments.

The DSEIR also lacks substantial evidence to support its conclusion that “[n]one of the potential adverse effects identified for the Project would make a cumulatively considerable contribution to the cumulative impact when combined with other approved or anticipated projects considered in this analysis.”⁷¹

First, the “projects considered in this analysis” are limited to projects in the City of Oakland⁷², which does not comport with the geographic area used to justify the City’s conclusions. For example, the City used the abundance of purple needlegrass grassland at neighboring reserves to justify its conclusion that impacts to native purple needlegrass grassland at the Project site would be less than significant.⁷³ However, many of the reserves referenced in the DSEIR are outside of the City of Oakland, and the City did not consider the impacts of projects outside the City of Oakland.

Second, the City’s cumulative effects assessment only considered “potential adverse effects identified for the Project.” For example, it based its conclusion that impacts to native purple needlegrass grassland would be less than significant on its finding that only 3.86 acres of native grassland would be affected by the Project and that this acreage is relatively small compared to the overall regional population. This undermines the intent of cumulative effects analysis, which is to determine whether two or more individual effects, when considered together, are considerable. Whereas impacts to 3.86 acres might be considered insignificant in a vacuum, it could be cumulatively considerable when viewed in connection with other past, present, and future projects.

Grading and other development activities will have a significant effect on habitat conditions, and even if the Applicant’s restoration activities are successful, they will not replace the habitat that is lost for many years (e.g., it takes 60-80 years for an oak to reach maturity). For wildlife, this equates to multiple generations of lost habitat, and consequently, a considerable loss of reproductive output. This could have serious cumulative consequences on a species’ ability to maintain a viable population in the Project area. This potential cumulative impact must be disclosed and evaluated in a revised DSEIR.

⁷¹ DSEIR, p. 4.3-85.

⁷² DSEIR, Appendix G.

⁷³ DSEIR, p. 4.3-68.

F. The DSEIR Lacks Substantial Evidence to Support Its Finding that the Project's Impact to Avian Habitat Will Be Temporary and Not Significant

The DSEIR acknowledges that mass grading and the removal of over 4,000 trees from the riparian corridor, non-native forest, and oak woodland communities would impact avian habitat.⁷⁴ It then states:

This impact to avian habitat is considered temporary however, as the Project proposes an extensive replanting and landscape plan, described in detail under criterion "f" (Oakland Tree Ordinance and Tree Removal) under Impact BIO-5. Restoring portions of the site as open space and parks, installing street trees, and restoring Rifle Range Creek, its tributaries, and the associated riparian corridors, would reduce the overall long-term effects on avian habitat attributable to the Project.⁷⁵

There are several flaws with the City's rationale.

First, the development of large, mature oak trees, which provide critical resources to many bird species, requires 60 to 80 years.⁷⁶ Thus, Project impacts to avian habitat are not "temporary," especially when considering the lifespan and reproductive potential of birds.⁷⁷ California Partners in Flight and PRBO Conservation Science examined seven focal bird species representative of the range of oak habitats in the state. They reported: "[l]oss of habitat or habitat structure (such as dead standing trees, mature trees with cavities, or a shrubby understory component) is implicated as a likely cause of decline and/or other problems for five of the seven focal species."⁷⁸

Second, adherence with Oakland's Tree Ordinance does not offset the loss of *woodlands*, which is the functional unit of conservation concern (i.e., not the individual tree).⁷⁹ Indeed, the Tree Ordinance allows the Applicant to pay a fee in lieu of replanting trees at the site. That fee is applied toward tree planting in city

⁷⁴ DSEIR, p. 4.3-51.

⁷⁵ *Id.*

⁷⁶ Cashen Comments.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

parks, streets, and medians.⁸⁰ Trees planted at those locations do not create *woodlands*, and they would not replicate the functions and values of the trees (and woodlands) removed from the Project site.⁸¹

Third, the DSEIR lacks substantial evidence for its assumption compliance with the Oakland Tree Ordinance would reduce impacts to oak woodlands below a level of significance. To the contrary, a study reviewing oak ordinances throughout California found that tree ordinances, such as the one implemented by the City of Oakland, have not been effective in conserving oaks and oak woodlands.⁸²

Fourth, many of the replacement trees planted at the Project site will be located in areas that are not conducive to high-quality avian habitat. The DSEIR indicates:

In addition to trees preserved under the Project, the Project sponsor proposes an extensive replanting and landscape plan introduced along Project streets, residential areas, hillsides, pedestrian ways, the creek corridor, and site entrances along with a system of several parks, gardens, courtyards, pedestrian trails, and open spaces onsite, which would incorporate replacement trees pursuant to the City's Tree Ordinance and SCA BIO-5.⁸³

Trees along streets and in residential areas may be aesthetically pleasing to humans, but they have minimal value to most bird species.⁸⁴ Indeed, trees in those locations can create an "ecological trap" by attracting birds to places where they will be susceptible to heightened mortality (e.g., due to window strikes and domestic cats).⁸⁵

⁸⁰ DSEIR, p. 4.3-43.

⁸¹ Cashen Comments.

⁸² *Id.*

⁸³ DSEIR, p. 4.3-76.

⁸⁴ Cashen Comments.

