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**Via Email and Overnight Mail**

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City of Santa Clara  
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Santa Clara, California 95050  
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**Re: Comments on the Draft Environmental Impact Report – Gateway Crossings Project**

Dear Ms. Fernandez:

On behalf of Santa Clara County Residents for Responsible Development we submit these comments on the City of Santa Clara's ("City") Draft Environmental Impact Report ("DEIR") prepared pursuant to the California Environmental Quality Act ("CEQA")<sup>1</sup> and its implementing Guidelines,<sup>2</sup> for the Gateway Crossings Project ("Project") proposed by Hunter Storm Properties ("Applicant"). The project proposes to build on a 23.8-acre site up to 1,600 residential units, an 182,000 square foot full service hotel, 15,000 square feet of ancillary retail, surface and structured parking, public and private streets, a neighborhood park and open space, and new infrastructure and utilities. The Project site is located on 1205 Coleman Avenue, at the southwest corner of Coleman Avenue and Brokaw Road. (APN Nos. 230-46-069 and 230-46-070).

The DEIR states that the Project requires the following discretionary actions of the City: (1) General Plan Amendment (GPA) to change the land use designation on the site to Very High Density Residential; (2) An amendment to the General Plan Land Use Map for the Santa Clara Station Focus Area to reflect the General Plan change; (3) An amendment to Appendix 8.13 to the General Plan (the Climate Action Plan) to establish a 20 percent reduction in Vehicle Miles Traveled (VMT), half of which (a 10 percent reduction) would be achieved with a Transportation

<sup>1</sup> Pub. Resources Code (hereinafter "PRC") §§ 21000 et seq.

<sup>2</sup> 14 Cal.Code Regs. (hereinafter "CCR") § 15000 et seq.  
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Demand Management (TDM) program; (4) Zoning Code text amendment to add a new zoning designation of Very High Density Mixed Use to facilitate the development of the land uses and building types contemplated for the Project site; (5) Rezoning of the Project site to the new zoning designation; (6) Vesting Tentative Parcel Map and (7) Development Agreement.

Based on our review of the DEIR, appendices and other relevant records, we conclude that the DEIR fails to meet the requirements of CEQA. First, the DEIR fails to properly disclose, analyze and mitigate impacts on air quality and public health. Second, the DEIR conclusion that impacts from air quality and public health are less than significant (some with and others without mitigation) is not supported by substantial evidence. Third, substantial evidence shows that the Project's impacts on air quality and public health will be significant. Fourth, the DEIR conclusion that impacts from GHG are significant and unavoidable is not supported by substantial evidence. Fourth, the DEIR fails to properly disclose, analyze and mitigate the Project's transportation and traffic impacts. Fifth, the Project does not comply with the General Plan Policies regarding affordable housing.

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"), and with the assistance of traffic and transportation expert Dan Smith of Smith Engineering & Management. SWAPE's and Mr. Smith's comments and curriculum vitae are attached hereto as Exhibit A and Exhibit B, respectively, and are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments of SWAPE and Mr. Smith in addition to our comments.

We urge the City to reject the DEIR and direct staff to prepare and recirculate a revised Draft EIR that properly analyzes, addresses and mitigates the Project's potentially significant impacts, as required by CEQA.

## I. STATEMENT OF INTEREST

Santa Clara Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards and environmental impacts associated with Project development. Santa Clara Residents includes the International Brotherhood

of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families, and other individuals that live and/or work in the City of Santa Clara and Santa Clara County.

Individual members of Santa Clara Residents and the affiliated labor organizations live, work, recreate and raise their families in the City of Santa Clara and Santa Clara County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Santa Clara Residents have a strong interest in enforcing the State's 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 PROJECT FAILS TO COMPLY WITH THE GENERAL PLAN POLICIES**

According to the DEIR, the project requires amending the General Plan to accommodate 122-322 more residential units than allowed under the City's General Plan, and to "redefine the land use boundaries and densities within the site."<sup>3</sup> The DEIR, however, almost completely ignores the General Plan policies regarding affordable housing.

The "Residential Land Use Goals" of the City's General Plan include several goals relating to affordable housing, including the following goals:

**5.3.2-G1** Equitable housing opportunities within the community for persons of all economic levels, regardless of religion, gender, sexual orientation, marital status, national origin, ancestry, familial status, race, color, age, source of income or mental or physical disability.

**5.3.2-G2** A variety of housing types, sizes, location and tenure in order to maintain social and economic diversity in the City.

