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April 19, 2016

**VIA EMAIL AND
HAND DELIVERY on April 20, 2016**

Planning Commission
Oakland City Hall
One Frank H. Ogawa Plaza, Hearing Room No. 1
Oakland, CA 94612

Peterson Vollman
Planner II
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612
Email: pvollmann@oaklandnet.com

Re: **Comments on the Addendum for the 2400 Valdez Street Project
(PLN15-336)**

Dear Honorable Members of the Oakland Planning Commission and Mr. Vollman:

We write on behalf of Oakland Residents for Responsible Development to comment on the City of Oakland's Addendum ("Addendum") to the Environmental Impact Report ("EIR") for the Broadway Valdez District Specific Plan ("BVDSP") prepared pursuant to the California Environmental Quality Act ("CEQA").¹ The Project is proposed on a 1.1-acre site in the western portion of the city of Oakland, generally bounded by 26th Street immediately to the north, Valdez Street to the west, 24th Street to the south, and an automotive business as well as parking lots to the east.

The Addendum evaluates the Project's potential impacts and consistency with the BVDSP. We reviewed the Addendum and BVDSP EIR, and we identified

¹ Pub. Resources Code §§ 21000 et seq.

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several flaws in the Project analysis as well as new information regarding new or more severe impacts than previously analyzed in the BVDSP EIR. Specifically, the Addendum fails to adequately address the Project's inconsistency with the BVDSP; fails to adequately describe the Project; fails to analyze and mitigate the Project's health risks posed to the surrounding community, which are new or more severe than previously analyzed; fails to adequately analyze and mitigate the Project's greenhouse gas ("GHG") emissions as required under the BVDSP; and fails to adequately analyze hazards on the Project site. Therefore, the City lacks substantial evidence to support its decision that an Addendum is appropriate, rather than a new EIR.

We reviewed the Addendum and BVDSP EIR with the help of experts Matt Hagemann and Jessie Jaeger. Their attached technical comments are submitted in addition to the comments in this letter.² Accordingly, they must be addressed and responded to separately. The curricula vitae of these experts are also attached as exhibits to this letter.

I. STATEMENT OF INTEREST

Oakland Residents for Responsible Development ("Oakland Residents") is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes Alan Guan, Risi Agbabiaka, Peter Lew, Bridgette Hall, Tanya Pitts, the International Brotherhood of Electrical Workers Local 595, Plumbers and Steamfitters Local 342, Sheet Metal Workers Local 104, and their members and their families who live and/or work in the City of Oakland and Contra Costa County.

The individual members of Oakland Residents live, work, and raise their families in the City of Oakland. They would be directly affected by the Project's impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of Oakland Residents also have an interest in enforcing the City's planning and zoning laws and the State's environmental laws

² See Letter from Matt Hagemann and Jessie Jaeger, SWAPE, to Laura Horton re: Comments on the 2400 Valdez Street Project, April 13, 2016 (hereinafter, "SWAPE Comments"), Attachment A.

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. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Oakland Residents' members are concerned about projects that present environmental and land use impacts without providing countervailing economic and community benefits.

II. THE CITY CANNOT RELY ON THE ADDENDUM FOR PROJECT APPROVAL

CEQA has two basic purposes, neither of which is satisfied by the Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.³ The EIR is the "heart" of this requirement.⁴ 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."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 An adequate EIR must contain facts and analysis, not just an agency's conclusions.⁷ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.⁸

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by

³ 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *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.

⁴ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁵ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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

⁷ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

⁸ Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

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requiring the consideration of environmentally superior alternatives.⁹ If an EIR 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.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹² A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹³ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁴

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.¹⁵ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁶ A negative declaration may be prepared

⁹ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

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

¹¹ *Id.*, §§ 21002-21002.1.

¹² CEQA Guidelines § 15126.4(a)(2).

¹³ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁴ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

¹⁵ CEQA Guidelines §§ 15060, 15063(c).

