ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
rkoss@adamsbroadwell.com

MILA A. BUCKNER
DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
RACHAEL E. KOSS
NATALIE B. KUFFEL
LINDA T. SOBCZYNSKI
NED C. THIMMAYYA

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

February 22, 2017

Via Email and Overnight Mail

Krinjal Mathur
City of San Jose
Department of Planning, Building, and Code Enforcement
200 East Santa Clara St., 3rd Floor
San Jose, CA 95113
Email: krinjal.mathur@sanjoseca.gov

Re: Comments on the Draft Supplemental Environmental Impact Report for the Greyhound Residential Project (File Nos. SP16-021 and T16-017)

Dear Ms. Mathur:

We write on behalf of San Jose Residents for Responsible Development to provide comments on the Draft Supplemental Environmental Impact Report ("DSEIR") prepared by the City of San Jose ("City"), pursuant to the California Environmental Quality Act ("CEQA"),[1] for the Greyhound Residential Project ("Project"). The Project would be located on a 1.74-acre site on five parcels located on the block defined by S. Almaden Avenue, W. San Fernando Street, S. San Pedro Street and Post Street in the downtown core of San Jose. The Project includes demolition of existing structures and construction of two residential towers with 781 residential units and 20,000 square feet of ground floor commercial space. The proposed building towers would be 242 and 252 feet tall. The Project would include four levels of below-grade parking and two levels of above-grade parking.

The purpose of the DSEIR is to provide a project-level review supplementing the program-level Downtown Strategy 2000 Final Environmental Impact Report (Downtown Strategy 2000 FEIR) certified by the San Jose City Council in 2005, and the San Jose 2040 General Plan Final Environmental Impact Report (General Plan FEIR) certified by the San Jose City Council in 2011.

[1] Pub. Resources Code, §§ 21000 et seq.

As explained more fully below, the DSEIR fails to adequately evaluate the Project's air quality, greenhouse gas emissions, hazardous materials and public health impacts. As a result of its shortcomings, the DSEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. The DSEIR's numerous defects in its air quality modeling and impact analyses render it inadequate as an informational document. In light of the DSEIR's fundamentally flawed nature, the comments contained in this letter should be viewed as illustrative of the problems with the document, rather than as a comprehensive catalogue of the document's deficiencies. Based on the findings of this comment letter, a revised DSEIR must be prepared and recirculated before the City may legally approve the Project.

We have reviewed the DSEIR and its technical appendices with assistance from Matt Hagemann and Jessie Jaeger from Soil / Water / Air Protection Enterprise ("SWAPE").[2] The City must respond to these consultants' comments separately and individually.

I. STATEMENT OF INTEREST

San Jose Residents for Responsible Development ("San Jose 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 impacts of the Project. The association includes: City of San Jose residents Jeff Dreyer, Gabriel Montes and Eric Comstock; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters 483, and their members and their families; and other individuals that live and/or work in the City of San Jose and Santa Clara County.

Individual members of San Jose Residents and the affiliated unions live, work, recreate and raise their families in Santa Clara County, including the City of San Jose. 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

[2] *See* **Attachment A**: Letter from Matt Hagemann and Jessie Jaeger, SWAPE, to Rachael Koss re: Comments on the Greyhound Residential Project, February 10, 2017.

that exist onsite. San Jose 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. THE CITY FAILED TO PROVIDE ACCESS TO ALL DOCUMENTS REFERENCED IN THE DSEIR FOR THE ENTIRE COMMENT PERIOD

CEQA requires that all documents referenced in an environmental review document be made available to the public for the entire comment period.[3] Once documents are properly made available, CEQA requires a minimum of 45 days for public review and comment. The City violated CEQA when it failed to make all documents referenced in the DSEIR available for public review during the entire comment period.

The DSEIR was released on December 22, 2016. On December 27, pursuant to CEQA, we requested that all documents referenced in the DSEIR be made available for public review. On January 11, 2017, the City provided a link to documents which purportedly included those responsive to our request for all documents referenced in the DSEIR. However, the documents provided did not include reference documents. We informed the City that the link did not contain the referenced documents, and on January 23, nearly a month after our original request, the City provided some documents referenced in the DSEIR. On January 25, we notified the City that that not all referenced documents were included in the linked documents. We also explained that because the City failed to provide all documents referenced in the DSEIR for the entire public comment period as required by CEQA, the City must extend the public comment deadline.