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<sup>3</sup> Gateway Crossings DEIR, April 2018, p. 115.  
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**5.3.2-G3 Affordable housing units dispersed throughout the City to avoid a concentration in any one neighborhood.”<sup>4</sup>**

The “Residential Land Use Policies” of the General Plan also call for more affordable housing, with a special emphasize on citing affordable housing near transit:

**“5.3.2-P1 Encourage the annual construction of the housing units necessary to meet the City’s regional housing needs assessment by reducing constraints to housing finance and development.**

**5.3.2-P6 Provide adequate choices for housing tenure, type and location, including higher density, and affordability for low- and moderate-income and special needs households.**

**5.3.2-P9 Encourage senior and group residential facilities, and affordable housing developments near neighborhood retail, support services and transit facilities.**

**5.3.2-P10 Create opportunities for affordable housing and housing to support special needs populations, including Extremely Low Income households.”<sup>5</sup>**

Despite these extensive and clear policies, the DEIR only mentions policies 5.3.2-P1 and 5.3.2-P6 in its discussion of land use and planning for the Project.<sup>6</sup>

In addition to the General Plan Residential Land Use Goals and Residential Land Use Policies, the General Plan policies for the Santa Clara Station Focus Area, in which the Project is located, specifically calls for the development of affordable housing within the Focus Area.

**“5.4.3-P20 Highly encourage the development of affordable housing and senior housing that is well designed and compatible with adjacent uses in the Santa Clara Station Focus Area.”<sup>7</sup>**

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<sup>4</sup> City of Santa Clara 2010-2035 General Plan, Chapter 5 – Goals and Policies, pp. 20.

<sup>5</sup> City of Santa Clara 2010-2035 General Plan, Chapter 5 – Goals and Policies, pp. 21.

<sup>6</sup> Gateway Crossings DEIR, April 2018, p. 110.

<sup>7</sup> City of Santa Clara 2010-2035 General Plan, Chapter 5 – Goals and Policies, pp. 38

However, the DEIR *fails* to include this Focus Area policy anywhere in its discussion of land use policies relevant to the Project site at 1205 Coleman Avenue:

According to the California Department of Housing and Community Development, the City has made “insufficient progress” toward its Lower Income Regional Housing Needs Allocation (RHNA), which includes housing for very low and low income.<sup>8</sup> Under these circumstances, the City lacks any basis for ignoring its own affordable housing policies, despite adding a significant number of units beyond what is allowed under the General Plan.

To be clear, the Project does not include *any* affordable housing units, in complete disregard of the applicable General Plan policies. Although in section 7.0 of the DEIR, the City discusses a “Reduced Development Alternative” and states that “[i]t is possible the Reduced Development Alternative could meet City objectives 2 and 4 of providing sustainable residential mixed-use development with affordable housing,”<sup>9</sup> the City also fails to explain why the Reduced Development Alternative would comply with the General Plan’s affordable housing goals and policies.

The Project, therefore, does not comply with the General Plan Goals and Policies and the City lacks evidence to support any conclusion otherwise. The City must revise and recirculate an EIR that properly discusses the City’s land use goals and policies, including those regarding affordable housing.

### III. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT IMPACTS ON AIR QUALITY AND GHG

#### A. 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).<sup>10</sup> The EIR is the very heart of CEQA.<sup>11</sup> “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so

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<sup>8</sup> Department of Housing and Community Development, SB 35 Statewide Determination Summary, January 31, 2018, at p. 7.

<sup>9</sup> Gateway Crossings DEIR, April 2018, p. 227.

<sup>10</sup> See, e.g., PRC § 21100.

<sup>11</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

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as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”<sup>12</sup>

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.<sup>13</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR “protects not only the environment but also informed self-government.”<sup>14</sup> 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.”<sup>15</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>16</sup> 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.”<sup>17</sup> 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.”<sup>18</sup>

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”<sup>19</sup> As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information

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<sup>12</sup> *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

<sup>13</sup> 14 CCR § 15002(a)(1).

<sup>14</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>15</sup> *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.

<sup>16</sup> 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.

<sup>17</sup> 14 CCR §15002(a)(2).

<sup>18</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>19</sup> *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>20</sup>

**B. The City Lacks Substantial Evidence to Support its Conclusions regarding Impacts on Air Quality. Substantial Evidence shows the Project May Result in Potentially Significant, Unmitigated Impacts on Air Quality**

In the Air Quality section of the DEIR, the City is required to disclose, analyze and propose mitigation to reduce the Project’s construction and operation emissions of pollutants to less than significant levels. However, as shown by SWAPE<sup>21</sup> and explained below, the DEIR analysis and conclusion are flawed, because they rely on unsubstantiated input parameters, do not properly account for the Project’s trip generation and fail to account for overlap in construction and operational emissions. As a result, the DEIR conclusions regarding the Project’s impacts on air quality are not supported by substantial evidence. Moreover, SWAPE performed an updated operational emissions analysis, based on the Project’s actual data and agency accepted methods for air quality evaluation, and found that the Project’s ROG and NOx emissions exceed the significance threshold set forth by the Bay Area Air Quality Management (BAAQMD) for mixed-use projects.

**1. The DEIR’s Air Quality Analysis Fails to Include All Land Uses and Underestimates Land Use Sizes**

SWAPE’s review of the DEIR’s CalEEMod output files for Option 2 (the preferred option) demonstrates that incorrect land use sizes were used to estimate emissions. As a result, the construction and operational emissions are underestimated:

- The DEIR’s emission model only accounted for 225 hotel rooms, even though the Project proposes 250 rooms;

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<sup>20</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

<sup>21</sup> Exhibit A: SWAPE comments.  
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- The DEIR's emission model only accounted for 1,581 residential units, even though the Project proposes 1,600 units; and
- The DEIR's emission model completely omitted the 10,000 square foot restaurant use proposed in the Project.