¹⁶ *See, e.g.*, Pub. Resources Code § 21100.

instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."¹⁷

When an EIR has been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.¹⁸

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at

¹⁷ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

¹⁸ Pub. Resources Code § 21166.

the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.¹⁹

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.²⁰ For addendums specifically, CEQA allows addendums to a previously certified EIR "if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."²¹ In any case, however, the decision must be supported by substantial evidence.²²

Here, the City's decision to prepare an addendum, rather than a subsequent or supplemental EIR for the Project is not supported by substantial evidence. The addendum does not simply provide "some changes or additions" to the EIR; rather, it includes over 2,000 pages of analysis for a large development project that was not

¹⁹ CEQA Guidelines § 15162(a)(1)-(3).

²⁰ CEQA Guidelines § 15162(b).

²¹ CEQA Guidelines § 15164.

²² *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

specifically analyzed in the BVDSP. Moreover, the Project will have new or more severe significant impacts than previously analyzed in the BVDSP EIR. In addition, as described below, the site-specific analysis conducted for the Project is flawed in several ways and the Addendum fails to incorporate all applicable mitigation and Standard Conditions of Approval (“SCAs”) identified in the BVDSP. Therefore, the City may not rely on the Addendum for Project approval, and must provide detailed analysis of the Project’s impacts in an EIR.

A. The Addendum Is Inconsistent With The Broadway Valdez District Specific Plan

The BVDSP EIR provides program level analysis, and site-specific analysis in some instances, for impacts resulting from development in the Broadway Valdez District. The BVDSP envisioned the area surrounding the Project site as retail-focused. For example, GOAL LU-8 for the Valdez Triangle, the area in which the Project is sited,²³ establishes the Valdez Triangle as a “dynamic new retail destination that caters to the comparison shopping needs for Oakland and the broader East Bay.”²⁴ The BVDSP differentiated the retail-oriented Valdez Triangle with the more residential North End, stating:

Due to its proximity to Downtown, its accessibility to transit and freeways, and its fine-grained network of cross-streets, the focus in the Valdez Triangle will be on creating a new destination retail district. In response to its linear configuration, proximity to the two medical centers, and inventory of historic buildings, the focus in the North End will be on creating a high-density mixed use boulevard that caters to. . . residential neighborhoods with a mix of retail, dining, office, residential and professional services.²⁵

The BVDSP then addressed this specific Project site and assumed the development of zero residential units and 127,733 square feet of commercial use.²⁶ The Addendum acknowledges the Project’s clear inconsistency with the BVDSP, but states that because the traffic impacts are within the range of traffic impacts

²³ Addendum, p. 4.

²⁴ BVDSP, p. 71.

²⁵ BVDSP, p. 102.

²⁶ BVDSP, Appendix D.

contemplated in the BVDSP EIR, the Project's inconsistency with the BVDSP is not relevant and an EIR would not be required.²⁷ This conclusion is flawed.

Although the BVDSP may allow some flexibility in specific build out of the area, the fact that the Project adds the development of 225 units that result in significant air quality and GHG emission impacts as explained below, combined with the fact that those units were not anticipated under the BVDSP, demonstrates an inconsistency that cannot be ignored under CEQA. The City cannot rely on CEQA analysis that not only fails to adequately analyze and mitigate Project impacts, as required under the overlaying specific plan, but is also directly in conflict with the intent of the plan. The infill exemptions, streamlining provisions, and use of addendums under CEQA anticipate projects that are *consistent* with the overlaying plan and that do not result in new or more significant impacts than previously analyzed. That is not the case here.

As explained below, the Addendum not only fails to adequately describe the Project, which is a basic requirement of any CEQA document, but it also fails to address new or more severe health risks resulting from the Project, and fails to incorporate SCAs required for GHG emissions under the BVDSP. Furthermore, the Addendum fails to adequately analyze hazards on the Project site. For these reasons, the Project is not consistent with the BVDSP and therefore cannot rely on the plan's EIR. A new EIR must be prepared for the Project.

