

Letter 8

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March 26, 2018

Via Email and Overnight Mail

David Sanchez, Senior Planner
City of Pasadena
175 N. Garfield Avenue
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**Re: Comments on the Draft Sustainable Communities
Environmental Assessment- 3200 E. Foothill Boulevard Mixed Use
Project**

Dear Mr. Sanchez:

Please accept these comments on behalf of Coalition for Responsible Equitable Economic Development ("CREED LA") regarding the City of Pasadena's ("City") Sustainable Communities Environmental Assessment (SCEA) for the proposed 3200 East Foothill Boulevard Mixed Use Project ("Project") proposed by Pasadena Gateway, LLC ("Applicant"). The Project proposes to demolish 29 existing structures on the Project site and construct eight separate mixed-use buildings, subterranean and above-ground parking structures, and landscaping. The proposed buildings would include a total of 550 apartment units and 9,800 square feet of retail space. The Project also proposes to develop a 0.21-acre accessory site for recreational use. The Project site address is 3200 East Foothill Boulevard, Pasadena, Los Angeles County, CA (Zoning District EPSP-D2-IG-B-4). The APNs are 5752-023-039 and 5752-023-044.

The SCEA and public notices state that the Project requires the following discretionary actions of the City of Pasadena: (1) a Zoning Map Amendment (Planned Development application) to change the Zoning Designation from EPSP-D1-IG (East Pasadena Specific Plan subarea d1, General Industrial District) to PD (Planned Development) and establish a Planned Development Plan; (2) a Public Tree Removal Permit to allow the removal of 17 street trees along Foothill Boulevard and Kinneloa Avenue; and (3) a Design Review Permit to approve the

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Project design for consistency with the Zoning Code and Design Guidelines (collectively, "Project Approvals"). In addition, the Project site requires approval of a Removal Action Workplan ("RAW") by the Department of Toxic Substances Control ("DTSC") to allow for the removal of on-site contaminants to levels protective of human health and the environment.

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The SCEA and public notices are incorrect. The Project actually requires a Zoning Map Amendment to change the zoning designation from EPSP-D2-IG (East Pasadena Specific Plan subarea d2, General Industrial District) to PD (Planned Development) and a Planned Development Plan.

In addition, as explained more fully below, the SCEA prepared for the Project is significantly flawed and does not comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* Moreover, no substantial evidence supports the City's conclusion that the Project will result in less than significant impacts. In addition, substantial evidence shows that the Project would result in significant impacts from hazards and air quality. The City may not approve the Project until the City prepares a sustainable communities environmental impact report ("SCEIR") that adequately analyzes the Project's significant and potentially significant impacts and incorporates all feasible mitigation measures to reduce those impacts to less than significant levels.

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We prepared these comments with the assistance of air quality expert Hadley Nolan and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil / Water / Air Protection Enterprise ("SWAPE"). SWAPE's technical comments and curriculum vitae are attached hereto as Exhibit A and are fully incorporated herein.

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We urge the City to reject the SCEA and direct staff to prepare an SCEIR to evaluate the Project's unmitigated, significant and potentially significant impacts.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California

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Pipe Trades District Council 16, along with their members, their families, and other individuals who live and work in the City of Pasadena.

Individual members of CREED LA and its member organizations include Carlos Blas De La Torre, Christian Blas, Mario Polanco, Oscar Blas, Erik Flores, Fernando Medina, Tarik Streetz, Shomari Davis and Jose Pina. These individuals live, work, recreate, and raise their families in the City of Pasadena and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

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In addition, CREED LA 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 the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).¹ The EIR is the very heart of CEQA.² "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."³

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CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁴ "Its purpose is to inform the public and its responsible officials of the

¹ See, e.g., PRC § 21100.

² *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

³ *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 ("CBE v. CRA").