⁸⁵ Cashen Comments. An ecological "trap" is an area where an animal settles to breed because conditions at the time of settlement seem appropriate. However, either because natural conditions change (e.g., fire, drought), or humans change them (e.g., drive motorcycles through them), the animal has made a mistake and either dies or has reduced reproductive output. Thus the animal is, in essence, lured into what turns out to be poor-quality habitat.

Finally, “restoring” portions of the site does not ensure avian habitat would be replaced because the performance standards proposed in the Applicant’s restoration plan pertain to tree survival during the first 10 years—the plan does not include any performance standards for avian habitat.⁸⁶ The success of a *habitat* restoration project must be judged by how wildlife species respond to it, not just by the replanting of plant species.⁸⁷ Because the DSEIR does not incorporate appropriate success criteria for restoring avian habitat, the DSEIR lacks substantial evidence to support its assumption that restoration efforts would reduce the overall long-term effects on avian habitat below a level of significance.⁸⁸

The DSEIR must be revised and recirculated to disclose and evaluate potential impacts to avian habitat from the replacement of mature woodland habitat with immature trees scattered in areas with much lower habitat value.

G. The DSEIR Improperly Defers Formulation of Mitigation Measures to Address Significant Impacts from Avian Collisions

The DSEIR acknowledges: “avian collisions with glass or reflective surfaces on buildings of the proposed Project have the potential to result in mortality, which could be a significant impact under CEQA and violate the federal MBTA and the California Fish and Game Code (as it could constitute unauthorized take).”⁸⁹ The DSEIR finds that this impact would be reduced below a level of significance with implementation of the Bird Collision Reduction Measures set forth in SCA BIO-2.

SCA BIO-2 requires preparation of a Bird Collision Reduction Plan and lists several *mandatory measures* that need to be incorporated into the Plan.⁹⁰ However, it subsequently states: “the project sponsor will tailor the project-specific Bird Collision Reduction Plan to incorporate those strategies that reasonably apply to the Project or its commercial tenants or homeowners/tenants.”⁹¹ The DSEIR does not identify what measures “reasonably apply” and does not set forth any performance standards to guide the Applicant in selecting the appropriate measures. Instead, it is left up to the Applicant to decide what is “reasonable” after the CEQA review process terminates.

⁸⁶ DSEIR, Appendix 6 to Appendix N.

⁸⁷ Cashen Comments.

⁸⁸ *Id.*

⁸⁹ DSEIR, p. 4.3-53.

⁹⁰ DSEIR, pp. 4.3-36 and -37.

⁹¹ DSEIR, p. 4.3-54.

Because the Applicant has not prepared a Bird Collision Reduction Plan and because the DSEIR has not identified which collision reduction measures will be mandatory, the mitigation measures that will be implemented are uncertain and unenforceable. CEQA requires that public agencies adopt “feasible” mitigation measures that must “actually be implemented.”⁹² Nonbinding measures cannot be relied upon to mitigate potential impacts.⁹³ As a result, the City lacks substantial evidence to support a determination that the Plan will be sufficient to reduce avian collision impacts below a level of significance.

H. The DSEIR Misrepresents the Amount of Habitat that Will Be Restored or Enhanced

The DSEIR is also inadequate because its findings rely on a misrepresentation of the amount of habitat that will be restored or enhanced. A key component of the Project is the restoration and enhancement of riparian areas along Rifle Range Creek.⁹⁴ Neither the DSEIR nor accompanying appendices define the terms “restoration” and “enhancement.” However, because the focus of the restoration and enhancement element is on riparian areas, one can presume the DSEIR is referring to *habitat* restoration and enhancement. In general:

- The term “habitat restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning the majority of natural functions to the lost or degraded native habitat.⁹⁵
- The term “habitat enhancement” means the manipulation of the physical, chemical, or biological characteristics of a habitat to change a specific function or seral stage of the habitat for the purpose of benefitting species.⁹⁶

The DSEIR exaggerates the amount of riparian restoration that would occur due to the Project. It states: “[t]he Project proposes restoration and enhancement of approximately 16.7 acres of riparian areas along Rifle Range Creek and one of the

⁹² *Federation of Hillside and Canyon Associations v. City of Los Angeles*, *supra*, 83 Cal.App.4th at 1261; see Public Resources Code § 21002.1, subd. (b).

⁹³ *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 385.

⁹⁴ DSEIR, p. 1-1.

⁹⁵ U.S. Legal Definitions [online]. Habitat Restoration Law & Legal Definition. Available at: <<http://definitions.uslegal.com/h/habitat-restoration/>>.

⁹⁶ U.S. Legal Definitions [online]. Habitat Enhancement Law & Legal Definition. Available at: <<http://definitions.uslegal.com/h/habitat-enhancement/>>.

Creek's tributaries, Hospital Creek."⁹⁷ However, there are currently 7.28 acres of riparian woodlands on the Project site.⁹⁸ These woodlands are comprised primarily of native plant and animal species (although some non-native herbaceous plants occur in the understory).⁹⁹ Therefore, from the habitat prospective, they do not appear to need restoration or enhancement. Nevertheless, given 7.28 acres already exist on the site, the Project would, at most, result in a net increase of 9.42 acres of riparian woodlands (if the Applicant's restoration and enhancement activities are successful).

V. THE DSEIR FAILS TO DISCLOSE OR ADEQUATELY MITIGATE AIR QUALITY AND GREENHOUSE GAS IMPACTS

The DSEIR fails to adequately evaluate the Project's air quality impacts and its impacts on global climate change. Air pollutant and greenhouse gas ("GHG") emissions associated with the Project are underestimated and may in fact result in new and more significant impacts when correctly evaluated. A revised DSEIR should be prepared to adequately address these issues and incorporate additional mitigation.