B. The Addendum Fails To Adequately Describe The Project

The Addendum fails to meet CEQA's requirements because it fails to include a complete Project description regarding on-site hazards, rendering the entire hazards analysis inadequate. CEQA places the burden of environmental investigation on the government rather than the public. Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁸ An accurate and complete project description is necessary to perform an adequate evaluation of the potential environmental effects of a proposed project. In contrast, an inaccurate or incomplete project description renders the analysis of environmental impacts inherently unreliable. Without a complete project

²⁷ Addendum, p. 3.

²⁸ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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description, the environmental analysis under CEQA will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²⁹

Because the BVDSP did not analyze specific development projects, the City is required to provide a complete and detailed description of projects proposed under the plan in all project-level CEQA documents. In this case, the Addendum fails to sufficiently describe the Project by failing to describe dewatering requirements for the Project that may be associated with excavation and trenching at the Project site, which could lead to potentially significant impacts. An EIR must be prepared to address these deficiencies.

The CEQA analysis in the Addendum is inconsistent because it states that "if construction dewatering activities occur, the groundwater analytical results included in the Phase II Environmental Site Assessment ("ESA") would be provided to EBMUD prior to the completion of construction activities."³⁰ However, as explained by SWAPE, this statement is misleading because "[d]ewatering activities will assuredly occur because the water table is found at a depth as shallow as seven feet . . . and the Project would involve excavation to a depth of between 25 and 27 feet."³¹ In addition, the Phase II ESA conducted for the Project appears to conclude that dewatering would be required for the Project. No detailed description of the Project's dewatering requirements was included in the Addendum.

Construction dewatering has the potential to introduce pollutants into the storm drain systems. For example, groundwater from dewatering could contain sediment that, if not properly managed, could be discharged to the storm drain system. In addition, shallow soil contamination could introduce further contamination to storm drains and other water bodies. As SWAPE points out, the Phase I & II ESAs found petroleum hydrocarbons (motor oil), cobalt, and lead in soil at depths less than 12 feet at levels above San Francisco Regional Water Quality Control Board regulatory screening levels for a residential setting.³² Without additional information and analysis, the Project's impacts to workers, the public, and hydrological resources cannot adequately be determined. The City must

²⁹ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

³⁰ Addendum, p. 34.

³¹ SWAPE Comments, p. 3.

³² *Id.*, at 2.

describe potential dewatering activities so the public and decision makers can fully assess the Project's impacts on the environment.

Therefore, SWAPE concludes that an EIR "is necessary to properly document the need for dewatering, the impacts of dewatering, and a determination by EBMUD that the water quality is suitable for disposal."³³

C. The Addendum Fails To Adequately Analyze The Project-Specific Health Risk And Fails To Incorporate Conditions And Measures Identified in the Broadway Valdez District Specific Plan

The BVDSP EIR determined that development under the plan could generate substantial levels of Toxic Air Contaminants ("TACs"), resulting in significant health risks to sensitive receptors during construction activities and project operations. The BVDSP further determined that new operational sources, such as backup diesel generators, could result in significant impacts on new and existing receptors.³⁴ SCAs and mitigation measures were identified to reduce the impacts.³⁵

Despite the SCAs and mitigation measures, the BVDSP EIR determined that the TAC exposure resulting generally from Project would remain significant and unavoidable. This conclusion, however, was based primarily on operational exposures, and the BVDSP did not evaluate in detail the potential health risk to sensitive receptors during *construction*. The BVDSP did not address construction related exposures because "the specificity of detail necessary to conduct a health risk assessment is not available at the Specific Plan stage."³⁶ The BVDSP EIR thus deferred the assessment of health risks from construction activities to the project level stage where project-specific impacts and mitigation measures could be determined.

As explained by SWAPE, however, the Addendum completely fails to evaluate the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter ("DPM") emissions released during Project construction.³⁷ The

³³ *Id.*, at 3.

³⁴ BVDSP EIR, p. 4.2-28.

³⁵ *Id.*, at 4.2-28 - 29.

³⁶ *Id.*, at 4.2-27.

³⁷ SWAPE Comments, p. 9.