As a result of the DEIR analysis failing to evaluate emissions from the actual proposed Project, SWAPE concludes that "the construction and operational emissions associated with the Project are incorrect and should not be relied upon to estimate emissions."<sup>22</sup> Indeed, the DEIR's analysis lacks substantial evidence to support its conclusion regarding air quality impacts.

## **2. The DEIR Uses Incorrect Trip Purpose Percentage**

SWAPE's review found that the DEIR's analysis of the Project's operational emissions improperly double-counts the number of pass-by trips expected to occur throughout Project operation. As a result, the Project's operational emissions are underestimated.

There are three types of trips generated by the Project: primary trips, diverted trips and pass-by trips. Pass-by trips are assumed to be very short – 0.1 miles in length and are a result of no diversion from the primary route. The other two types of trips generated by the Project, primary and diverted trips, are longer and, as a result, create a more significant impact on air quality.

SWAPE found that although pass-by trips for the retail land use were already accounted for in the TIA's Traffic Generation calculation, the trip purpose percentage was divided amongst primary, diverted, and pass-by trip types for the Project's proposed retail land uses.

As explained by SWAPE: "By spreading the trip purpose percentages amongst the three categories, the model is accounting for pass-by trips that have already been accounted for in the TIA. Because the proposed Project's CalEEMod model incorrectly allocates the Project's operational trips to the various categories of trip purposes, the emissions associated with these trips are underestimated, and as a result, the Project's operational emissions are underestimated. An updated

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<sup>22</sup> Exhibit A: SWAPE comments, p. 2-4.  
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CalEEMod model must be prepared in an updated DEIR in order to accurately estimate the Project's operational emissions."<sup>23</sup>

Therefore, the DEIR's analysis lacks substantial evidence to support its conclusion regarding the Project's operational air quality impacts.

### **3. The DEIR Fails to Account for Overlap in Construction and Operational Emissions**

According to the DEIR, Project construction is expected to occur in five phases, with each phase expected to be operational once construction is complete.<sup>24</sup> Thus, SWAPE explain, "when construction of Phase 5 begins, the previous four phases will be in operation. Due to these overlaps, the DEIR should have evaluated the Project's air quality impact assuming that construction of Phase 2 through Phase 5 and operation of the previous phase or phases would occur concurrently. Review of the DEIR, however, demonstrates that no such analysis was conducted, leaving a gap in the DEIR's evaluation of the Project's potential impacts."<sup>25</sup> As a result, the DEIR's analysis fails to evaluate the Project's potentially significant air quality impacts.

### **4. Substantial Evidence Shows the Project May Result in Potentially Significant, Unmitigated Impacts on Air Quality**

In light of the lack of substantial evidence to support the DEIR conclusion regarding impacts from operation emissions, and to more accurately estimate the actual Project emissions, SWAPE prepared an updated CalEEMod model. SWAPE's updated CalEEMod Model includes site-specific information and correct input parameters and takes into account the overlap in the Project's operations and construction. SWAPE's revised analysis using Project-specific data shows that the Project's operational ROG and NOx emissions increase significantly when compared to the DEIR's CalEEMod model emission estimates for full Project build out. Furthermore, SWAPE found that ROG and NOx emissions exceed ROG and NOx significance thresholds established by the BAAQMD. SWAPE concludes that an

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<sup>23</sup> Exhibit A: SWAPE comments, p. 5-6.

<sup>24</sup> Gateway Crossings DEIR, April 2018, Appendix B, p. 10.

<sup>25</sup> Exhibit A: SWAPE comments, p. 7.

updated DEIR should be prepared that includes an updated air pollution model to adequately estimate the Project's emissions, and additional mitigation measures should be identified and incorporated to reduce these emissions to a less-than-significant level.<sup>26</sup> Feasible mitigation measure are discussed below.

Consequently, substantial evidence shows that the Project will result in potentially significant, unanalyzed and unmitigated air quality impacts.

**C. The DEIR Failed to Adequately Disclose, Analyze and Mitigate the Project's Significant Cancer Risk from Construction and Operational Emissions**

**1. The City Lacks Substantial Evidence to Support Its Conclusion that the Project Would Result in Less Than Significant Public Health Impacts**

The DEIR fails to include a health risk analysis ("HRA") to disclose the adverse health impacts that will be caused by exposure to toxic air contaminants ("TACs") from the Project's construction and operational emissions. As a result, the DEIR fails to disclose the Project's potentially significant cancer risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter ("DPM") emissions with the necessary analysis, this finding is not supported by substantial evidence.

