

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

[ccaro@adamsbroadwell.com](mailto:ccaro@adamsbroadwell.com)

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
LAURA E. HORTON  
MARC D. JOSEPH  
RACHAEL E. KOSS

August 17, 2016

**VIA EMAIL and HAND DELIVERY**

Chair Adhi Nagraj and  
Honorable Members of the City of Oakland Planning Commission  
Oakland City Hall  
One Frank H. Ogawa Plaza, Hearing Room No. 1  
Oakland, CA 94612  
Email: [nagrajplanning@gmail.com](mailto:nagrajplanning@gmail.com);  
[cmanusopc@gmail.com](mailto:cmanusopc@gmail.com); [amandamonchamp@gmail.com](mailto:amandamonchamp@gmail.com);  
[jmyres.oakplanningcommission@gmail.com](mailto:jmyres.oakplanningcommission@gmail.com);  
[pattillo@pgadesign.com](mailto:pattillo@pgadesign.com); [EW.Oakland@gmail.com](mailto:EW.Oakland@gmail.com)

Peterson Z. Vollmann, Planner IV  
City of Oakland, Bureau of Planning  
250 Frank H. Ogawa, Suite 2114  
Oakland, CA 94612  
Email: [pvollmann@oaklandnet.com](mailto:pvollmann@oaklandnet.com)

Re: **Agenda Item No. 6: 277 27<sup>th</sup> Street (24<sup>th</sup> and Harrison Streets Project, PLN 16-080)**

Dear Chair Nagraj, Honorable Members of the Oakland Planning Commission and Mr. Vollmann:

These comments are submitted on behalf of **Oakland Residents for Responsible Development** ("Residents") regarding Agenda Item No. 6, 277 27<sup>th</sup> Street, also known as the 24<sup>th</sup> and Harrison Streets Project (PLN 16-080) ("Project"), and the CEQA Analysis prepared by the City of Oakland ("City") for the Project pursuant to the California Environmental Quality Act ("CEQA Analysis").<sup>1</sup>

<sup>1</sup> Pub. Resources Code §§ 21000 et seq.

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Residents and its expert consultants from Soil / Water / Air Protection Enterprise (“SWAPE”)<sup>2</sup> have reviewed the Staff Report for the August 17, 2016 continued Planning Commission (“Commission”) hearing, along with new technical reports prepared for the City and Applicant Holland Partner Group (“Applicant”) in response to our August 3, 2016 comments (collectively “Responses”). Based on our review, it is clear that the City failed to adequately respond to our comments regarding the need for further analysis, disclosure, and mitigation of existing soil contamination at the site. The City has also failed to support its conclusion that the potentially significant health risks to children and infants from the Project’s construction emissions will be less than significant based on the Applicant’s purported future compliance with Standard Condition of Approval (“SCA”) SCA-AIR-1.

For the reasons discussed herein, the City’s CEQA Analysis remains inadequate. Residents renews its request that the City prepare a project-level environmental impact report (“EIR”) to fully analyze and mitigate the Project’s potentially significant environmental and public health impacts.<sup>3</sup>

**A. The City’s Responses Fail to Adequately Respond to Comments Regarding Potentially Significant Soil Contamination.**

SWAPE explained that the CEQA Analysis inaccurately concluded that existing soil and groundwater contamination at the Project site is insignificant when, in fact, the City’s own Environmental Site Assessments (“ESAs”) discloses widespread soil and groundwater contamination present at the Project site at levels which exceed health-protective Environmental Screening Levels (“ESLs”). The Responses mischaracterize the results of the Phase II ESAs and fail to remedy the inadequacies in the CEQA Analysis’ reliance on SCA-HAZ-1 and SCA-HAZ-2 to address potentially significant soil contamination that may be unearthed during Project construction.

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<sup>2</sup> See August 17, 2016 letter from SWAPE to C. Caro re Supplemental Comments on the 24th and Harrison Streets Project, attached hereto as Exhibit A (“SWAPE Comments”). The SWAPE Comments are incorporated by reference as if fully set forth herein.

<sup>3</sup> Residents reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

First, the Responses state that findings in the Phase II ESA completed for the 277 27th Street parcel with respect to the TPH-d (diesel) interpret the chemical to actually be biogenic interference from naturally occurring organic materials.<sup>4</sup> This statement is wholly inaccurate. The Phase II clearly states that the petroleum detections exceeding established ESLs at the Project site are considered to be related to petroleum hydrocarbon releases associated with historic site operations.<sup>5</sup>

Second, the Responses fail to meaningfully respond to SWAPE's observations that SCA-HAZ-1 and SCA-HAZ-2 do not impose adequately health-protective or regulatory-compliant procedures to ensure adequate detection and removal of the type of contaminants located at the Project site. As SWAPE previously commented, SCA-HAZ-1 and SCA-HAZ-2 include only general provisions to address "unexpected" contamination that is encountered after earth-moving activities have commenced, by relying on measures for visual and olfactory detection (i.e. sight and smell). SWAPE found that these measures are inadequate because "[t]he TPH-d and TPH-mo contamination that is documented at the site may be hazardous to health at concentrations which cannot be seen or smelled in the soil, rendering provisions in SCA-HAZ-1 and SCA-HAZ-2 ineffective."<sup>6</sup> The Responses merely reiterate the erroneous conclusions from the CEQA Analysis, which failed to address this gap in proposed hazardous materials mitigation, and fails to provide for any effective mitigation that would target and remove the sources of TPH and mitigate potential health risks from exposure to the chemicals. Therefore, the response is inadequate.