⁴ 14 CCR § 16002(a)(1).
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environmental consequences of their decisions before they are made. Thus, the EIR “protects not only the environment but also informed self-government.”⁵ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁶

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.⁷ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”⁸ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”⁹

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The Sustainable Communities Environmental Assessment (“SCEA”) is a form of CEQA document that was established by SB 375. Its goal is not to undercut or circumvent CEQA requirements, but to provide incentive for Transit Priority Projects (“TPPs”) that are consistent with a larger effort to reduce GHG emissions by providing a streamlined channel for such projects. Thus, the SCEA must comply with CEQA’s informational goal, as well as with CEQA’s goal to reduce or avoid adverse environmental impacts when feasible. As explained below, while the City may use the streamlined process provided for TPPs under CEQA section 21155.2, an SCEA is not the proper CEQA document in this case. Instead, the City is required to prepare a sustainable communities environmental impact report (“SCEIR”) in order to fully analyze and mitigate the Project’s impacts.

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

⁶ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁷ 14 CCR§ 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

⁸ 14 CCR §15002(a)(2).

⁹ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

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**III. THE PROJECT WILL BE DETRIMENTAL TO PUBLIC HEALTH AND
THUS DOES NOT QUALIFY FOR PLANNED DEVELOPMENT
REZONE**

The proposed Project would be located on a site zoned as IG – General Industrial District – in the East Pasadena Specific Plan (“the Specific Plan” or “EPSP”). The General Industrial District *does not allow* for residential, mixed-use projects.¹⁰ Therefore, the Applicant proposes to rezone the industrial site to Planned Development (“PD”) in order to override the Specific Plan Zoning.¹¹

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The process of approving a rezone to a PD requires the City Council, among other things, to make a finding that “(t)he proposed amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.”¹² As described below, the Project is located on a site that was historically used by the U.S. Navy for research and development of weapon systems. As a result, a long list of contaminants of concern (COCs) exist on the site at levels which exceed allowed health risk levels, and extensive remedial actions are required. Also as described below, no substantial evidence supports the City’s conclusion that the COCs on the site will be brought to a level that will not pose a risk to human health. Therefore, the City lacks substantial evidence to support a finding that “(t)he proposed amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.”¹³

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**IV. THE PROJECT FAILS TO COMPLY WITH THE EAST PASADENA
SPECIFIC PLAN**

The proposed Project also conflicts with the Specific Plan goals. The SCEA superficially describes the Specific Plan as a plan which “promotea new development that balances the needs of residential and commercial uses while preserving the quality of life in the area in terms of existing air quality, traffic, safety, and sense of community.” However, the Specific Plan chapter which lists the “Purposes of the EPSP Zoning Districts”, clearly explains that the vision for the

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¹⁰ East Pasadena Specific Plan, p. 5.
¹¹ Pasadena Zoning Code §17.26.020.C.
¹² Pasadena Zoning Code, §17.74.070.B.
¹³ Pasadena Zoning Code, §17.74.070.B.
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area is for primarily commercial and industrial use. Purposes C, D, E, F and G all point to a distinctive commercial and industrial purpose, including:

“Allow sufficient expansion opportunities for businesses to grow and to maintain quality job opportunities (...) [s]trengthen the City’s tax and employment base by supporting and protecting existing industrial uses (...) and [s]ustain and create business development opportunities (...)”¹⁴

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The EPSP allows for limited residential development; however in subarea d2, where the Project is located, it calls for mixed use development “in appropriate areas.”¹⁵ Clearly this area, with its history of use as a research and testing site for weapon systems, and its resulting situation of heavily contaminated soils and soil gas, is not such an appropriate area.

V. THE SCEA FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT HAZARDOUS MATERIALS IMPACTS

A. The SCEA violates CEQA by incorporating mitigation measures into the Project description.

CEQA requires the City’s environmental document to disclose, investigate and analyze the Project’s potentially significant impacts. The SCEA fails to do so by impermissibly compressing the analysis of the impacts and mitigation measures into a single issue under the Project description, instead of properly analyzing the impacts and discussing possible mitigation in the relevant discussion section.

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In *Lotus v. Department of Transportation*, an EIR approved by CalTrans contained several measures “[t]o help minimize potential stress on the redwood trees” during construction of a highway.¹⁶ Although those measures were clearly separate mitigation, the project proponents considered them “part of the project,” and the EIR concluded that because of the planned implementation of those measures, no significant impacts were expected.¹⁷ However, the Appellate Court

¹⁴ East Pasadena Specific Plan, section 17.32.020.