The City denied our request for an extension on January 30, incorrectly stating that all referenced documents were publicly available for the entire comment period. On January 31, we again requested that the City make available all documents referenced in the DSEIR, and again requested an extension of the comment period. We even provided a list of many of the documents that were

[3] See Pub. Resources Code § 21092(b)(1); 14 Cal. Code Regs. ("CEQA Guidelines") § 15087(c)(5).

referenced in the DSEIR, but were not made available. We also explained that, without reviewing the documents, it is impossible to meaningfully assess and comment on the DSEIR's analyses of the Project's potentially significant impacts.

On February 10, five days before the comment deadline, the City called to request an additional two weeks to respond to our request for all documents referenced in the DSEIR. At 4:24 p.m. on February 15, 2017, the day of the comment deadline, the City extended the comment deadline by one week. That same evening, the City provided nearly 750 pages of additional reference documents related to potentially significant impacts from hazardous materials. While we appreciate the City finally providing additional reference documents, four business days to review, analyze and comment on 750 pages of technical material is insufficient and violates CEQA.

The City has clearly violated CEQA by failing to make available all documents referenced in the DSEIR during the entire comment period. We reserve the right to supplement these comments once the City makes all referenced documents available for public review.

III. CEQA REQUIRES THE DISCLOSURE OF ALL POTENTIALLY SIGNIFICANT 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 decision makers and the public about the potential, significant environmental effects of a project.[4] Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report.[5] 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."[6]

[4] CEQA Guidelines § 15002(a)(1).
[5] See, e.g., Pub. Resources Code § 21100.
[6] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[7] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[8] In addition, an adequate EIR must contain the facts and analysis necessary to support its conclusions.[9]

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.[10] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[11] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[12] 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 disclose and evaluate all potentially significant environmental impacts of the Project. In addition, it fails to propose all feasible measures to mitigate the Project's potentially significant impacts to a less than significant level. The DSEIR fails to satisfy the basic purposes of CEQA. The DSEIR's conclusions regarding impacts to air quality and greenhouse gas emissions, hazardous materials and public health are not supported by substantial evidence. An EIR may conclude that impacts are insignificant only after providing an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. Thus, if the City fails to fully investigate a potential impact, its finding of insignificance will not withstand legal scrutiny.[13] The City must address these shortcomings and recirculate a revised DSEIR for public review and comment.

---

[7] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[8] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[9] See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[10] CEQA Guidelines § 15002(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 Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 400.
[11] Pub. Resources Code §§ 21002.1(a), 21100(b)(3).
[12] Pub. Resources Code §§ 21002-21002.1.
[13] Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2).

IV. THE DSEIR FAILS TO ADEQUATELY DISCLOSE, EVALUATE AND MITIGATE THE PROJECT'S IMPACTS FROM HAZARDOUS MATERIALS

The DSEIR fails to adequately evaluate the Project's impacts from hazardous materials. The DSEIR fails to disclose key baseline information, fails to fully evaluate the Project's impacts and fails to support significance findings with substantial evidence. The City must prepare a revised DSEIR that adequately addresses these issues.

The Project site is located just northeast of a Pac Bell site, which is listed on the State Water Resources Control Board Geotracker website. The Pac Bell site is under active regulatory oversight for cleanup of contaminated soil and groundwater. SWAPE explains in their comments that an August 2015 report prepared for the Pac Bell site documented the presence of a light nonaqueous phase liquid ("LNAPL") from past diesel spills originating from an underground storage tank pit. SWAPE explains that the LNAPL is a continuing source of dissolved phase diesel contamination of groundwater. Notably, groundwater flows from the Pac Bell site directly to the Project site.

The August 2015 report documents the presence of total petroleum hydrocarbons as diesel ("TPH-d") in the groundwater monitoring wells closest to the Project site, just southwest of S. Almaden Avenue. SWAPE notes that the northeastern down gradient edge of the TPH-d plume has not been defined and no groundwater monitoring data have been recently collected at the Project site. SWAPE explains that monitoring data must be collected at the Project site to ensure that contamination does not exist that would pose a risk to construction workers or future residents. This is because day lighting of the water table will result in the potential for TPH-d vapors to off-gas to ambient air, providing an exposure pathway for breathing contaminated vapors. The DSEIR fails to analyze potentially significant health impacts from TPH-d vapors.