A. The DSEIR Arbitrarily Changes CalEEMod Input Parameters to Understate the Project's Air Quality Impacts

The DSEIR for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2013.2.2 ("CalEEMod").¹⁰⁰ CalEEMod provides recommended default values based on site specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type.¹⁰¹ If more specific project information is known, the user can change the default values and input project-specific values, but CEQA requires that such changes be justified by substantial evidence.¹⁰² Once all the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air

⁹⁷ DSEIR, p. 3-23.

⁹⁸ BRA, Figures 2 and 9.

⁹⁹ BRA, pp. 17 and 18.

¹⁰⁰ CalEEMod website, available at: <http://www.caleemod.com/>.

¹⁰¹ SWAPE Comments.

¹⁰² CalEEMod User Guide, p. 2, 9, available at: <http://www.caleemod.com/>.

pollution and GH emissions, and make known which default values were changed as well as provide a justification for the values selected.¹⁰³

Here, several of the values inputted into the Project's CalEEMod output files are incorrect and are not consistent with information disclosed in the DSEIR.¹⁰⁴ As a result, emissions associated with the Project are greatly underestimated.¹⁰⁵ A revised DSEIR must be prepared to adequately assess the potential impacts operation of the Project may have on regional and local air quality and global climate change.

1. Use of Incorrect CO₂ Intensity Factors

The CalEEMod model relies upon an incorrect carbon dioxide (CO₂) intensity factor to estimate the Project's operational emissions.¹⁰⁶ When Pacific Gas & Electric ("PG&E") is chosen as the utility provider for the proposed Project, CalEEMod assumes a default CO₂ intensity factor of 641.35 pounds per megawatt-hour ("lb/MWhr"). This intensity factor is used to estimate the CO₂ emissions generated from electricity usage during Project operation. The PG&E intensity factor of 641.35 pounds is the most accurate, verified, and up-to-date number that has been reported to the BAAQMD by PG&E, and it is the number that is used and recommended in the most recent CalEEMod program.¹⁰⁷ As described in the CalEEMod User's Guide, this intensity factor is "based on Table G6 of the California Air Resources Board (ARB) Local Government Operation Protocol version 1.1 or the latest public utilities inventory reports," and "is consistent with recommendations in the California Air Pollution Control Officer Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures document."¹⁰⁸

The intensity factor used in the Project's three operational GHG CalEEMod models, however, were adjusted from the default value to 290 lb/MWhr.¹⁰⁹ As a

¹⁰³ SWAPE Comments; CalEEMod User Guide, p. 7, 13, available at: <http://www.caleemod.com/> (A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.)

¹⁰⁴ SWAPE Comments.

¹⁰⁵ *Id.*

¹⁰⁶ SWAPE Comments.

¹⁰⁷ See CalEEMod User's Guide, Appendix D, Default Data Tables, Table 1.2, available at: <http://www.caleemod.com/>

¹⁰⁸ *Id.*, Appendix A, Calculation Details, p. 2.

¹⁰⁹ Appendix H-I, pp. 783, pp. 877, and pp. 930

result, the emissions generated by this modeling are less than half what they would be if CalEEMod default factor was used.

This Project's Greenhouse Gas Reduction Plan ("GHG Reduction Plan") states that this reduced intensity factor comes from "the Pacific Gas and Electric Company (PG&E) CO₂ intensity factor for 2020."¹¹⁰ The 2015 document, however, expressly states that this estimate is "not to be used" for "GHG reporting, financial analysis, or regulatory compliance...."¹¹¹

Moreover, the 290 lb value cited in that document is taken from a 2010 CPUC Future Emissions Estimate that was calculated "prior to the drought."¹¹² The drought has a significant impact on the availability of hydroelectric power. As a result, the CPUC 2010 estimates have not been reliable estimates of future CO₂ intensity factors.¹¹³

There is no substantial evidence to support using a 55% reduction in electricity-related GHG emissions. PG&E's CO₂ intensity factor rises and falls from year to year, based primarily on customer demand and the availability of clean hydropower.¹¹⁴

The DSEIR's significant reduction from the default assumption for PG&E is unsupported. PG&E's intensity factor changes each year and even PG&E acknowledges that its reports should not be relied upon until "a thorough, third-party verification" is conducted.¹¹⁵ California is still in the midst of a severe drought. With global warming impacts occurring more rapidly than expected,

¹¹⁰ Appendix W, p.5

¹¹¹ Greenhouse Gas Emission Factors: Guidance for PG&E Customers, at p. 1, available at: https://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge_ghg_emission_factor_info_sheet.pdf.

¹¹² Greenhouse Gas Emission Factors: Guidance for PG&E Customers, at p. 3, available at: https://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge_ghg_emission_factor_info_sheet.pdf.

¹¹³ SWAPE Comments; compare: <http://www.pgecurrents.com/2016/02/05/pge%E2%80%99s-carbon-emissions-remain-among-nation%E2%80%99s-lowest/>, with: http://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge_ghg_emission_factor_info_sheet.pdf.

¹¹⁴ SWAPE Comments; PG&E article dated February 20, 2013, available at: <http://www.pgecurrents.com/2013/02/20/pge%E2%80%99s-clean-energy-reduces-greenhouse-gas-emissions/>.