¹⁶ East Pasadena Specific Plan, section 17.32.020.O.

¹⁶ *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 650.

¹⁷ *Id.*, at 651.

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found that because the EIR had “compress[ed] the analysis of impacts and mitigation measures into a single issue, the EIR disregard[ed] the requirements of CEQA.”¹⁸

The SCEA suffers from the same critical flaw. The Project is located on a site that was used by the navy for testing and scientific work involving classified materials, torpedoes, and other weapon systems.¹⁹ As a result, hazardous materials are present “in soil and soil vapor, and potentially in groundwater beneath the property.”²⁰ These hazardous materials include chemicals which may pose extreme health risks to humans and to the environment, and include, among other toxic contaminants, arsenic, lead, volatile organic compounds and perchlorate.²¹ After listing the contaminants of concern (“COCs”) on the site, the SCEA’s Project Description states:

“Based on the findings of previous site assessments and in response to DTSC requirements, Ninyo & Moore developed a RI/FS and a RAW. The proposed Project includes implementing these documents. Accordingly, the following remediation measures would be implemented as part of the Project to address COCs during redevelopment activities.”²²

At this point, the SCEA’s Project Description describes the two main remedial actions: 1) storm drain system and associated contaminated sediments removal and 2) impacted soil excavations. The Project Description includes the estimated volumes of soil that will be excavated but states that “[e]xcavations may be adjusted based on field conditions.”²³ Also, in the Project Description section, the SCEA states that, following the excavations, more soil gas surveys will be conducted, and further steps may be required depending on the results. Further steps range from more excavations, to the installment of passive systems to prevent VOC’s migration, to the conversion of those systems to active systems.

In section 3, named “Incorporation of Feasible Mitigation Measures, Performance Standards, and Criteria from Prior Applicable EIRs,” the SCEA

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¹⁸ *Id.*, at 656.
¹⁹ SCEA, p.8.
²⁰ SCEA, p. 10.
²¹ SCEA, p. 12-13.
²² SCEA, p. 14
²³ SCEA, p. 14
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purportedly describes the Project's potential impacts and applicable mitigation measures. Under the "Hazards and Hazardous materials" section of the "environmental checklist," the City analyzes the potential impacts associated with hazardous substances.²⁴ In particular, CEQA requires the City to discuss and analyze whether the Project would "be located on a site included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?"²⁵

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In the paragraphs that follow, the SCEA acknowledges that the Project is located on a site that is listed as a State Response facility and as a Formerly Used Defense Site on the DTSC EnviroStor database and Cortese list, and as a Military Cleanup Site on the State Water Resources Control Board GeoTracker database. It also briefly repeats the list of COCs that were identified on the site, including metals, VOCs, dioxins and furans, PAHs, and perchlorate.²⁶ However, without describing the contaminant levels as compared to thresholds of significance, explaining what those exceedances mean to the public and the environment and disclosing the significant hazards to the public and the environment, the SCEA merely concludes:

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"Given the levels of contamination present at the project site, operation of the proposed project could expose construction workers and potential future residents to contaminated soil vapor, soil, and groundwater. However, planned remedial excavation activities as outlined in the RAW and RI/FS, discussed in the Project Description, would reduce contaminant levels for identified COCs to be less than significant. Implementation of the assessment and remedial activities as outlined in the RAW would reduce health risks to levels that would allow for residential use."²⁷

In other words, the SCEA's brief paragraph comprises the whole analysis of the significant impacts from the long list of COCs that were identified on the site. The SCEA then moves on to discuss other hazards that were not addressed in the RAW

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²⁴ SCEA p.119.

²⁵ SCEA p. 124; CEQA Guidelines, Appendix G, VIII(d).

²⁶ SCEA p. 124

²⁷ SCEA p. 125

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or RI/FS (i.e., the water in the anechoic chamber and the possible groundwater contamination).