Groundwater monitoring data is also necessary to ensure that dewatering of the Project site will not result in the unpermitted discharge of TPH-d contamination to the sanitary sewer. Groundwater at the Project site is at a depth of 20 feet. The Project requires excavation of the entire site to 41 feet below the ground surface for underground parking. SWAPE explains that "interception of the water table will

result in the need to dewater the Project site for construction," resulting in potentially significant groundwater impacts. The DSEIR failed to disclose or analyze this potentially significant impact. Without groundwater monitoring data, it is impossible to determine the extent of the Project's potentially significant impacts from dewatering. The groundwater monitoring results must be included in a revised DSEIR that is circulated for public review and comment.

The TPH-d groundwater plume originating at the Pac Bell site was not identified or analyzed in the DSEIR, the Downtown Strategy 2000 FEIR or the General Plan FEIR. No mitigation measures have been required that would reduce potentially significant impacts from the plume to a less than significant level. A revised DSEIR must disclose, analyze and mitigate potentially significant public health and water quality impacts from the plume.

V. THE DSEIR FAILS TO ADEQUATELY DISCLOSE, EVALUATE AND MITIGATE THE PROJECT'S AIR QUALITY AND PUBLIC HEALTH IMPACTS

The DSEIR fails to adequately evaluate the Project's air quality and public health impacts. Air pollutant emissions associated with the Project are underestimated and result in new and more significant impacts when correctly evaluated. A revised DSEIR should be prepared to adequately address these issues and incorporate all feasible mitigation measures.

A. The DSEIR Relies on Air Quality Modeling that Underestimates Project Construction and Operation Emissions

The DSEIR relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2013.2.2 ("CalEEMod"). 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. 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. Once all 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 used in calculating a project's emissions, and make known which default values were changed.

Here, several of the values used in the Project's CalEEMod output files are incorrect and are not consistent with information disclosed in the DSEIR. As a result, emissions associated with the Project are underestimated. When corrected, modeling shows that the Project would have significant air quality impacts.

1. The Modeling Fails to Account for Total Parking Area

The DSEIR states that the Project includes 786 parking spaces. The CalEEMod output files, however, show that only 736 parking spaces were used to model the Project's emissions. By using 50 less parking spaces, the model underestimates the Project's construction and operation emissions. SWAPE explains that paving for parking spaces involves laying concrete or asphalt, and architectural coating activities involve the use of paint and other coating materials. These activities result in construction air pollutant emissions. During operation, architectural coating activities and electricity usage from outdoor lighting, ventilation and elevators in the parking structures will result in air pollutant emissions. By underestimating the total number of parking spaces, Project construction and operation emissions are underestimated. A revised DSEIR must be prepared that includes an updated CalEEMod model that accurately assesses Project emissions.

2. The Model's Use of Alternatively Fueled Equipment is Unsupported

The model assumes that Project construction will use off-road construction equipment fueled by compressed natural gas ("CNG") and bio-diesel. However, there are no conditions or mitigation measures in the DSEIR that require the use of non-diesel equipment for Project construction. As a result, the model (and the DSEIR) underestimates the Project's construction emissions.

3. The Model Uses an Incorrect Intensity Factor

SWAPE explains that the model relies on an incorrect carbon dioxide ("CO_2") intensity factor to estimate the Project's operation emissions. When PG&E is the utility provider, as it would be for the Project, CalEEMod assumes a default CO_2 intensity factor of 641.35 pounds per megawatt-hour. The intensity factor is used to estimate the CO_2 emissions generated from electricity usage during Project operation. The intensity factor used in the CalEEMod model for the Project, however, was 429.6 pounds per megawatt-hour. There is no justification for reducing the intensity factor to estimate Project emissions.