¹¹⁵ SWAPE Comments.

hydropower resources will continue to become less reliable.¹¹⁶ The DSEIR fails to provide any analysis, explanation or substantial evidence to support deviating from the default intensity factor in favor of the inapplicable and out-of-date 2010 CPUC Future Emissions Estimate. While the City may deviate from default CalEEMod values, these deviations must be explained and supported. The reliance on the 2010 CPUC Future Emissions Estimate is speculative at best.

Furthermore, the reliance on the 2010 CPUC Future Emissions Estimate contained in the PG&E document is contrary to that document's own guidance for estimated future year emissions. Because of the unreliability of the 2010 future emissions estimates, the PG&E document states that "to estimate GHG emissions in a recent or future year for which an emission factor is not yet available, we recommend using an average of the five most recent coefficients available."¹¹⁷ The PG&E Emissions Factor Summary estimates the five year average for CO₂ to be 457 lbs/MWh.¹¹⁸ Therefore, at the very least, an intensity factor of 457 lbs/MWh should have been applied to the Project, which is still almost double the 290 lb/MWh intensity factor used within the operational CalEEMod models.¹¹⁹

The DSEIR lacks substantial evidence to support its decision to rely on out-of-date emissions that were never intended to be relied upon to estimate future CO₂ emissions for regulatory purposes. As a result, the Project's GHG emissions are greatly underestimated,¹²⁰ violating CEQA's requirement to disclose the scope of a project's potential impacts.

Because the DSEIR substantially underestimates the Project's GHG emissions, its conclusion that proposed mitigation will reduce the Project's GHG emissions below a level of significance is not supported by substantial evidence. The DSEIR relies on mitigation measures such as offsets that are based upon the Project's total annual GHG emissions. Sufficient offsets will not be obtained to reduce the Project's GHG emissions below a level of significance if the Project's GHG emissions are underestimated.

¹¹⁶ SWAPE Comments.

¹¹⁷ Greenhouse Gas Emission Factors: Guidance for PG&E Customers, at p. 2, available at: https://www.pge.com/includes/docs/pdfs/shared/environment/calculator/pge_ghg_emission_factor_info_sheet.pdf.

¹¹⁸ SWAPE Comments.

¹¹⁹ *Id.*

¹²⁰ *Id.*

2. Use of Incorrect Land Use Type

The Project's emissions are also underestimated due to the use of incorrect land use types in the CalEEMod calculations.¹²¹ Both the "Mobile Emissions-TDM" and "Mobile Emissions- No TDM- New Fleet Mix" CalEEMod output files included "General Light Industry" as one of the Land Use.¹²²

The inclusion of "General Light Industry" land use, however, is unjustified, as there is no light industry proposed by the Project. The Project only proposes commercial, residential, open space and parks, and roads.¹²³

Without providing adequate justification for the inclusion of the "General Light Industry" land use type, the "Mobile Emissions-TDM" and "Mobile Emissions- No TDM- New Fleet Mix" CalEEMod output files are incorrect and therefore should not be relied upon to make a significance determination.¹²⁴

Additionally, 1,110 daily trips were inputted for the General Light Industry land use for both models, but then a trip length of zero miles was applied to the daily trips.¹²⁵ No explanation is provided as to why daily trips for this land use would be inputted into the models and then have the associated trip lengths reduced to zero miles, essentially resulting in the omission of emissions from these operational trips. Due to these discrepancies in these models, the DSEIR's mobile source emission models are inaccurate and unreliable, and do not support the DSEIR's significance determinations.¹²⁶

3. Incorrect Number of Vehicle Trips

The Project's emissions are also underestimated because the DSEIR underestimates the number of vehicle trips.¹²⁷ The DSEIR states, "The transportation analysis for the Project estimates that upon buildout, the Project would result in approximately 12,360 net new vehicle trips per day after accounting

¹²¹ SWAPE Comments.

¹²² DSEIR, Appendix H-I, pp. 518, pp. 592

¹²³ DSEIR, p. 3-52, Figure 3-22.

¹²⁴ SWAPE Comments.

¹²⁵ DSEIR, Appendix H-1, pp. 581, pp. 655

¹²⁶ SWAPE Comments.

¹²⁷ SWAPE Comments.

for the use of alternative modes of transportation and internal trip capture.”¹²⁸ The proposed Project is also required to implement a Transportation Demand Management (TDM) program under SCA TRA-4 to reduce vehicle trips.¹²⁹ The TDM program designed for the proposed Project will achieve a 10% reduction in vehicle trips.¹³⁰ Assuming 12,360 daily trips as stated above, a 10% reduction due to implementation of the TDM would result in approximately 1,236 less daily mobile trips, resulting in a total of 11,124 daily trips (12,360 trips-1,236 trips). The CalEEMod output files used to estimate the Project’s operational mobile emissions (output files titled “Mobile Emissions- No TDM- New Fleet Mix” and “Mobile Emissions-TDM”), however, failed to use the net new daily vehicle trips stated in the DSEIR.¹³¹ As a result, emissions from operational mobile trips are underestimated.¹³²

According to the “Mobile Emissions- No TDM- New Fleet Mix” CalEEMod output file, a total of only 10,785.70 daily weekday trips and 10,842.90 daily weekend trips were modeled (see excerpt below).¹³³