The SCEA's paragraph and its reference to the Project Description clearly violate CEQA and the court's directive in *Lotus*. When criticizing the agency's failure to identify any standards of significance, the *Lotus* court held:

“Caltrana compounds this omission by incorporating the proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant. As the trial court held, the “avoidance, minimization and/or mitigation measures,” as they are characterized in the EIR, are not “part of the project.” They are mitigation measures designed to reduce or eliminate the damage... [a]bsent a determination regarding the significance of the impacts... it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”²⁸

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Similarly, CEQA requires an SCEA to “contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.”²⁹ Just like for projects requiring an EIR – where the agency can approve the project if it finds “[c]hanges or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects” – this Project and the SCEA may be approved if the City finds that “[c]hanges or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.”³⁰ In either case, making the required finding is impossible without first identifying, analyzing and assessing the level of significance of each impact and considering mitigation measures. All this, as the *Lotus* court indicated, has to be done in a separate discussion of mitigation measures, and cannot be incorporated into the project’s description. The SCEA, by settling for a short description of crucial mitigation measures within the project description, and without analyzing the impacts and the proposed mitigation, violates CEQA.

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²⁸ *Lotus v. Department of Transportation*, 223 Cal.App.4th at 655-656.

²⁹ PRC § 21155.2(b)(2).

³⁰ Compare PRC §21081(a)(1) and PRC § 21155.2(b)(5)(B)(i). Alternatively, just like for an EIR, the City may find that such changes are within the responsibility of another agency. (Compare PRC §21081(a)(2) and PRC § 21155.2(b)(5)(B)(ii).)

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B. The City lacks substantial evidence to support the conclusion that the Project's impacts are less than significant.

1. **The City lacks substantial evidence to support the conclusion that impacts from hazardous materials are less than significant.**

As described above, in the Environmental Checklist section of the SCEA, the City analyzes the Project's impacts from hazards and hazardous substances. In particular, CEQA requires the City to analyze whether the project would "be located on a site included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?" The SCEA acknowledges that the Project is located on a listed site.³¹ However, the City concludes that the impact would be "less than significant with mitigation incorporated." As shown below, the City's conclusion is not supported by substantial evidence.

a. VOCs in the soil pose a potentially significant impact which is not mitigated in the SCEA.

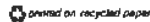
In the Project Description section, the SCEA acknowledges the presence of volatile organic compounds ("VOCs") in the soil vapor at levels which exceed the DTSC Human Health Screening Levels. However, in the SCEA's analysis of the associated impacts, it is clear that the magnitude of the risk is not yet known and, ultimately, the Project's measures that may be implemented to reduce the risk would not ensure the risk would be mitigated to a less than significant level.

Regarding the presence of VOCs in soil vapor, the SCEA's Project Description states:

"Tetrachloroethylene (PCE), trichloroethylene (TCE), and carbon tetrachloride exceeded the DTSC California Human Health Screening Levels (CHHSL) of 0.470 µg/L, 1.3 µg/L, and 0.063 µg/L, respectively, for residential soil vapor at various locations throughout the site. Concentrations of carbon tetrachloride, PCE, TCE and dibromochloromethane in soil vapor exceed the cancer risk and hazard index set forth by the US EPA. PCE and carbon

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³¹ SCEA p. 124.
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tetrachloride have been detected at depths up to 150 feet below grade in soil vapor.” (SCEA p. 12)

The SCEA’s Project Description then describes the steps that would be implemented to address the risk from VOCs. As it turns out, more soil gas surveys would be conducted and, depending on the results, step-out excavations may be needed. Then, after site-wide grading, another survey would be conducted, and again, depending on the results, systems to prevent the migration of VOCs into indoor air would be installed on the Project site. The systems would be passive but, again depending on the results of yet another survey, may be converted to active systems:

“Following remedial excavation activities and prior to mass grading of the site, Ninyo & Moore would conduct a soil gas survey. Results of the survey would be used to conduct a Human Health Risk Assessment to evaluate if VOCs in soil gas pose a vapor intrusion health risk. If soil vapor concentrations detected during the initial soil gas survey exceed health risk criteria, i.e., a calculated cancer risk greater than 1×10^{-6} and/or hazard index greater than 1, Ninyo & Moore would conduct step-out excavations, per the RAW. An additional soil gas survey would be conducted after step-out excavations and site-wide grading have been conducted. If a human health risk remains, passive systems to prevent the migration of VOCs into indoor air would be installed at the site, per Ninyo & Moore’s 2017 RI/FS. The system may include impermeable vapor barriers and subslab passive venting systems. The venting system would be designed so that it could be converted to an active venting system if the passive system does not reduce VOC contaminant levels to below health risk thresholds. An active venting system would include the use of fans to depressurize the subslab area, thus actively removing vapors from beneath the building. Based on information provided by the DTSC, if passive or active systems are utilized to prevent vapor migration, a Land Use Covenant would be required, and recorded, and an Operation and Maintenance (O&M) Plan would be developed for the systems.³²

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There are three problems with this description of the Project’s mobilization of VOC contaminated soil and construction and operation of the Project on soils with VOCs in soil vapor.

³² SCEA, p. 14
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First, in the SCEA's analysis of the Project's potentially significant impacts, the City acknowledges the VOCs on site require remediation,³³ but *ignores completely* the significance of the impact to the public, the aforementioned plan and how that plan would mitigate impacts to below significance thresholds. In fact, the SCEA fails to include *any* mitigation measure that directly addresses the VOCs and the significant risk they pose to the public, including workers and residents, as a result of Project construction and operation. Instead, the SCEA states:

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"Given the levels of contamination present at the project site, operation of the proposed project could expose construction workers and potential future residents to contaminated soil vapor, soil, and groundwater. However, planned remedial excavation activities as outlined in the RAW and RI/FS, discussed in the Project Description, would reduce contaminant levels for identified COCs to be less than significant. Implementation of the assessment and remedial activities as outlined in the RAW would reduce health risks to levels that would allow for residential use."³⁴

As discussed above, describing measures as part of the project violates CEQA.

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Second, the City fails to discuss the potential impact of VOCs on the health of the public, including future residents. The court in *Bakersfield Citizens for Local Control* held that to properly analyze an impact, it must be correlated with the adverse health effects it creates.³⁵ No such analysis or correlation is made by the City.

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Finally, even if the City could ignore CEQA's requirement to analyze, describe the significance of and require mitigation for significant hazards impacts, the City lacks substantial evidence to support its conclusion that impacts from VOCs would be reduced below a level of significance with the measures described in the Project Description, RAW and RI/FS. Specifically, none of the mitigation measures described by the City anywhere in the SCEA would reduce the Project's impacts from VOCs below a level of significance.

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³³ SCEA, p. 124.

³⁴ SCEA, p. 125

³⁵ *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1219-1220, 1183-006acp



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The City acknowledges the fact that step-out excavations may not reduce the VOCs in soil gas below the level of significance. The City also acknowledges that installment of passive venting systems may fail to reduce the VOCs in soil gas below the level of significance.³⁶ However, the City completely ignores what measure would be taken if, after converting the venting systems from passive to active, the VOC levels remain above public health risk thresholds.

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This flaw in the City's analysis becomes even more apparent when turning to the Remedial Action Workplan (RAW) that the City refers to in its Project Description. As it turns out, the RAW identifies mitigation measures that would eliminate the risk of VOCs, and the venting systems are not such a measure.

Specifically, Section 6.3 of the RAW discusses "Evaluation of Removal Action Alternatives." With regard to the VOCs, alternative 2 outlines the same path outlined in the Project description, i.e. excavations, installment of passive vapor mitigation systems ("VMS") and should they fail, converting them to active systems. Regarding this alternative, the RAW merely states that "VMSs installed beneath structures are commonly used in the industry as an effective means of mitigating potential vapor intrusion into buildings."³⁷ By contrast, alternative 3 discusses the installment of soil vapor extraction wells ("SVE") instead of VMS. The RAW then concludes: "[s]uch a process of removing VOCs from soil gas at the site would eliminate any potential vapor intrusion threat to future residential site users, but would be a costly and time-intensive process."³⁸ This alternative, which "would eliminate" the significant impact, is not discussed anywhere in the SCEA.