The DEIR attempts to justify the omission of a construction health risk assessment by stating that "[a] review of the project area did not reveal any sensitive receptors within 1,000 feet of the project site. For this reason, project construction activities would not result in significant health risk impacts to off-site sensitive receptors."<sup>27</sup> With regard to the lack of an HRA for operational emissions, the DEIR similarly argues that "[t]here are no sensitive receptors within 1,000 feet of the project site. For this reason, the project emergency backup generator under either option would not have a significant health risk to off-site sensitive receptors due to generator testing."<sup>28</sup>

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<sup>26</sup> Exhibit A: SWAPE comments, p. 6.

<sup>27</sup> Gateway Crossings DEIR, April 2018, p. 49.

<sup>28</sup> Gateway Crossings DEIR, April 2018, p. 50.

As SWAPE explains, the 1,000 radius is not the only factor an agency should use in deciding whether to perform an HRA, and the DEIR justifications are incorrect for several reasons.

First, while BAAQMD guidelines recommend performing an HRA for receptors within 1,000 feet of the project, “the BAAQMD has also established the Community Air Risk Evaluation (CARE) Program, which identifies communities that experience higher levels of air pollution than others. According to BAAQMD guidelines, “the goal of the Community Risk Reduction Plan is to encourage local jurisdictions to take a proactive approach to reduce the overall exposure to TAC and PM2.5 emissions and concentrations from new and existing sources”.<sup>29</sup> The Project will be located in one of these communities and, according to the DEIR itself, emissions generated during Project activities has the potential to affect sensitive receptors near the Project site.”<sup>30</sup>

Moreover, SWAPE explains, “according to the BAAQMD’s ‘CEQA Air Quality Guidelines,’ the recommended 1,000-foot radius can be enlarged on a case-by-case basis. Since the nearest sensitive receptor is located only 347 meters away from the Project site, and because the Project is located within a CARE community, this receptor will be impacted by the emissions generated by the Project over the 6 to 8 year construction period and throughout operation.”<sup>31</sup> Since there are sensitive receptors located in close proximity to the Project site that will be impacted, the City must evaluate the proposed Project’s health risk impact to those sensitive receptors.

Second, SWAPE explains that according to BAAQMD, “the thresholds for local risks and hazards from TAC and PM2.5 are intended to apply to all sources of emissions, including both permitted stationary sources and on- and off-road mobile sources, such as sources related to construction, busy roadways, or freight movements.”<sup>32</sup> Therefore, an individual project would be considered significant if the total project’s TAC emissions, including exhaust from construction equipment, heavy duty diesel trucks, and diesel-powered generators, would result in an

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<sup>29</sup> Exhibit A: SWAPE comments, p. 9-10, FN omitted.

<sup>30</sup> Exhibit A: SWAPE comments, p. 9-10.

<sup>31</sup> Exhibit A: SWAPE comments, p. 9-10, FN omitted.

<sup>32</sup> “CEQA Guidelines.” Bay Area Air Quality Management District, May 2017. Available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en), p. D-34

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increased cancer risk greater than 10 in one million, or would result in an increased ambient air PM<sub>2.5</sub> concentration greater than 0.3 µg/m<sup>3</sup>. However, because the DEIR *failed* to evaluate whether or not these emission sources would result in such increases, the public and decisionmakers have no way of knowing the magnitude of the Project's impact on the health of nearby residents. Furthermore, BAAQMD's CEQA guidance states that "carcinogens are assumed to have no safe threshold below which health impacts would not occur."<sup>33</sup> Thus, the City must conduct a proper analysis in order to disclose the full extent of the potential impacts that the Project would have on the surrounding community.<sup>34</sup>

Finally, SWAPE explains that failing to conduct a proper HRA conflicts with the most recent guidance published by the Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. OEHHA recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors, and that exposure from projects lasting more than 6 months should be evaluated for the duration of the project. Therefore, per OEHHA guidelines, health risk impacts from Project construction and operation should have been evaluated by the DEIR. These recommendations reflect the most recent HRA policy, and as such, an assessment of health risks to nearby sensitive receptors from construction and operation should be included in a revised CEQA evaluation for the Project.<sup>35</sup>

In sum, the City lacks substantial evidence to support its conclusion that the Project would result in less than significant public health impacts.

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<sup>33</sup> "California Environmental Quality Act Air Quality Guidelines." Bay Area Air Quality Management District, May 2017. Available at: [http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en), p. C-21

<sup>34</sup> Exhibit A: SWAPE comments, p. 10.

<sup>35</sup> Exhibit A: SWAPE comments, p. 10-11.

**2. The Project Will Result in a Significant, Undisclosed and Unmitigated Lifetime Cancer Risk from Exposure to Contaminants Generated by Project Construction and Operation**

In order to demonstrate the potential risk posed by the Project's construction and operation to nearby sensitive receptors, SWAPE performed a screening level health risk assessment of the Project's DPM emissions using the AERSCREEN model.<sup>36</sup> AERSCREEN is recommended by OEHHA and the California Air Pollution Control Officers Associated (CAPCOA) guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs").<sup>37</sup> SWAPE evaluated the Project's construction and operational impacts to sensitive receptors using the annual PM<sub>10</sub> exhaust estimates from the DEIR's CalEEMod models and the SWAPE's CalEEMod model for full Project operation.