4. The Model Uses Incorrect Off-Road Equipment and Off-Road Equipment Usage Hours

The off-road construction equipment list and usage hours used to estimate the Project's construction emissions are inconsistent with the off-road construction equipment list and duration disclosed in the DSEIR. SWAPE explains in their comments that the equipment and usage hours used in the model underestimate the Project's construction emissions. Specifically, the emissions were modeled assuming that most of the off-road equipment would operate for 30 minutes to two hours per day. The DSEIR, however, shows that this is not the case. According to the DSEIR, every piece of off-road construction equipment would be used for a minimum of eight hours per day. Moreover, the model does not include all of the equipment necessary to construct the Project. Several pieces of equipment listed in the DSEIR were omitted from the model, including dump trucks and water trucks. Thus, the Project's construction emissions are substantially underestimated.

5. The Model Incorrectly Assumes the Use of a Tier 4 Construction Fleet

The DSEIR states that "all diesel-powered off-road equipment larger than 25 horsepower and operating at the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent."[14] To determine the emission reductions from this mitigation measure, the Project's construction emissions were calculated with the assumption that every piece of heavy-duty machinery greater than 25 hp would be equipped with Tier 4

[14] DSEIR, p. ix, MM AIR-1.1.

Final engines. SWAPE explains that this assumption is unsubstantiated and unrealistic.

The U.S. Environmental Protection Agency's ("EPA") 1998 non road engine emission standards were structured as a three-tiered progression. Tier 1 standards were phased-in from 1996 to 2000 and Tier 2 emission standards were phased in from 2001 to 2006. Tier 3 standards, which applied to engines from 37-560 kilowatts (kW) only, were phased in from 2006 to 2008. The Tier 4 emission standards were introduced in 2004, and were phased in from 2008 to 2015.[15] SWAPE explains that these tiered emission standards, however, are only applicable to newly manufactured non road equipment. According to the EPA "if products were built before EPA emission standards started to apply, they are generally not affected by the standards or other regulatory requirements."[16] Therefore, pieces of equipment manufactured prior to 2000 are not required to adhere to Tier 2 emission standards, and pieces of equipment manufactured prior to 2006 are not required to adhere to Tier 3 emission standards. SWAPE explains that construction equipment often lasts more than 30 years and, therefore, Tier 1 equipment and non-certified equipment are currently still in use.

Although Tier 4 Final engines are currently being produced and installed in new off-road construction equipment, the majority of existing diesel off-road construction equipment in California is not currently equipped with Tier 4 Final engines.[17] According to the *San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects*, in 2014, 25% of all off-road equipment in the state of California were equipped with Tier 2 engines, approximately 12% were equipped with Tier 3 engines, approximately 18% were equipped with Tier 4 Interim engines, and only 4% were equipped with Tier 4 Final

[15] Emission Standards, Non road Diesel Engines, *available at:* https://www.dieselnet.com/standards/us/nonroad.php#tier3
[16] "Frequently Asked Questions from Owners and Operators of Non road Engines, Vehicles, and Equipment Certified to EPA Standards." United States Environmental Protection Agency, August 2012. *Available at:* http://www.epa.gov/oms/highway-diesel/regs/420f12053.pdf
[17] California Industry Air Quality Coalition White Paper, p. 3, *available at:* http://www.agc-ca.org/uploadedFiles/Member_Services/Regulatory-Advocacy-Page-PDFs/White_Paper_CARB_OffRoad.pdf

engines.[18] Thus, the DSEIR relies on a construction equipment fleet that only accounts for 4% of all off-road equipment available in the state of California.

SWAPE notes that there are construction equipment regulations that apply to construction companies. For example, the California Air Resources Board ("CARB") prohibits smaller construction companies from adding construction equipment with Tier 0 engines to their fleets, and prohibits medium and large construction companies from adding equipment with Tier 1 engines to their fleets.[19] However, CARB does not require that off-road construction fleets be comprised solely of Tier 4 Final engines. According to CARB, regulations requiring that new additions to off-road vehicle fleets be equipped with Tier 4 engines will not take effect for years. CARB states, "Beginning January 1, 2018, for large and medium fleets, and January 1, 2023, for small fleets, a fleet may not add vehicles with a Tier 2 engine to its fleet. The engine tier must be Tier 3 or higher." [20] Therefore, SWAPE concludes that "it is highly unrealistic to assume that the entire construction fleet used during Project construction will be made up of construction machinery equipped with Tier 4 Final engines, exclusively."