Addendum concludes that, “[b]ased on an examination of the analysis, findings, and conclusions of the BVDSP EIR, implementation of the proposed project would not substantially increase the severity of significant impacts identified in the BVDSP EIR, nor would it result in new significant impacts related to air quality that were not identified in the BVDSP EIR.”³⁸ This conclusion is incorrect.

While an operational health risk assessment (“HRA”) was prepared, the risk from exposure to DPM emissions during construction were not quantified, nor were they compared to applicable numerical thresholds. Although the Addendum states that the Project would require implementation of SCAs and Transportation Demand Management (“TDM”) to control construction emissions,³⁹ SWAPE notes that the risk should still be quantified to determine whether all necessary SCAs and mitigation measures have been applied if the measures will adequately reduce DPM emissions.⁴⁰

Furthermore, SWAPE explains that by failing to quantify the risk associated with Project construction, the Addendum “is inconsistent with guidance set forth by the Office of Environmental Health Hazard Assessment (“OEHHA”),” the organization responsible for providing recommendations for HRAs in California.⁴¹ The February 2015 OEHHA guidance document describes the types of projects that warrant the preparation of an HRA.⁴² According to SWAPE, construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment over a construction period of 24 months, from June 2016 to June 2018, as stated in the Addendum.⁴³ OEHHA recommends that all short-term projects lasting longer than two months be evaluated for cancer risks to nearby sensitive receptors.⁴⁴ SWAPE explains that “[t]his recommendation reflects the most recent HRA policy, and as such, the health risk for Project construction should be quantified and evaluated against the numerical significance

³⁸ Addendum, p. 22

³⁹ *Id.*

⁴⁰ SWAPE Comments, p. 9 – 10.

⁴¹ *Id.*, at 10.

⁴² “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.

⁴³ SWAPE Comments, p. 10.

⁴⁴ OEHHA, Risk Assessment Guidelines, at 8-18.

threshold established by the Bay Area Air Quality Management District (“BAAQMD”).”⁴⁵

SWAPE prepared a simple screening-level HRA, which demonstrates that construction-related DPM emissions would exceed BAAQMD health risk thresholds.⁴⁶ SWAPE’s model indicates that construction activities will generate approximately 1,531 pounds of DPM over a 729-day construction period.⁴⁷ SWAPE then calculated the excess cancer risk for each sensitive receptor location, for adults, children, and/or infant receptors using applicable HRA methodologies prescribed by OEHHA. As SWAPE explains, OEHHA recommends the use of Age Sensitivity Factors (“ASFs”) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.⁴⁸ SWAPE’s findings are included below.

Parameter	Description	Units	Adult	Child	Infant
C _{air}	Concentration	µg/m ³	4.44	4.44	4.44
DBR	Daily breathing rate	L/kg-day	302	581	581
EF	Exposure Frequency	days/year	350	350	350
ED	Exposure Duration	years	2	2	2
AT	Averaging Time	days	25550	25550	25550
	Inhaled Dose	(mg/kg-day)	3.7E-05	7.1E-05	7.1E-05
CPF	Cancer Potency Factor	1/(mg/kg-day)	1.1	1.1	1.1
ASF	Age Sensitivity Factor	-	1	3	10
	Cancer Risk		4.04E-05	2.33E-04	7.77E-04

As demonstrated in the table, SWAPE found that excess cancer risk to adults, children, and infants during Project construction for the sensitive receptors located 25 meters away are 40.4, 233, and 777 in one million, respectively, which far exceed applicable thresholds. Thus, SWAPE concludes that “a refined health risk assessment must be prepared and included in [an EIR] to examine air quality impacts generated by Project construction using site-specific meteorology and

⁴⁵ SWAPE Comments, p. 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ OEHHA, Risk Assessment Guidelines.

specific equipment usage schedules.”⁴⁹ The Addendum fails to adequately address this impact.