SWAPE found the closest sensitive receptor is approximately 347 meters away from the Project site. SWAPE relied on information in the DEIR that construction of the Project would occur over five phases over the course of 6 to 8 years, and each phase of the project will become operational once constructed and therefore construction and operation of the Project will overlap. Consistent with recommendations set forth by OEHHA, SWAPE used a residential exposure duration of 30 years, starting from the infantile stage of life.<sup>38</sup> SWAPE's model and exposure assumptions are detailed in their letter.<sup>39</sup>

SWAPE's analysis found that unmitigated DPM emissions released during Project construction and operation would result in an excess cancer risk beyond BAAQMD's significance threshold. The excess cancer risk to adults, children, and infants at the MEIR located approximately 350 meters away, over the course of Project construction and operation are approximately 8, 50, and 49 in one million, respectively. Furthermore, the excess cancer risk over the course of a residential lifetime (30 years) at the MEIR is approximately 107 in one million.<sup>40</sup> This risk is above the BAAQMD significance threshold for cancer of ten in one million, and is

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<sup>36</sup> Exhibit A: SWAPE comments, p. 11.

<sup>37</sup> Exhibit A: SWAPE comments, p. 11-12.

<sup>38</sup> Exhibit A: SWAPE comments, p. 12.

<sup>39</sup> Exhibit A: SWAPE comments, p. 11-15.

<sup>40</sup> Exhibit A: SWAPE comments, p. 15.

therefore a significant impact requiring mitigation.<sup>41</sup> As noted by SWAPE, a screening-level HRA is known to be more conservative, and is aimed at health protection, but its purpose is to determine if a more refined HRA needs to be conducted. Here, a more refined HRA should be prepared by the City to properly analyze the Project's significant impacts.

Therefore, the DEIR fails to analyze the Project's significant, unmitigated impact the public health from exposure to contaminants generated by the Project.

**C. The DEIR Must Require Feasible and Available Mitigation Measures to Reduce Construction Emissions**

SWAPE's analysis demonstrates that the Project's construction-related DPM emissions may present a potentially significant impact. Therefore, additional mitigation measures must be identified and incorporated in a revised DEIR to reduce these emissions to a less than significant level.

SWAPE proposes that the Project employ additional measures which are found in CAPCOA's "*Quantifying Greenhouse Gas Mitigation Measures*" and can be used to reduce both GHG levels and criteria air pollutants, such as particulate matter.<sup>42</sup> In addition, SWAPE proposes various mitigation measures recommended by The Northeast Diesel Collaborative ("NEDC") to reduce diesel emissions and protect public health. These measures include implementation of diesel control measures; repowering or replacing older construction equipment engines; installing retrofit devices on existing construction equipment and implementing a construction vehicle inventory tracking system.<sup>43</sup>

In addition to these measures, SWAPE recommends that the Applicant implement mitigation measures called "Enhanced Exhaust Control Practices" that are recommended by the Sacramento Metropolitan Air Quality Management District (SMAQMD) and include a detailed plan, submitted by the applicant, to reduce exhaust emissions from the Project's construction.<sup>44</sup> SWAPE also proposes

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<sup>41</sup> Exhibit A: SWAPE comments, p. 15. See also *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (EIR must disclose an impact as significant when it exceeds a duly adopted CEQA significance threshold).

<sup>42</sup> Exhibit A: SWAPE comments, p. 16

<sup>43</sup> Exhibit A: SWAPE comments, p. 16-18.

<sup>44</sup> Exhibit A: SWAPE comments, p 19-20.

additional mitigation measures aimed at reducing operational ROG (also known as VOC) emissions. Such additional mitigation measures include use of zero-VOC emissions paint, using materials that do not require painting and use of spray equipment with greater transfer efficiencies.<sup>45</sup>

As SWAPE explains, “[t]hese measures offer a cost-effective, feasible way to incorporate lower-emitting equipment into the Project’s construction fleet, which subsequently reduces NOx and DPM emissions released during Project construction. An updated DEIR must be prepared to include additional mitigation measures, as well as include an updated air quality assessment to ensure that the necessary mitigation measures are implemented to reduce construction emissions.”<sup>46</sup> Furthermore, the DEIR must require these measures as mitigation in the DEIR in order to ensure that the Project’s construction-related emissions are reduced to the maximum extent possible.

**D. The DEIR Lacks Substantial Evidence to Support A Finding Of Overriding Considerations for Significant and Unavoidable Greenhouse Gas Impacts**

The DEIR fails to adopt all feasible mitigation measures to reduce the Project’s significant greenhouse gas (“GHG”) impacts to less than significant levels before declaring the impacts “significant and unavoidable.” This violates CEQA’s requirement that the City mitigate all significant environmental impacts to the greatest extent feasible.

Before it can approve the Project, the City must certify the Project’s Final EIR and make mandatory CEQA findings. Those findings must include (1) that the Final EIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.<sup>47</sup> Where, as here, the Project will have a significant effect on the environment, the City may not approve the Project unless it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and

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<sup>45</sup> Exhibit A: SWAPE comments, p 20-21.