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Condo/Townhouse	3,088.80	3,146.00	3146.00	8,674,272	8,674,272
General Light Industry	1,110.00	1,110.00	1110.00		
Regional Shopping Center	3,501.40	3,501.40	3501.40	5,677,483	5,677,483
Single Family Housing	3,085.50	3,085.50	3085.50	8,619,400	8,619,400
Total	10,785.70	10,842.90	10,842.90	22,971,155	22,971,155

As stated in the title, this model does not assume implementation of the Transportation Demand Management (TDM) program. The total weekday and weekend mobile trips utilized in this model, however, do not reflect the 12,360 net new daily trips discussed in the Air Quality section of the DSEIR.¹³⁴ In fact, the model underestimates the total number of trips by approximately 1,574 weekday trips and 1,517 weekend trips.¹³⁵

¹²⁸ DSEIR, p. 4.2-25-4.2-26

¹²⁹ DSEIR, 4.2-25

¹³⁰ DSEIR, 4.2-26

¹³¹ SWAPE Comments.

¹³² *Id.*

¹³³ Appendix H-I, pp. 655.

¹³⁴ DSEIR, p. 4.2-25.

¹³⁵ SWAPE Comments.

Furthermore, the “Mobile Emissions-TDM” CalEEMod output file only models 9,818.13 daily weekday trips and 9,869.61 daily weekend trips (see excerpt below).¹³⁶

Land Use	Average Daily Trip Rate			Unmitigated	Mitigated
	Weekday	Saturday	Sunday	Annual VMT	Annual VMT
Condo/Townhouse	2,779.92	2,831.40	2,831.40	7,806,845	7,806,845
General Light Industry	1,110.00	1,110.00	1,110.00		
Regional Shopping Center	3,151.26	3,151.26	3,151.26	5,109,735	5,109,735
Single Family Housing	2,776.95	2,776.95	2,776.95	7,757,460	7,757,460
Total	9,818.13	9,869.61	9,869.61	20,674,040	20,674,040

This model assumes implementation of the TDM. As previously stated, the TDM program would result in a 10% reduction of total daily trips, which would result in 11,124 daily trips (12,360 trips-1,236 trips). Therefore, by modeling mobile emissions assuming only 9,818.13 daily weekday trips and 9,869.61 daily weekend trips after implementation of the TDM, these operational trips are underestimated by approximately 1,305 weekday trips and 1,254 weekend trips.¹³⁷

It should be noted that while the Air Quality section of the DSEIR states that a total of 12,360 net new trips will be result from the proposed Project,¹³⁸ the Draft Transportation Demand Management Program states that the proposed Project is estimated to generate 11,275 daily mobile trips before implementation of the TDM program.¹³⁹ As discussed above, the “Mobile Emissions- No TDM- New Fleet Mix” CalEEMod output file models a total of 10,785.70 daily weekday trips, which still underestimates the total daily trips stated in the Draft Transportation Demand Management Program by approximately 489 trips.¹⁴⁰

Furthermore, the Draft Transportation Demand Management Program states that the TDM program would “Reduce automobile trip generation by 62 AM peak hour, 97 PM peak hour, and 1,125 daily trips, which would result in the Project generating 562 AM peak hour, 868 PM peak hour, and 10,125 daily trips.”¹⁴¹ This assumption of 10,125 daily trips after implementation of the TDM program is still greater than the 9,818.13 daily weekday trips utilized in the DSEIR’s model. As a result, despite the differences in daily operational trips presented in the DSEIR

¹³⁶ Appendix H-I, pp. 581.
¹³⁷ SWAPE Comments.
¹³⁸ DSEIR, p. 4.2-25.
¹³⁹ Appendix BB, p. 1.
¹⁴⁰ SWAPE Comments.
¹⁴¹ Appendix BB, p. 5.

and the Draft Transportation Demand Management Program, the “Mobile Emissions- No TDM- New Fleet Mix” and “Mobile Emissions-TDM” CalEEMod models still underestimate operational trips for both before and after implementation of the TDM.¹⁴²

Additionally, 1,110 daily trips were inputted for the General Light Industry land use for both models with a trip length of zero miles.¹⁴³ By assuming a trip length of zero miles, these daily trips are essentially unaccounted for. In essence, emissions from only 9,675.7 weekday trips (10,785.70 trips -1,110 trips) and 9,732.9 weekend trips (10,842.90 trips - 1,110 trips) are accounted for in the “Mobile Emissions- No TDM- New Fleet Mix” model.¹⁴⁴ Furthermore, emissions from only 8,708.13 weekday trips (9,818.13 trips -1,110 trips) and 8,759.61 weekend trips (9,869.61 trips - 1,110 trips) are accounted for in the “Mobile Emissions-TDM”.¹⁴⁵ Therefore, the total daily operational trips utilized in the “Mobile Emissions- No TDM- New Fleet Mix” and “Mobile Emissions-TDM” CalEEMod models are even further underestimated compared to what is discussed in the DSEIR and the Draft Transportation Demand Management Program.¹⁴⁶

By underestimating the operational trips for both the “Mobile Emissions- No TDM- New Fleet Mix” and “Mobile Emissions-TDM” CalEEMod models, the total vehicle miles travelled are underestimated for Project operation. As a result, the Project’s air pollutant and GHG emissions generated by mobile sources during operation are greatly underestimated and the mobile source emissions presented in Table 4.2-5 and Table 4.2-6 of the DSEIR for both before and after implementation of the TDM program are incorrect and unreliable.¹⁴⁷ An updated air quality analysis must be prepared in a revised DSEIR that adequately assesses the Project’s air quality and greenhouse gas impacts using correct input parameters.