Finally, the Responses state that the City will rely on the deferred creation of a Site Management Plan to require implementation of specific sampling and handling and transport procedures for reuse or disposal of contaminated soil and groundwater.<sup>7</sup> However, the Responses admit that "the exact method employed or plan to be implemented" has not yet been determined. The City cannot defer further analysis of the site's soil contamination to a future, post-approval stage. That analysis must be performed prior to Project approval and included in a proposed Site Management Plan that is disclosed to the public.

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<sup>4</sup> Responses, p. 4.

<sup>5</sup> See Phase II ESA, p. 5-7.

<sup>6</sup> See August 3, 2016 SWAPW comments.

<sup>7</sup> See Responses, p. 4.

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The Site Management Plan must also include adequate mitigation measures to address the nature of contamination at the site. SWAPE recommends that the City require the following measures in the Site Management Plan:

- Be prepared by a qualified Environmental Professional and signed and stamped by a Professional Geologist ("P.G.") or Professional Engineer ("P.E."), who shall oversee its execution.
- Include sampling and detection monitoring procedures to identify contaminated soil and groundwater during construction, and provisions for managing, removing, transporting and disposing of any such materials if encountered, in accordance with applicable State, Federal, and local regulatory requirements.
- Describe procedures for soil and groundwater testing (e.g., sampling frequencies, test methods, and action levels, etc.) for petroleum hydrocarbons, and shall include mandatory procedures to be followed for the temporary stockpiling of soil and collection of groundwater for testing, off-site disposal and/or discharge of collected soil and groundwater under applicable stormwater discharge permit(s), health and safety considerations, documentation and reporting. These procedures shall comply with all applicable regulatory requirements, including, but not limited to, the Hazardous Materials Regulations. These procedures shall include, at a minimum, the following:
  - The P.G. or P.E. shall document the occurrence of any water table encountered during excavation activities.
  - If a water table is encountered during excavation activities, groundwater present at those locations shall be sampled for petroleum hydrocarbons.
  - A site-specific Health and Safety Plan ("HASP") shall be prepared and implemented during construction. The HASP shall identify potential health and safety risks associated with petroleum-contaminated soil and groundwater, along with appropriate protective responses if encountered. The HASP shall include provisions for air monitoring, identify action levels based on health risk-based standards, and describe mandatory responses, including upgrades in

personal protective equipment, evacuation of the work area, and/or enhanced ventilation. The Construction Contractor shall ensure that adequate protective equipment is available for worker use at all times. Protective equipment shall include the equipment described in 29 Code of Federal Regulations Section 1910.120 Appendix B, Level C or Level D, depending on the results of field monitoring and testing conducted pursuant to this section. Workers shall be made aware of site-specific health and safety risks and hazards through an initial orientation and routine meetings during field work.<sup>8</sup>

**B. The City Lacks Substantial Evidence on Which to Conclude that the Construction Emissions Identified in the Applicant's Health Risk Assessment Will Be Reduced Below Levels of Significance.**

Our August 3, 2016 comments to the Commission included a screening level health risk assessment ("HRA") prepared by SWAPE which concluded that the Project's construction emissions would result in an excess cancer risk to adults, children, and infants of 7.06, 40.7, and 136 in one million, respectively.<sup>9</sup> The child and infantile exposures calculated by SWAPE vastly exceed the Bay Area Air Quality Management District ("BAAQMD") threshold of 10 in one million.

In response to SWAPE's analysis, the Applicant's consultant, Firstcarbon Solutions, prepared its own project level construction HRA for the Project ("Firstcarbon HRA"). SWAPE's review of the Firstcarbon HRA demonstrates that the Project's unmitigated construction emissions would result in a significant health risk impact to infants located in the residential communities approximately 25 meters away from the Project site. In an effort to mitigate this risk, the Firstcarbon HRA incorporates an assumption that the Project will use exclusively Tier 4 off-road equipment during construction pursuant to SCA-AIR-1, resulting in an 85% reduction in toxic diesel particulate matter ("DPM"). The Firstcarbon HRA concludes, that, with the use of Tier 4 equipment, the Project's health risk impact to infants would be mitigated to less than significant levels.<sup>10</sup>

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<sup>8</sup> August 17, 2016 personal communication with M. Hagemann of SWAPE

<sup>9</sup> See August 3, 2016 SWAPE Comments.

<sup>10</sup> Firstcarbon HRA, p. 2.

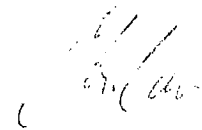
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alone to reduce the Project's admittedly significant construction emissions below levels of significance. Rather, the City must confirm, through a detailed analysis supported by fact, whether and how the Applicant will procure exclusively Tier 4 equipment for the Project. The City must also identify alternative mitigation measures that are technologically feasible in the event that the Applicant is unable to procure all Tier 4 equipment necessary to construct the Project.

### C. CONCLUSION

For these reasons, we urge the City to prepare a revised analysis in an EIR, as required by CEQA, and to identify and implement all feasible mitigation measures available to reduce the Project's potentially significant site-specific impacts to less than significant levels before the City considers approving the Project.

Sincerely,



Christina M. Caro

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Attachments