Furthermore, the Addendum has not indentified or incorporated all SCAs and mitigation required under the BVDSP. The Addendum not only fails to quantify the construction health risk to determine whether all necessary SCAs and mitigation have been incorporated (which were not even clearly identified in the BVDSP), but also fails to incorporate Mitigation Measure AIR-4: Risk Reduction Plan to address the Project’s use of an emergency generator, which can introduce new TACs as stated in the Addendum.⁵⁰

AIR-4 states that “[a]pplicants for projects that would include backup generators shall prepare and submit to the City, a Risk Reduction Plan for City review and approval. . . The applicant shall implement the approved plan.”⁵¹ The BVDSP appears to require this measure for all projects with backup generators, such as this Project, to address cumulatively considerable health risks from multiple new sources.⁵² However, even though the BVDSP clearly anticipated cumulatively considerable health risks from new sources of TACs such as emergency generators, the Addendum ignores this analysis and concludes that AIR-4 is not required. This is counter to the BVDSP.

The Addendum is inconsistent with the BVDSP because it fails to incorporate all mitigation required under the BVDSP for health risks to the surrounding community. In addition, given that the Addendum acknowledges that the proposed Project “differs from what was presented in the BVDSP EIR,” the health risk impact from DPM during construction does in fact present new information showing a significant impact, which the BVDSP stated could not be known at the Project level, and which was not discussed in the BVDSP EIR. Therefore, an EIR is required for the Project and the City may not rely on the Addendum for Project approval.

⁴⁹ SWAPE Comments, p. 12.

⁵⁰ Addendum, p. 21 (“[The Project] would have an emergency generator, thereby introducing new sources of TACs.”).

⁵¹ BVDSP EIR, p. 4.2-28.

⁵² *Id.*

D. The Addendum Fails To Adequately Analyze Project-Specific Greenhouse Gas Emissions And Fails To Incorporate Conditions And Measures Identified In The Broadway Valdez District Specific Plan

The BVDSP EIR analyzed GHG emission impacts resulting from build-out of the entire plan, which were determined to be significant and unavoidable. Several mitigating SCAs were identified and incorporated into the BVDSP. Those SCAs, such as a GHG Reduction Plan, apply to Projects that meet certain thresholds for GHG emissions. According to the Addendum, a GHG screening analysis (“GHG Analysis”) was conducted to determine if the proposed Project would meet the thresholds requiring the development of a GHG Reduction Plan under SCA F in the BVDSP (or SCA 38 as the Addendum’s GHG Analysis refers to it).⁵³

Under SCA F, if the Project emits more than 1,100 metric tons of CO₂e per year (MTCO₂e/yr) and generates more than 4.6 metric tons of CO₂e per year per service population (MTCO₂/yr/sp), the Project would have a significant GHG impact, and the Project Applicant would be required to develop a GHG Reduction Plan.⁵⁴ The Addendum concluded that the Project does not exceed the applicable thresholds, and thus would have a less than significant GHG impact. No SCAs or mitigation measures were applied to the Project.

However, SWAPE finds that the City’s conclusion regarding GHG impacts is “inaccurate” and “based on emissions generated by an incorrect model.”⁵⁵ As explained by SWAPE, the GHG Analysis relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2013.2.2 (“CalEEMod”).⁵⁶ 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.⁵⁷ 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

⁵³ BVDSP EIR, Section 4.6; Addendum, Attachment F.

⁵⁴ *Id.*

⁵⁵ SWAPE Comments, p.4.

⁵⁶ CalEEMod website, *available at*: <http://www.caleemod.com/>

⁵⁷ CalEEMod User Guide, pp. 2, 9.

disclose to the reader what parameters were utilized in calculating the Project's air pollution emissions, and make known which default values were changed as well as provide a justification for the values selected.⁵⁸

When reviewing the construction and operational CalEEMod output files for the GHG analysis, SWAPE found that several of the values inputted into the model are "not consistent with each other and with information disclosed in the [Addendum]." ⁵⁹ As a result, the GHG emissions associated with the construction and operation of the Project are "greatly underestimated."⁶⁰ When SWAPE corrected those values, the model shows that the Project will have a significant GHG impact.⁶¹ The model values are incorrect for two reasons.