When the Project’s emissions are correctly modeled, criteria air pollutant and GHG emissions will increase. Because operational GHG emissions upon buildout are just barely below the threshold of significance applied by the DSEIR, these increases will almost certainly result in a new or substantially more significant impact.

¹⁴² SWAPE Comments.

¹⁴³ Appendix H-I, pp. 581, pp. 655.

¹⁴⁴ Appendix H-I, pp. 655.

¹⁴⁵ Appendix H-I, pp. 581.

¹⁴⁶ SWAPE Comments.

¹⁴⁷ SWAPE Comments; DSEIR, p. 4.2-26.

B. By Understating GHG Emissions, the DSEIR Lacks Substantial Evidence to Support Its Conclusion that Compliance with Oak Knoll Project Greenhouse Gas Reduction Plan Will Reduce Greenhouse Gas Impacts Below a Level of Significance

The DSEIR for the Oak Knoll Project relies on consistency with the August 2016 Oak Knoll Greenhouse Gas Reduction Plan (“GHG”) Reduction Plan, pursuant of SCA GHG-1 to support its finding that the Project’s GHG emissions will be reduced below a level of significance. According to SCA GHG-1,

“The project applicant shall retain a qualified air quality consultant to develop a Greenhouse Gas (GHG) Reduction Plan for City review and approval and shall implement the approved GHG Reduction Plan. The goal of the GHG Reduction Plan shall be to increase energy efficiency and reduce GHG emissions to below at least one of the Bay Area Quality Management District’s (BAAQMD’s) CEQA Thresholds of Significance (1,100 metric tons of CO₂e per year or 4.6 metric tons of CO₂e per year per service population) AND to reduce GHG emissions by 36 percent below the project’s 2005 “business-as-usual” baseline GHG emissions (as explained below) to help implement the City’s Energy and Climate Action Plan (adopted in 2012) which calls for reducing GHG emissions by 36 percent below 2005 levels.”¹⁴⁸

The GHG Reduction Plan relied upon by the DSEIR to reduce impacts to below a level of significance bases its mitigation requirements (including the purchase of offsets) on a comparison of the Project’s annual GHG emissions (calculated assuming Project implementation of a Transportation Demand Management program and assuming implementation of City and State efforts to reduce GHG emissions from vehicles, electrical generation and waste disposal) to BAAQMD’s CEQA Thresholds of Significance. If both BAAQMD thresholds of significance are exceeded, then the GHG Reduction Plan requires the purchase of offsets and/or the installation of Project design features in an amount sufficient to reduce operational GHG emissions below at least one of the BAAQMD thresholds.

The GHG Reduction Plan states that, without sufficient mitigation, GHG emissions for Phase I and combined operation of Phase I and Phase II will exceed the significance threshold of 4.6 MT CO₂e/service population/year and thus require

¹⁴⁸ DSEIR, p. 4.6-21-4.6-22

offsets or additional mitigation.¹⁴⁹ At full buildout in 2024, the Plan finds that GHG operational emissions will be 4.5 MT CO₂e/service population/year - just barely below the threshold of 4.6. The GHG Reduction Plan thus does not require any offsets or additional mitigation for the GHG operational emissions at full buildout.

As discussed above, the GHG emission estimates are substantially understated.¹⁵⁰ As a result, the DSEIR lacks substantial evidence for its finding that operational emissions at full buildout will not exceed the BAAQMD threshold of 4.6 MT CO₂e/service population/year. Because the GHG Reduction Plan does not require any offsets or additional mitigation at full buildout, emissions above this threshold will not be mitigated or offset. The DSEIR must be revised and recirculated to accurately calculate potential GHG operational emissions and to mitigate those emissions to the extent feasible.

The GHG Reduction Plan is also inadequate because it requires specific offsets for the operational year 2022, but fails to specify the amount of offsets required for operational year 2023. CEQA guidelines require GHG reduction plan requirements to be binding and enforceable or to be incorporated as mitigation measures applicable to the project.¹⁵¹ Because SCA GHG-1 does not specify the amount of carbon offsets to be purchased in order to meet the BAAQMD efficiency threshold for operational emissions from cumulative phases in 2023, it fails to meet the requirements of CEQA and fails to support a finding that sufficient carbon offsets will be purchased to mitigate this impact.

C. The DSEIR Lacks Substantial Evidence to Support its Conclusion that SCA AIR-1 Will Reduce Impacts from Construction NO_x Emissions to Below a Level of Significance

The DSEIR finds that the combined average daily emissions for construction of the proposed Project would exceed the BAAQMD significance threshold for NO_x.¹⁵² As a result, the DSEIR states that SCA AIR-1 will be implemented to reduce fugitive dust and construction equipment exhaust emissions.¹⁵³ SCA AIR-1 includes implementation of the BAAQMD's Best Management Practices for fugitive dust and requires "all construction equipment, diesel trucks, and generators be

¹⁴⁹ DSEIR, Appendix W at p. 7.

¹⁵⁰ SWAPE Comments.

¹⁵¹ CEQA Guidelines, Section 15183.5.