<sup>46</sup> Exhibit A: SWAPE comments, p. 20.

<sup>47</sup> 14 CCR § 15090 & 15091.

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that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>48</sup>

The DEIR’s GHG analysis determines that the Project’s GHG emissions would exceed the thresholds set forth by the BAAQMD and proposes several mitigation measures to reduce the Project’s GHG emissions. Even after implementation of mitigation, the DEIR concludes that Option 1 of the Project would result in a significant and unavoidable impact with respect to GHG emissions.<sup>49</sup>

However, SWAPE reviewed the Project’s proposed GHG mitigation measures, and concluded that *the DEIR fails to require all feasible mitigation available to reduce the Project’s GHG impacts*. SWAPE stated that, in their expert opinion, additional, feasible mitigation is available to further reduce the Project’s GHG emissions, including, *inter alia*, the following:<sup>50</sup>

- Incorporate Bike Lane Street Design (On-Site)
- Limit Parking Supply
- Implement Commute Trip Reduction Program- Voluntary or Required
- Provide Ride-Sharing Programs
- Implement Subsidized or Discounted Transit Program
- Implement Preferential Parking Permit Program
- Price Workplace Parking
- Implement Employee Parking “Cash-Out”
- Use passive solar design, such as:
  - Orient buildings and incorporate landscaping to maximize passive solar, heating during cool seasons, and minimize solar heat gain during hot seasons.
- Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting.
- Develop and follow a “green streets guide” that requires:
  - Use of minimal amounts of concrete and asphalt;

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<sup>48</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>49</sup> Gateway Crossings DEIR, April 2018, p. 92.

<sup>50</sup> Exhibit A: SWAPE comments, p. 21-25.



- Use of groundcovers rather than pavement to reduce heat reflection.<sup>51</sup>
- Implement Project design features such as:
  - Shade HVAC equipment from direct sunlight;
  - Install high-albedo white thermoplastic polyolefin roof membrane;
  - Install high-efficiency HVAC with hot-gas reheat;
  - Install formaldehyde-free insulation; and
  - Use recycled-content gypsum board.
- Provide education on energy efficiency to residents, customers, and/or tenants. Provide information on energy management services for large energy users.
- Meet “reach” goals for building energy efficiency and renewable energy use.
- Require all buildings to become “LEED” certified.
- Limit the use of outdoor lighting to only that needed for safety and security purposes.
- Require use of electric or alternatively fueled sweepers with HEPA filters.
- Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use.
- Plant low-VOC emitting shade trees, e.g., in parking lots to reduce evaporative emissions from parked vehicles.
- Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site.

The DEIR must be revised to consider these GHG mitigation measures and incorporate all feasible measures identified by SWAPE as *binding* mitigation for the Project. Only if the Project’s GHG impacts remain significant after requiring all such feasible mitigation can the City consider declaring the Project’s GHG impacts to be significant and unavoidable.

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<sup>51</sup> Cool Houston Plan;

[http://www.harcresearch.org/sites/default/files/documents/projects/CoolHoustonPlan\\_0.pdf](http://www.harcresearch.org/sites/default/files/documents/projects/CoolHoustonPlan_0.pdf)  
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#### **IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT TRANSPORTATION AND TRAFFIC IMPACTS**

CEQA requires the City to analyze the Project's direct, indirect and cumulative impacts from traffic generated by the Project. The DEIR analysis of transportation impacts is inadequate for several reasons. First, the DEIR fails to assess the Project's transportation impacts compared to the actual environmental setting, as required by CEQA. Second, the DEIR greatly underestimates the Project's actual transportation impacts by improperly taking credit for prior uses that ceased a long time ago. Finally, the DEIR fails to properly discuss and mitigate the Project's impact on public transit, as required by CEQA.

##### **A. The DEIR Fails to Adequately Establish the Existing Setting for Transportation Impacts**

The existing environmental setting is the starting point from which the lead agency must measure whether a proposed project may cause a significant environmental impact.<sup>52</sup> CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.<sup>53</sup> Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate, meaningful evaluation of environmental impacts. The courts have clearly stated that, "[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."<sup>54</sup>

The DEIR fails to properly describe the environmental setting for the site's transportation impacts: the last occupant of the site was BAE systems, which ceased operating on the site in 2016. According to the DEIR, "[t]he former buildings

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<sup>52</sup> See, e.g., *Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (March 15, 2010) 48 Cal.4th 310, 316; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1278 ("*Fat*"), citing Remy, et al., Guide to the Calif. Environmental Quality Act (1999) p. 165.

<sup>53</sup> CEQA Guidelines §15125(a) (emphasis added); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453 ("*Riverwatch*").

<sup>54</sup> *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

were occupied by BAE systems until as recent as April 2016” and they were “recently demolished in late 2016/early 2017.”<sup>55</sup> The NOP for the EIR was published in February 2017, and it states “[t]he project site was previously developed with several industrial/office buildings totaling approximately 272,840 square feet, *which were recently demolished.*”<sup>56</sup> The notice of preparation, therefore, was published when the buildings were already demolished, and the site was vacant.