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The SCEA states, "[b]ased on information provided by the DTSC, if passive or active systems are utilized to prevent vapor migration, a Land Use Covenant would be required, and recorded, and an Operation and Maintenance (O&M) Plan would be developed for the systems."³⁹ As the City knows, a Land Use Covenant and an O&M plan do not mitigate the impact to less than significant.

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³⁶ SCEA, P. 14

³⁷ Ninyo & Moore. 2017. Draft Removal Action Workplan Former Naval Information Research Foundation Under Sea Center, p. 46.

³⁸ Ninyo & Moore. 2017. Draft Removal Action Workplan Former Naval Information Research Foundation Under Sea Center, p. 47

³⁹ SCEA, p. 14-16.
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None of the measures referenced in or described in the SCEA's Project Description reduce hazards impacts to less than significant or prohibit the public from occupying the Project if active systems are unable to reduce VOC vapors to below a level of significance. Therefore, the Project would result in significant unmitigated impacts. The City failed to perform its duty under CEQA to provide the public with information about the Project's significant impacts and its duty to mitigate such impacts below a level of significance. The City lacks substantial evidence to support its conclusion that such impacts are less than significant with mitigation. If the City finds that no other mitigation measures are feasible, the City must find that the impact is significant and unavoidable. The City must disclose the significant impact in an SCEIR and may consider whether there are overriding considerations that outweigh the Project's significant impact on public health.

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b. Water in the anechoic tank pose a potentially significant impact which is not mitigated in the SCEA.

In the "Hazards and Hazardous materials" section of the "environmental checklist," the City analyzes the potential impacts associated with hazardous substances. Before turning to the specific questions in the checklist, the City states:

"In addition to the COCs addressed in the 2017 RAW and RI/FS, Rincon has identified the following additional concerns which have not been addressed in the RAW or RI/FS.

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- Water remaining in an onsite anechoic tank previously used for torpedo testing may contain elevated concentrations of metals or other COCs, therefore sampling and analysis of the water and offsite disposal would be necessary."⁴⁰

The RAW indeed does not discuss the hazards from the water in the tank. However, the tank is mentioned in the list detailing past environmental investigations. There, a report prepared by the United States Army Corps of Engineers ("USACE") in June 1999 is mentioned as recommending "removal of surface water from the anechoic tank located in Building 5 (due to detections of chromium and TPH)."

⁴⁰ SCEA, p.120.
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Question (a) in the “Hazards and Hazardous materials” section requires the City to analyze “[w]ould the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?” To this, the City answers:

“Any water remaining in the anechoic chamber historically used for testing torpedoes in Building 5, in addition to surface water reportedly present in Building 103, may need to be disposed of due to elevated levels of cadmium, copper, lead, mercury, chromium, and/or TPH. These waters will need to be properly characterized, i.e., samples collected and analyzed for COCs by a state-certified laboratory prior to disposal. Depending on analytical results, disposal of the water may represent a risk during handling and transport. Therefore, construction activities associated with the proposed project would involve the transport to and disposal of these hazardous materials at an approved disposal facility. However, hazards associated with transport and disposal could be reduced to less than significant with the implementation of mitigation measure HAZ-1.”⁴¹

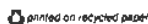
HAZ- 1 states:

“Any surface water remaining onsite in connection with historical research and development of weapons systems, in particular, water located in the anechoic tank within Building 5 and surface water reportedly present in Building 103, shall be properly characterized, i.e., water samples collected and analyzed for COCs by a state-certified laboratory. Analytical results will determine if the waste water will be classified as a non-hazardous or hazardous waste. Handling and transport of waste water shall be conducted in accordance with applicable local, state and federal regulations, including EPA RCRA (40 CFR Part 262), Federal and State OSHA, DOT, and DTSC (CCR Title 22).”⁴²

This analysis of the potential impact from water in the tank, and the proposed mitigation measure, fails to comply with CEQA. The City may not rely solely on compliance with regulations or laws where those regulations or laws do not address

⁴¹ SCEA, p. 121

⁴² SCEA p. 126
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the potentially significant impacts and where the impacts would be potentially significant. The City must conduct an analysis of impacts and identify enforceable mitigation.