¹⁵² DSEIR at p. 4.2-23.

¹⁵³ DSEIR at p. 4.2-23.

equipped with Best Available Control Technology [BACT] for emission reductions of NO_x and PM”.¹⁵⁴ In an effort to determine the reductions in construction emissions after implementation of BACT, emissions were remodeled assuming all construction equipment for all three phases of construction will be equipped with Tier 3 engines.¹⁵⁵ However, even assuming an entire construction fleet of Tier 3 equipment, the DSEIR air quality modeling still found that the Project’s construction emissions would exceed NO_x significance thresholds.¹⁵⁶

Nonetheless, the DSEIR concludes that NO_x emissions from construction will be less than significant after implementation of SCA AIR-1. The DSEIR bases this conclusion on the assumption that the Project will be constructed with a combination of Tier 3 and Tier 4 equipment in order to reduce emissions to below significant levels. This assumption is speculative and unenforceable.¹⁵⁷ No condition or mitigation is proposed to require the use of a sufficient mixture of Tier 3 and Tier 4 equipment to reduce NO_x emissions to below a level of significance.

SCA AIR-1 does not specifically prescribe what “Best Available Control Technology” is required and does not contain any requirement to reduce NO_x emissions to below any significance threshold. The DSEIR states that the “necessary technology to be determined on a case-by-case basis” to reduce emissions to below the significant threshold level, but that is not the definition of BACT and is not required under the terms of the SCA.¹⁵⁸ Moreover, the City may not rely on SCA AIR-1 in lieu of an enforceable mitigation measure where the requirements of SCA AIR-1 are vague or unenforceable as applied to a specific project. Where the City’s standard conditions are uncertain as applied to a specific project, the DSEIR must specify the project-specific requirements as a mitigation measure.¹⁵⁹

The DSEIR states that the applicant “could” require its contractors to utilize Tier 4 equipment for at least half of all construction equipment as part of SCA AIR-1.¹⁶⁰ However, this *is not required by SCA AIR-1*. Not only does SCA AIR-1 not require the use of Tier 4 equipment, it doesn’t even require that all construction equipment be at least Tier 3. SCA AIR-1 states that “All equipment to be used on

¹⁵⁴ DSEIR at pp. 4.2-23-4.2-24.

¹⁵⁵ DSEIR at p. 4.2-24.

¹⁵⁶ DSEIR at p. 4.2-24.

¹⁵⁷ SWAPE Comments.

¹⁵⁸ DSEIR at p. 4.2-24.

¹⁵⁹ See CEQA Guidelines § 15183.5.

¹⁶⁰ DSEIR at p. 4.2-24.

the construction site and subject to the requirements of Title 13, Section 2449, of the California Code of Regulations (“California Air Resources Board Off-Road Diesel Regulations”) must meet emissions and performance requirements one year in advance of any fleet deadlines. Upon request by the City, the project applicant shall provide written documentation that fleet requirements have been met.”¹⁶¹

Under California Air Resources Board (“CARB”) guidelines, new vehicles purchased for construction fleets must be at least Tier 3 for medium and large engines and Tier 2 for small engines.¹⁶² Furthermore, CARB Off-Road Diesel emissions and performance requirements allow use of existing Tier 1 or Tier 0 equipment as long as fleet-wide averages meet CARB requirements.¹⁶³ There is thus no requirement that a contractor have *any* Tier 4 equipment, much less use all Tier 3 equipment. Furthermore, California Air Resources Board Off-Road Diesel emissions and performance requirements allow use of existing Tier 1 or Tier 0 equipment as long as fleet-wide averages meet CARB BACT requirements.¹⁶⁴

Without specific, enforceable mitigation, the DSEIR’s assumption that at least 50% of construction equipment will be Tier 4 compliant is speculative and violates CEQA. CEQA requires that public agencies adopt “feasible” mitigation measures that must “actually be implemented.”¹⁶⁵ “When the success of mitigation is uncertain, an agency cannot reasonably determine that significant effects will not occur.”¹⁶⁶ Nonbinding measures cannot be relied upon to mitigate potential impacts.¹⁶⁷

The DSEIR’s assumption that NOx emissions would be reduced below a level of significance if at least 50% of the construction equipment will be Tier 4 compliant is also speculative because it fails to identify or set standards for which equipment would be part of the 50% that is Tier 4. If the Tier 3 equipment is, on the average,

¹⁶¹ DSEIR at p.4.2-15.

¹⁶² See <https://www.arb.ca.gov/msprog/ordiesel/faq/tierlifefaq.pdf>;
<https://www.arb.ca.gov/msprog/ordiesel/faq/bactfaq.pdf>.

¹⁶³ *Id.*

¹⁶⁴ See <https://www.arb.ca.gov/msprog/ordiesel/faq/tierlifefaq.pdf>;
<https://www.arb.ca.gov/msprog/ordiesel/faq/bactfaq.pdf>.

¹⁶⁵ *Federation of Hillside and Canyon Associations v. City of Los Angeles*, *supra*, 83 Cal.App.4th at 1261; see Pub. Resources Code § 21002.1, subd. (b).

¹⁶⁶ Remy, Thomas, Moose and Manley, Guide to the California Environmental Quality Act (Solano Press, 2007) at p. 426; see *Sundstrom v. County of Mendocino* (1988) 22 Cal.App.3d 296, 306-308.