First, the Project's GHG Analysis failed to include the anticipated amount of material that will be exported off site during the "Excavation" construction phase within the CalEEMod model, and as a result, the Project's construction emissions are underestimated.⁶² The Addendum states that "[c]onstruction would include excavation and off-haul of up to 42,000 cubic yards of excavated material and approximately 42,000 cubic yards of demolition material would be disposed of off-site."⁶³ The material generated during the "Demolition" phase would come from the demolition of the existing paved features on the Project site and the material generated during the "Excavation" phase will come from the excavation of the top soil on the Project site to a depth of between 25 and 27 feet below grade.⁶⁴ SWAPE explains that these proposed material export activities would "produce substantial pollutant and GHG emissions, and as a result, these activities should have been included in the Project's CalEEMod model."⁶⁵

Second, the Energy Use values inputted into the construction CalEEMod model are inconsistent with the Energy Use values inputted into the operational CalEEMod model.⁶⁶ SWAPE explains that CalEEMod is an inclusive model that allows the user to model both construction and operational emissions for a proposed

⁵⁸ *Id.*, at 7, 13.

⁵⁹ SWAPE Comments, p. 5.

⁶⁰ *Id.*

⁶¹ *Id.*, at 7 - 9.

⁶² *Id.*, at 5.

⁶³ Addendum, p. 21.

⁶⁴ *Id.*, at 10.

⁶⁵ SWAPE Comments, p. 5.

⁶⁶ *Id.*, at 6.

Project within the same model. As such, most CEQA evaluations estimate the Project's construction and operational emissions in one model. However, SWAPE notes that contrary to this common practice, the analyses prepared for the Project uses two separate CalEEMod models – one for construction and one for Project operation. According to SWAPE, the construction model indicates that the Applicant provided Project-specific values for operational energy use, but those same values were not included in the operational emissions model.

SWAPE corrected the operational model, as seen below, using the Project-specific Energy Use and Natural Gas values referenced in the construction model. SWAPE's corrected model demonstrates that GHG emissions will greatly exceed both of the numerical thresholds referenced in SCA F;⁶⁷ thus, the BVDSP requires that a GHG Reduction Plan must be prepared.⁶⁸

Total Project Emissions		
Activity	Greenhouse Gas Emissions (MT CO2e/Yr)	
	CEQA Analysis	SWAPE Analysis
Construction	65	68
Operation	1,962	20,942
Total	2,027	21,010
Significance Threshold	1,100	1,100
Exceeds Threshold?	Yes	Yes

Total Project Emissions		
Activity	Greenhouse Gas Emissions Per Service Population (MT CO2e/SP/Yr)	
	CEQA Analysis	SWAPE Analysis
Construction	65	68
Operation	1,962	20,942
Total	2,027	21,010
Service Population	466	466

⁶⁷ *Id.*, at 8 – 9.

⁶⁸ BVDSP EIR, p. 4.6-27 – 28.

Emissions Per Service Population	4.3	45.1
Significance Threshold	4.6	4.6
<i>Exceeds Threshold?</i>	No	Yes

Therefore, SWAPE concludes that the City's determination that the Project's GHG emissions are less than significant and none of the SCAs identified in the BVDSP are required is "not substantiated."⁶⁹ An updated analysis in an EIR should be prepared to adequately evaluate and mitigate the Project's significant GHG impact.