The assumption that the Project will use an entire fleet of off-road equipment with Tier 4 Final engines during the construction phase is unsupported and results in an underestimation of emissions.

6. An Updated Analysis Shows that the Project Would Result in Significant Pollutant Emissions

SWAPE prepared an updated CalEEMod model to accurately determine the Project's emissions. SWAPE's analysis shows that, when the various inconsistencies, inaccuracies and unsupported assumptions described above are corrected, the Project's emissions significantly increase. ROG emissions increase by about 28%, NOx emissions increase by about 282%, PM10 exhaust emissions increase by about 800% and PM2.5 exhaust emissions increase by about 760%.

---

[18] "San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, *available at:* https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6

[19] CARB Fact Sheet dated February 2014, p. 3, *available at:* http://www.arb.ca.gov/msprog/ordiesel/faq/overview_fact_sheet_dec_2010-final.pdf

[20] http://www.arb.ca.gov/msprog/ordiesel/faq/overview_fact_sheet_dec_2010-final.pdf

SWAPE found that the Project's construction-related NOx emissions rise from 27.1 pounds per day to 103.5 pounds per day, which exceeds the Bay Area Air Quality Management District's ("BAAQMD") significance threshold of 54 pounds per day. SWAPE's corrected model shows that the Project would result in a significant impact that was not identified or mitigated in the DSEIR. The City must prepare a revised DSEIR that accurately analyzes the Project's emissions.

B. The DSEIR Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

The DSEIR's analysis of health risks from diesel particulate matter ("DPM") emissions is inadequate in two ways. First, the City's health risk assessment ("HRA") for the Project's constructed-related health risks from DPM emissions is unsupported. The HRA relies on emission estimates from the DSEIR's CalEEMod model. As described in detail above, the model relies upon incorrect input parameters that artificially reduce the Project's construction emissions. Therefore, the City must prepare an updated construction-related HRA to accurately determine the Project's health risk impact.

Second, the DSEIR concludes that exposure to DPM during Project operation would be less than significant, but there is no operational HRA to support this conclusion. The DSEIR attempts to justify the omission of an operational HRA, stating "[o]peration of the project is not expected to cause any localized emissions that could expose sensitive receptors to unhealthy air pollutant levels. No stationary sources of TACs, such as generators, are proposed as part of the project."[21] This is incorrect. SWAPE explains that "the Project will, in fact, generate localized toxic air contaminant (TAC) emissions during operation that may have adverse health impacts on the surrounding sensitive receptors." The Project will generate additional vehicle trips that would emit substantial amounts of DPM during operation, potentially exposing nearby sensitive receptors to substantial air pollutants. This may result in long term exposure to DPM and other TACs, causing a significant health risk impact. Therefore, the City must conduct an operational HRA.

The omission of a quantified HRA is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment

[21] DSEIR, Appendix C, p. 8.

("OEHHA"), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015.[22] This guidance document describes the types of projects that warrant the preparation of a HRA.

Construction of the Project will produce DPM emissions from exhaust stacks of construction equipment and on-road heavy duty trucks over a construction period of 528 days. The OEHHA recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.[23] Once construction is complete, Project operation will generate truck trips, which will produce additional exhaust emissions, thus continuing to expose nearby sensitive receptors to DPM emissions. The OEHHA recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident.[24] We can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have been evaluated as a 30-year exposure duration, which vastly exceeds the OEHHA's 6-month threshold. These recommendations reflect the most recent health risk policy.

To demonstrate the potential health risks to nearby sensitive receptors from Project construction and operation, SWAPE prepared a simple screening-level HRA. SWAPE used the OEHHA- and EPA-recommended AERSCREEN as the air dispersion model. SWAPE used the annual PM10 exhaust estimates from its updated CalEEMod model and the location of the closest sensitive receptors described in the DSEIR. Consistent with recommendations set forth by OEHHA, SWAPE used a residential exposure duration of 30 years, starting from the infantile stage of life. SWAPE's detailed calculations are provided in their comments.