The City acknowledges that hazards from handling and transport of the contaminated water are reasonably foreseeable. The city should therefore analyze potentially significant impacts from handling and transport of contaminated water, including impacts along the Project's proposed travel routes and the Project's proposed receiving facilities for the contamination. The City's analysis must be a fact-specific analysis, not a bare assertion that the contaminated water disposal will be in compliance with applicable regulations. Without such a fact-specific analysis, no substantial evidence supports the conclusion that potential impacts from the handling of the contaminated water will be reduced to less than significant.

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VI. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT THE CONCLUSION THAT IMPACTS ON AIR QUALITY ARE LESS THAN SIGNIFICANT.

In the "Air Quality" section of the "environmental checklist," the City analyzes the Project's potentially significant impacts on air quality. Question (d) in this section asks "would the project [e]xpose sensitive receptors to substantial pollutant concentrations?" This requires the City to analyze certain pollutants, including Toxic Air Contaminants ("TACs"). As explained in the SCEA:

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"Certain population groups, such as children, the elderly, and people with health problems, are particularly sensitive to air pollution. Sensitive receptors are defined as land uses that are more likely to be used by these population groups and include health care facilities, retirement homes, school and playground facilities, and residential areas."⁴³

The City acknowledges that the Kaiser Permanente medical office building is a sensitive receptor located approximately 50 feet to the east. However, it goes on to conclude that the Project would have a "less than significant" impact on sensitive receptors from TACs. ⁴⁴ As explained below, this conclusion is not supported by substantial evidence.

⁴³ SCEA, p. 62

⁴⁴ SCEA, p. 62

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Regarding impacts from Project construction, the City claims emissions are “temporary” and would not exceed significance thresholds:

“Construction activities associated with the proposed project, such as haul truck trips and operation of heavy construction equipment, would generate diesel exhaust particulates and other TACs. The SCAQMD currently does not currently provide TAC emission thresholds for construction activities. However, as discussed under impacts b and c and shown in Table 6, construction activities would be temporary and emissions from construction activities, including those produced from diesel exhaust, would not exceed SCAQMD thresholds. Therefore, it is not likely that construction activities would generate long-term levels of TACs that would impact nearby sensitive receptors.”⁴⁵

Relying on the argument that emissions are temporary and would not exceed thresholds, the City concludes that “it is not likely” that sensitive receptors would be impacted. The City never actually conducted any kind of health risk assessment or other assessment of impacts to sensitive receptors. As explained by SWAPE, the City’s justification for failing to evaluate the health risk posed to sensitive receptors is incorrect and inconsistent with SCAQMD’s recommendations. Without performing a health risk assessment, the City lacks substantial evidence to support the City’s conclusion that impacts from TACs during construction would be less than significant:

“[S]imply stating that ‘it is not likely that construction activities would generate long-term levels of TACs’ does not justify the omission of a construction HRA. The [SCAQMD] recommends that health risk impacts from short-term projects also be assessed. SCAQMD’s Guidance document states,

“Since these short-term calculations are only meant for projects with limits on the operating duration, these short-term cancer risk assessments can be thought of as being the equivalent to a 30-year cancer risk estimate and the appropriate thresholds would still apply (i.e. for a 5-year project, the maximum

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⁴⁵ SCEA, p. 63
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emissions during the 5-year period would be assessed on the more sensitive population, from the third trimester to age 5, after which the project's emissions would drop to 0 for the remaining 25 years to get the 30-year equivalent cancer risk estimate)".⁴⁵

Thus, the City must prepare a health risk assessment to determine whether or not the Project would expose sensitive receptors to substantial air pollutants during construction activities. The Draft SCEA should include a quantitative analysis and comparison of the results to applicable thresholds. The SCAQMD provides a specific numerical threshold of 10 in one million for determining a project's health risk impact.⁴⁷ Therefore, the City's analysis must compare the Project's construction health risk to this threshold in order to determine the Project's potentially significant health risk impact. "By failing to prepare a health risk assessment, the Draft SCEA fails to provide a comprehensive analysis of the Project's impacts to sensitive receptors that may occur when construction exposes people to substantial air pollutants."⁴⁸