Despite that, as explained by Mr. Smith in his comments, the DEIR’s environmental setting relies on traffic counts that include *counts that were performed more than two years before the NOP was published*, when the prior use of the site was still active:

“[T]he baseline traffic counts for the “existing traffic condition” are a hodge-podge of counts taken from September, 2014 and dates in 2015 when there was some level of prior use of the Project site and dates in March of 2017 when prior activity on the Project site had clearly been terminated (...) In fact, of the 18 existing intersections for which traffic analysis was performed, in the AM peak hour, 11 were counted in 2014 or 2015 when the prior use was contributing to the baseline and the other 7 were counted in March, 2017 when the prior use had clearly terminated. In the PM peak hour, 10 of the intersections were counted when the prior use was contributing traffic to the traffic baseline while 8 intersections were counted after the prior use had clearly terminated.”<sup>57</sup>

Using traffic counts from years before the NOP was published is a clear violation of CEQA and prevents the City from determining the Project’s *actual* transportation impacts. Therefore, the City must revise the DEIR to properly reflect the environmental setting and adequately analyze the Project’s potentially significant impacts.

## **B. The DEIR Underestimates the Project’s transportation impacts**

As described above, the former R&D use on the site ceased about two years ago, and the buildings were demolished by the time the City published the NOP.

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<sup>55</sup> Gateway Crossings DEIR, April 2018, p. 25.

<sup>56</sup> <http://www.santaclaraca.gov/home/showdocument?id=51066>

<sup>57</sup> Exhibit B: Smith Engineering and Management comments, p. 2.

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Despite that, the DEIR improperly deducts the trips generated by the former use from the proposed Project's traffic, as explained by Mr. Smith:

"[T]he Project's trip generation analysis deducts the full theoretical trip generation of the prior use at full occupancy from the trip generation of the Project as if that use had existed at the time of the NOP and as if it had been measured in all of the baseline counts. The inappropriate trip credit taken for the trips of the prior use can be seen in DEIR Table 3.17-5 and in Appendix G, Table 7."<sup>58</sup>

As a result, the Project's actual impacts are greatly underestimated:

"This results in an 18.37 percent reduction in the net new daily trips, a 37.8 percent reduction in the AM peak trips and a 27.29 percent reduction in the PM trips actually generated by the Project. As a result, the Project's transportation impacts are greatly underestimated."<sup>59</sup>

As noted by Mr. Smith, the fact that, within the Existing + Project analysis, the DEIR does not deduct the trips from the former use "does not compensate for the above-mentioned problem of failing to properly represent the environmental setting."<sup>60</sup>

Mr. Smith also explains that the DEIR's short range analysis (Existing + Background Projects + Project) is flawed. In the short range analysis, the DEIR not only improperly uses the credit for the trips from the former use, which is the same flaw discussed above, but also, perhaps in attempting to compensate for this flaw, includes the theoretical trips of the prior use as if the former R&D facility were a concurrent project. As Mr. Smith explains:

"The DEIR's short range analysis (Existing + Background Projects + Project) attempts to compensate for the muddled traffic baseline in a different way. It allows the credit for the trips of the prior use of the Project site to be deducted from the Project's trip generation. But it attempts to compensate and get the end result traffic impacts and mitigation needs right by including the theoretical trips of the prior use as if the former R&D facility were a

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<sup>58</sup> Exhibit B: Smith Engineering and Management comments, p. 2.

<sup>59</sup> Exhibit B: Smith Engineering and Management comments, p. 2.

<sup>60</sup> Exhibit B: Smith Engineering and Management comments, p. 2.

concurrent project (thereby seeming to offset their inappropriate deduction from the Project's trip generation).

However, this adjustment neither compensates for the strange admixture of existing traffic counts, nor does it properly account for the Project's full increment to, and fair share financial contribution responsibility for, traffic impacts. That is, the analysis improperly reduces the project's relative share by 1) allowing the project to take credit for the R&D trips, which unjustifiably reduces the project's relative share, while 2) at the same time, adding the former R&D facility trips to the existing trips (i.e., "enlarges the pie" of trips), thus further reducing the project's relative share of impacts. The fair share must be based on the Project's contribution of trips without deduction of prior use trips from the Project's trip totals. The analysis must be revised to accurately reflect the Project's fair share of transportation impacts."<sup>61</sup>

The result of the DEIR analysis taking improper credit for trips from the prior use, which did not exist at the time the NOP was prepared, and of using the prior use trips as if they are a concurrent project, is a gross underestimation of the Project's actual transportation impacts. Therefore, the DEIR lacks substantial evidence to support its conclusions. The City must prepare a revised DEIR that reflect the Project's actual impact.