---

[22] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* http://oehha.ca.gov/air/hot_spots/hotspots2015.html

[23] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

[24] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

SWAPE found that the excess cancer risk to adults, children, and infants at a sensitive receptor located 75 meters away over the course of Project construction and operation are 81, 530, and 1,300 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) is approximately 1,922 in one million. The infantile, child, adult, and lifetime cancer risks all exceed the BAAQMD threshold of 10 in one million. SWAPE notes that their analysis is a screening-level HRA, which is known to be more conservative, and tends to err on the side of health protection. If the results of a screening-level HRA are above applicable thresholds, then a more refined HRA must be conducted.

SWAPE's screening-level HRA shows that construction and operation of the Project could result in potentially significant health risk impacts. Therefore, a refined HRA must be prepared using site-specific meteorology and specific equipment usage schedules. The refined HRA must be included a revised DSEIR that is circulated for public review and comment.

C. The City Must Require All Feasible Mitigation Measures for the Project's Air Quality and Public Health Impacts

SWAPE's updated air quality analysis and HRA provides substantial evidence that the Project would result in significant air quality and public health impacts that were not identified in the DSEIR. The City must prepare a revised DSEIR that discloses and mitigates these impacts to a less than significant level.

SWAPE provides examples of some of the kinds of feasible mitigation measures to reduce the Project's air quality and public health impacts that should be required. They include, for example, limiting the idling of heavy duty vehicles to five minutes or less, requiring that diesel generators present on site for more than 10 days be equipped with emission control technology and using electric and hybrid construction equipment. SWAPE's recommended measures are more prescriptive than those included in the DSEIR and would help reduce the Project's NOx, PM and DPM emissions. The City must consider these measures and identify and explore other measures to reduce air quality and public health impacts below a level of significance.

VI. THE DSEIR FAILS TO DISCLOSE, EVALUATE AND MITIGATE THE PROJECT'S IMPACTS FROM GREENHOUSE GAS EMISSIONS

The DSEIR fails to adequately evaluate the Project's impacts on global climate change. The DSEIR concludes, without support, that the Project's impact from greenhouse gas ("GHG") emissions would be less than significant. In fact, the DSEIR does not even quantify the GHGs associated with the Project. Instead, the DSEIR states:

> Because construction would be temporary and would not result in a permanent increase in emissions, the project would not interfere with the implementation of AB 32…Since the project is consistent with the General Plan land use designation for the site and the land use assumptions of the GHG Reduction Strategy, compliance with the mandatory measures and voluntary measures required by the City would ensure its consistency with the City's GHG Reduction Strategy. Projects that are consistent with the GHG Reduction Strategy (such as the proposed project) would have a less than significant impact related to GHG emissions.[25]

This is not an "analysis," as required by CEQA. Moreover, the statements are unsupported.

The DSEIR states that the Project is consistent with the City's GHG Reduction Strategy and General Plan, but the DSEIR fails to demonstrate compliance with all of the applicable Voluntary and Mandatory Criteria in the GHG Reduction Strategy. The City provides that "[a]pplicants can complete the 'Evaluation of Project Compliance with the City of San Jose Greenhouse Gas Reduction Strategy' worksheet to demonstrate conformance to the Greenhouse Gas Reduction Strategy."[26]

Appendix A of the DSEIR shows that the Project complies with three of the applicable Mandatory Criteria, but there is no evidence that the Project complies with the fourth mandatory criterion or with any of the voluntary measures. The DSEIR states that "compliance with the mandatory measures and voluntary measures required by the City would ensure its consistency with the City's GHG

[25] DSEIR, Appendix A, p. 59.
[26] "Greenhouse Gas Reduction Strategy." *City of San Jose, available at:* http://www.sanjoseca.gov/index.aspx?NID=3687

Reduction Strategy."[27] Because compliance with all applicable Voluntary and Mandatory Criteria set forth in the GHG Reduction Strategy is not demonstrated, the City cannot conclude that the Project is consistent with the City's GHG Reduction Strategy. Therefore, there is no support for the DSEIR's conclusion that the Project would have a less than significant impact from GHG emissions.

In addition, while a lead agency enjoys substantial discretion in its choice of methodology to analyze impacts, the methodology must still be supported by substantial evidence. Under CEQA, a lead agency may consider the use of a qualitative analysis that relies upon consistency with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions when assessing the significance of impacts from GHGs, but such regulations or requirements must be adopted by the agency through a public review process and must include specific requirements that reduce or mitigate a project's incremental contribution of greenhouse gas emissions.[28] In this case, the DSEIR's method was not adopted by an agency and there is no evidence that compliance with this very limited list of measures would actually result in compliance with the statewide goals in AB 32. The DSEIR fails to provide substantial evidence to support the use of a consistency analysis with the City's General Plan and GHG Reduction Strategy to determine the Project's impacts.