¹⁶⁷ *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 385.

comprised of larger engines than the Tier 4 equipment, or is operated substantially more hours than the Tier 4 equipment, then NOx emission could still remain significant even if 50% of the construction equipment was Tier 4.

Without substantial evidence that sufficient Tier 4 equipment will be used to reduce Nox emissions below a level of significance, the DSEIR's reliance on these measures to support its conclusions is speculative and without evidentiary support. The DSEIR must be revised and recirculated to disclose that NOx emissions from construction activities may be significant and, if feasible, to identify specific and enforceable mitigation to reduce this impact below a level of significance.

VI. THE TRANSPORTATION DEMAND MANAGEMENT PLAN IS INCONSISTENT WITH SCA TRA-4

The DSEIR is also inadequate because it fails to disclose, evaluate and mitigate the Project's inconsistency with the City's Transportation Demand Management policy. The City has adopted Standard Conditions of Approval that are "mandatory" and must be incorporated as part of project approval.¹⁶⁸ One of the SCAs applicable to the Project is SCA TRA-4. Pursuant to SCA TRA-4, prior to permit approval, "[t]he project applicant shall submit a Transportation and Parking Demand Management (TDM) Plan for review and approval by the City."¹⁶⁹ The goals of the TDM plans are determined based on the number of vehicle trips that will be generated by the project. For projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips, the goal of the TDM Plan is a 20% reduction in vehicle trips.¹⁷⁰ Because the Project would generate a net 624 a.m. peak hour trips and 965 p.m. peak hour trips, this 20% goal was triggered.¹⁷¹

The Project's TDM Plan does not come close to meeting this goal. In fact, it achieves only half of the goal—a 10% reduction in vehicle trips.¹⁷² The City should not approve the Project's TDM Plan until it is able to achieve the full 20% reduction. As a result the Project fails to comply with SCA TRA-4 and is inconsistent with the City's traffic and TDM policies.

¹⁶⁸ See SEIR, pp. 4.0-5, 4.13-36.

¹⁶⁹ SEIR, p. 4.13-38.

¹⁷⁰ *Id.*

¹⁷¹ See SEIR, p. 4.13-48.

¹⁷² SWAPE Comments; see SEIR, Appendix BB, p. 5; see also SEIR, p. 4.13-110 (acknowledging that the TDM Plan will only achieve a 10% reduction, despite a 20% reduction target).

Accordingly, the DSEIR lack substantial evidence to support its finding that the Project would not conflict with “an applicable plan, policy or regulation of an appropriate regulatory agency adopted for the purpose of reducing greenhouse gas emissions” or “adopted City policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities.”¹⁷³

VII. THE PUBLIC WAS NOT PROVIDED WITH THE NECESSARY INFORMATION TO REVIEW THIS PROJECT

On September 22, 2016, we submitted a request for all documents referenced in the DSEIR. The documents that were provided in response did not include the full HRA report¹⁷⁴ and the August 2016 Transportation Impact Analysis prepared by Fehr & Peers in the SEIR appendices.¹⁷⁵ The underlying data for the HRA was provided in Appendix J and the underlying data for the traffic analysis was provided in Appendix V, but the actual reports were not included.

This violates CEQA’s requirement that all documents referenced in the draft EIR be available during the public comment period.¹⁷⁶ We reserve our right to comment relevant to these documents once this information is publicly released.

VIII. THE CITY MUST PREPARE AND RECIRCULATE A REVISED DSEIR AS A RESULT OF ITS INADEQUACIES

CEQA requires a lead agency to recirculate an EIR when significant, new information is added to the EIR following public review, but before certification.¹⁷⁷

¹⁷³ See SEIR, pp. 2-26, 2-46, 4.6-32, 4.6-39, 4.13-95.

¹⁷⁴ The DSEIR incorrectly claims that the Supreme Court held TAC impacts to new sensitive residents are not subject to CEQA. (Citing *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 377-378.) To the contrary, the Supreme Court clearly stated that the effect of existing conditions on future users of the project *must be analyzed* under CEQA when the project “exacerbates” these existing environmental hazards. (*Id.* at 377-378.) Where a new project would emit toxic air pollutants that exacerbate an existing source of toxic contaminants, as is the case here, CEQA requires analysis of how the existing TACs, combined with the project’s contribution, would affect future residents. Here, the Project will add more vehicles to I-580, Keller Avenue and Mountain Boulevard, thus further exacerbating existing TAC emissions.

¹⁷⁵ See SEIR, Appendix D.

¹⁷⁶ CEQA Guidelines, § 10587.

¹⁷⁷ Pub. Resources Code § 21092.1.

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The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that ... [a] new significant environmental impact would result from the project.”¹⁷⁸

As discussed above, the proposed Project will have numerous impacts that are different and more severe than those described in the EIR, including biological resource impacts, air quality impacts and greenhouse gas impacts. The DSEIR also lacks adequate mitigation for the potentially significant impacts that are identified. A revised and recirculated EIR is required.

IX. CONCLUSION

Oakland Residents for Responsible Development and its individual members thank the City for providing the opportunity to comment on this matter. We urge the City to ensure that the Project’s impacts are fully disclosed, evaluated and mitigated before the Project is allowed to proceed.

Sincerely,



Thomas A. Enslow

TAE:ljl

Exhibits

¹⁷⁸ CEQA Guidelines § 15088.5.