**C. The DEIR Fails to Properly Analyze the Project's Significant Impacts on Public Transit**

The DEIR states that a transportation/traffic impact is considered significant if the project would conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities or otherwise decrease the performance or safety of such facilities.<sup>62</sup>

With regard to impacts on transit facilities, the DEIR states that the Project site is served directly by two bus lines – VTA Bus Lines 10 and 304, and then summarily discusses and dismisses the impact on public transit:

“An evaluation of the effects of project traffic on transit vehicle delay was completed. The analysis shows that for most transit routes evaluated, the

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<sup>61</sup> Exhibit B: Smith Engineering and Management comments, p. 3, FN omitted.

<sup>62</sup> Gateway Crossings DEIR, April 2018, p. 175.

traffic associated with the proposed project would increase delay to transit service by three minutes or less. Neither the City nor VTA has established policies or significance criteria related to transit vehicle delay. Thus, this data is provided for informational purposes. Based on the discussion above, the project would not significantly impact the effectiveness of transit facilities. **(Less than Significant Impact)**<sup>63</sup>

The City's conclusion that impacts on transit would be less than significant is not supported by substantial evidence, as required by CEQA. First, the Project's impacts on transit may be even more severe when combined with other projects' impacts on transit. Despite this cumulative impact on transit, Mr. Smith explains that the DEIR fails to discuss any cumulative impact on transit:

"The concurrent background projects identified in the transportation analysis comprise a list of 105 individual projects that easily involve, in aggregate, 10 or more times the trip generation of the subject Project. If each group of projects that had a trip generation equivalent to the subject Project were to create a three-minute delay for VTA lines, the transit system in the area would become completely bogged down and dysfunctional."<sup>64</sup>

Second, the DEIR cannot claim BOTH that there are no policies or significance criteria related to transit vehicle delay AND that the Project would not result in a significant impact the effectiveness of transit.

Third, the DEIR's statement that neither the City nor VTA has established policies or significance criteria related to transit vehicle delay does not mean that there are no significance thresholds upon which to make a determination regarding transit impacts. CEQA explains that when there is no adopted threshold of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts.<sup>65</sup> Here, as explained by Mr. Smith, there are applicable thresholds the City can use to determine potentially significant transit impacts:

"Performance measures are used by different California Metropolitan Planning Organizations to evaluate the performance of public transit. Such

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<sup>63</sup> Gateway Crossings DEIR, April 2018, p. 196.

<sup>64</sup> Exhibit B: Smith Engineering and Management comments, p. 3-4.

<sup>65</sup> CEQA Guidelines, § 15064.7 (thresholds of significance).

measures are used to evaluate mobility – the degree of ease of travel between origins and destinations. Such thresholds may be qualitative or quantitative, such as average speed, relative delay time or travel time. (see Mineta Transportation Institute, “Transit Performance Measures in California”, April 2016).”<sup>66</sup>

Moreover, the City’s General Plan policy for the Santa Clara Station Focus Area specifically calls for the City to “Prioritize vehicular and transit transportation modes on roadways, such as Coleman Avenue and De La Cruz Boulevard, that provide access to the Station (...)”<sup>67</sup>. Line no. 10, which the DEIR mentions as serving the Project (and potentially impacted by it) is exactly this type of “vehicular transit” the General Plan calls for prioritizing. By failing to establish a threshold for transit impacts or relying on a qualitative threshold readily available for the State’s transit planning organizations, the City violate its duty under CEQA to evaluate the Project’s potentially significant transit impacts. The Project also contradicts its own General Plan.

In addition, the DEIR completely fails to disclose the Project’s impact on rail transit. As explained by Mr. Smith:

“The DEIR assumes a 9 percent reduction in the motor vehicle trip generation of the Project’s housing component based on its proximity to the Santa Clara Caltrain Station and the VTA transit lines that service it. However, the DEIR fails to analyze what impact adding those trips, which amount to 74 trips in the AM peak hour and 89 trips in the PM peak hour over and above the transit trips that would normally take place from a housing project located beyond a half-mile from a rail station, would have with regard to overcrowding on Caltrain and the VTA lines at that location.”<sup>68</sup>

In sum, the DEIR lacks substantial evidence to support its conclusion that the Project would result in less than significant impacts on bus transit and fails entirely to evaluate the Project’s potentially significant impacts on rail transit. The

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<sup>66</sup> Exhibit B: Smith Engineering and Management comments, p. 4. The study can be accessed here: <https://transweb.sjsu.edu/research/Transit-Performance-Measures-California>

<sup>67</sup> City of Santa Clara 2010-2035 General Plan, Chapter 5 – Goals and Policies, pp. 38.

<sup>68</sup> Exhibit B: Smith Engineering and Management comments, p. 3.

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City must revise its analysis to comply with CEQA and recirculate a revised DEIR for public review.

## V. CONCLUSION

The DEIR is inadequate as an environmental document because it fails to properly disclose, analyze and mitigate the Project's significant impacts on air quality, public health, GHGs, transportation and traffic. The Project also fails to comply with the City's General Plan affordable housing policies. Therefore, the City cannot approve the Project until it requires affordable housing and prepares a revised DEIR that resolves these issues and complies with CEQA's requirements.

Thank you for your consideration of these comments.

Sincerely,

Tanya A. Gulesserian  
Nirit Lotan



NL:acp  
Attachments

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