The BAAQMD's recommended GHG significance thresholds (discussed below) must be used to determine the Project's impacts from GHG emissions. The BAAQMD's thresholds have undergone a public review process as part of stakeholder working group meetings that are open to the public, and the BAAQMD's Guidance document provides the substantial evidence relative to the methodology for developing the interim GHG significance thresholds, consistent with requirements set forth by CEQA.[29]

To determine the Project's impact on global climate change, SWAPE conducted a simple analysis using the emission estimates provided in the DSEIR and the BAAQMD's Air Quality Guidelines. As stated in the City's GHG Reduction

---

[27] DSEIR, Appendix A, p. 59.
[28] CEQA Guidelines § 15064.4(b); *see also* http://resources.ca.gov/ceqa/docs/FINAL_Text_of_Proposed_Amendemts.pdf
[29] Air Quality Guidelines, BAAQMD, June 2010, *available at:* http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/draft_baaqmd_ceqa_guidelines_may_2010_final.pdf?la=en

Strategy, the BAAQMD Air Quality Guidelines are intended to serve as a guide for those who prepare or evaluate air quality impact analyses for projects (Project-level) and plans (Plan-level) in the San Francisco Bay Area.[30]

The Guidelines include information on legal requirements, BAAQMD rules, plans and procedures, methods of analyzing air quality impacts, thresholds of significance, mitigation measures and background air quality information. In June 2010, the BAAQMD Board of Directors set forth new CEQA thresholds of significance and updated their CEQA Guidelines. The BAAQMD's updated Guidelines recommend quantifying a project's indirect and direct GHG emissions, and comparing these emissions to the BAAQMD's screening threshold of 1,100 metric tons per year of carbon dioxide equivalents (MT CO_2e/year).[31] If a project would generate GHG emissions greater than 1,100 MT CO_2e/year, it would make a cumulatively considerable contribution to GHG emissions and result in a cumulatively significant impact to global climate change.

Consistent with BAAQMD Guidelines, SWAPE quantified the Project's construction and operational GHG emissions and compared the emissions to the BAAQMD recommended thresholds of 1,100 MT CO_2e/year. SWAPE found that the Project's total GHG emissions, where construction emissions were amortized over 30 years then added to the Project's operational emissions, were 5,855 MT CO_2e/year, which clearly exceeds the BAAQMD threshold of 1,100 MT CO_2e/year. This is a significant impact that the DSEIR fails to disclose or mitigate. The City must prepare a revised DSEIR that adequately analyzes and mitigates the Project's impacts from GHG emissions.

SWAPE provides examples of some of the kinds of feasible measures that would reduce the Project's impact from GHG emissions. Notably, some of the measures would also reduce the Project's operational DPM emissions. The measures include, for example, limiting the hours of operation of outdoor lighting, using CARB-certified or electric landscaping equipment and providing electric vehicle charging stations that are accessible for trucks. SWAPE's recommended measures provide a feasible way to incorporate lower-emitting design features into

[30] "Greenhouse Gas Reduction Strategy." City of San Jose*, available at:* http://www.sanjoseca.gov/documentcenter/view/9388, p. 12
[31] Air Quality Guidelines, BAAQMD, June 2010, *available at:* http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/draft_baaqmd_ceqa_guidelines_may_2010_final.pdf?la=en, p. 2-2

the Project, thereby reducing GHG emissions. The City must require these measures and identify and explore other measures to reduce the Project's GHG emissions and climate change impacts. The City must prepare a revised DSEIR that includes a GHG analysis that is supported by substantial evidence.

VII. CONCLUSION

The DSEIR fails to adequately disclose and evaluate the full extent of the Project's air quality, greenhouse gas emissions, hazardous materials and public health impacts. The City must prepare a revised DSEIR that addresses these inadequacies and recirculate the revised DSEIR for public review and comment.

Sincerely,

Rachael E. Koss

REK:acp

3640-008acp