E. The Addendum Fails To Adequately Analyze Project-Specific Hazards

1. Hazardous Materials on the Project Site

A July 2015 Phase I ESA prepared for the Project site and an August 2015 Phase II ESA were used as the basis for the Addendum to conclude that hazards impacts were less than significant and that no mitigation was necessary. However, SWAPE explains that "[n]o regulatory agencies were engaged to provide oversight of the Phase I and Phase II ESAs and therefore the conclusions reached in the CEQA Analysis are unreliable for decision-making."⁷⁰

As explained above, the sampling that was reported in the Phase II ESA documented detections of petroleum hydrocarbons (motor oil), cobalt, and lead in soil at depths less than 12 feet. SWAPE explains that "[t]he detections were above San Francisco Regional Water Quality Control Board regulatory screening levels for a residential setting" and that "[t]he lead detection was so elevated, the soil may need to be classified as hazardous waste."⁷¹ However, the Addendum merely states that contaminated soil would be excavated for Project construction and that general Standard Conditions of Approval would be required without further analysis. The Addendum then concludes that "implementation of the proposed project would not substantially increase the severity of significant impacts identified in the BVDSP

⁶⁹ SWAPE Comments, p. 5.

⁷⁰ *Id.*, at 2.

⁷¹ *Id.*

EIR, nor would it result in new significant impacts related to hazards and hazardous materials that were not identified in the BVDSP EIR.”⁷²

However, SWAPE explains that the contaminants that were detected in soil have health effects that include:

- Total petroleum hydrocarbons: headaches and dizziness, a nerve disorder called "peripheral neuropathy," and effects on the blood, immune system, lungs, skin, and eyes.
- Cobalt: lung, heart, liver and kidney effects.
- Lead: neurological and kidney effects, probable human carcinogen.⁷³

Although the BVDSP analyzed potential release of hazardous materials into the environment such as PCBs and lead-based paint, it is not clear that the BVDSP specifically analyzed the potential for impacts from high levels of petroleum hydrocarbons and cobalt in the soil. Given the limited analysis of hazardous materials in the BVDSP, SWAPE concludes that “[t]o assure the adequacy of the investigations, the Alameda County Department of Environmental Health should be engaged to review the findings of the Phase I and the Phase II . . . Regulatory oversight is necessary to validate the environmental sampling was adequate and that all contaminated soil will be excavated.”⁷⁴ Without this oversight, SWAPE finds that the Addendum is “inadequate” and that an EIR is “necessary to document regulatory engagement and a regulatory finding that the conditions at the Project site are appropriate for residential development.”⁷⁵

2. *Phase I Recommendations*

The July 2015 Phase I ESA prepared for the Project site made several recommendations, including the “[a]bandonment of the existing groundwater monitoring wells on the project site in accordance with local and state regulations.”⁷⁶

⁷² Addendum, p. 34.

⁷³ SWAPE Comments, p. 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Addendum, p. 33.

Three monitoring wells were identified in the Phase I and in the subsequent August 2015 Phase II ESA.⁷⁷ However, no details on the well construction (depth, date of completion) were included in the Phase I or Phase II. SWAPE finds that the Addendum fails to include any documentation that the wells were abandoned, as recommended in the Phase I.⁷⁸ Given the elevated concentrations of various materials such as motor oil and lead in soil samples, and the potential for those materials to have a significant environmental impact, the City should follow all Phase I ESA recommendations. Therefore, SWAPE concludes that an EIR “should be prepared to show that the wells were abandoned in accordance with Alameda County Municipal Code 6.88.060 to meet standards in Chapter II of the Department of Water Resources Bulletin No. 74-81, “Water Well Standards: State of California,” Department of Water Resources Bulletin No. 74-90.”⁷⁹

III. CONCLUSION

The City has failed to satisfy CEQA’s procedural and evidentiary standards for the preparation of an addendum. As explained above, the Addendum fails to adequately address the Project’s inconsistency with the BVDSP; fails to adequately describe the Project; fails to analyze and mitigate the Project’s health risks posed to the surrounding community, which are new or more severe than previously analyzed; fails to adequately analyze and mitigate the Project’s GHG emissions as required under the BVDSP; and fails to adequately analyze hazards on the Project site. For these reasons, we urge the City to prepare an EIR for the Project before the City considers approval of the Project.

Sincerely,



Laura E. Horton

LEH:ric
Attachments

⁷⁷ See Addendum, Attachments G & H.

⁷⁸ SWAPE Comments, p. 3.

⁷⁹ *Id.*