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Regarding the Project's operational impacts on sensitive receptors, the SCEA merely states:

"Operation of the proposed project would generally not involve use of heavy-duty trucks with the exception of occasional trash trucks or delivery trucks. Other traffic generated by the proposed project would primarily include resident vehicle trips. However, as discussed in impacts b and c and shown in Table 8, mobile vehicle emissions would be substantially below SCAQMD thresholds, therefore long-term TAC emissions would be nominal. Overall, TAC emissions from construction and operational activities would be less than significant."⁴⁹

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As SWAPE explains, "[s]imply because the Project proposes residential and retail land uses does not mean that the Project will inherently have a less than significant

⁴⁶ <http://www.sqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2>, p. IX-2

⁴⁷ <http://www.sqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>

⁴⁸ Exhibit A: SWAPE Comments, p. 2-3.

⁴⁹ SCEA, p. 63
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impact on the health of nearby neighbors, nor does it mean that a health risk assessment for the proposed Project is not needed”⁶⁰

The omission of a quantified health risk assessment not only results in the lack of any substantial evidence to back the City’s conclusion, but it is inconsistent with the most recent guidance published by Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. The organization’s most recent Risk Assessment Guidelines were formally adopted in March of 2015.⁶¹ As explained by SWAPE:

“According to the Project’s CalEEMod output files, the Project will generate 4,423 vehicle trips per day during operation, which will emit substantial amounts of diesel particulate matter (DPM), potentially exposing nearby sensitive receptors to substantial air pollutants. (Appendix C, pp. 148, pp. 191, pp. 234). The OEHHA document recommends that exposure from projects lasting more than 6 months should 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 (MEIR). Even though the SCEA does not state the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, per OEHHA guidelines, health risk impacts from Project construction and operation should have been evaluated in the Draft SCEA.”⁶²

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SWAPE prepared a simple health risk screening assessment (“HRSA”), consistent with EPA’s recommendations and with the OEHHA and SCAQMD Guidelines, to model the Project’s potential health risks impacts on sensitive receptors. SWAPE’s conclusion is that “[t]he excess cancer risk posed to adults, children, and infants at the MEIR located approximately 50 meters away, over the course of Project construction and operation are 29, 190, and 91 in one million, respectively” and that “[t]he infant, child, adult, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million.”⁶³ As SWAPE notes, such screening level assessment is

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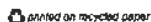
⁶⁰ Exhibit A: SWAPE Comments, p. 3.

⁶¹ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://cehha.ca.gov/air/hot_spots/hotspots2015.html

⁶² Exhibit A: SWAPE Comments, p. 3-4, FN omitted.

⁶³ Exhibit A: SWAPE Comments, p. 7

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conservative and tends to err on the side of health protection. The meaning of this, however, is that the City must prepare a more refined health risk assessment using site-specific meteorology and equipment data. Only after performing such a health risk assessment can the City reach a conclusion, supported by substantial evidence, regarding the Project's impact on sensitive receptors.

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SWAPE also lists feasible mitigation measures available to reduce operational emissions from the Project. Only after performing a health impact assessment, and implementing mitigation measures as required to reduce those impacts below levels of significance, can the City conclude, based on substantial evidence, that Project would result in "no significant impact."

VII. CONCLUSION

The Project will result in significant impacts to public health from hazards and air quality impacts, which were not adequately analyzed and mitigated to less than significant levels. The Project is inconsistent with the Specific Plan and the Zoning Code. Moreover, the SCEA violates CEQA by incorporating mitigation measures into the Project Description and failing to explain the significance of impacts to people and the environment.

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For the foregoing reasons, we respectfully request that the City of Pasadena reject the SCEA and deny the Project Approvals, until the City prepares and circulates the public a Draft SCEIR, as required by CEQA, and modifies the Project to be consistent with all laws, regulations and policies.

Sincerely,

Tanya A. Gulesserian
Nirit Lotan



Attachments

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