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May 29, 2018

**Via Email & Overnight Mail**

Rebecca Bustos, Associate Planner  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Email: [REDACTED]

**Re: Comments on the Draft Environmental Impact Report for the Agrihood Project (PLN2016-12389, PLN2016-12390, CEQ2016-01017)**

Dear Ms. Bustos:

We are writing on behalf of **Santa Clara Residents for Responsible Development** ("Santa Clara Residents") regarding the April 2018 Draft Environmental Impact Report ("DEIR") prepared by the City of Santa Clara ("City") for the Agrihood Project ("Project"). Core Companies ("Applicant") is proposing to construct a residential mixed-use development consisting of up to 160 mixed-income apartments and 165 affordable senior apartments in two separate structures. The Project also includes up to 36 townhomes, a 1,650 square-foot community building, a café, an 800 square-foot garden workshop, and approximately 1.5 acres of agricultural open space. The 5.8 acre Project site is located at 1834 Worthington Circle, Assessor's Parcel Number 303-14-053.

Based on our review, we have concluded that the DEIR fails to adequately evaluate and mitigate the Project's air quality and greenhouse gas ("GHG") impacts. First, the DEIR wholly fails to include an assessment of the health risk impacts posed to nearby residents as a result of emissions generated during Project operation. As a result, the DEIR's conclusion that air quality impacts from the Project would be less than significant is not supported by substantial evidence. Second, while the DEIR correctly states that the Project's GHG emissions would

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result in a significant environmental impact, the City has failed to evaluate the feasibility of mitigation measures that may lessen or avoid the Project's significant GHG impacts. For this reason, the DEIR's conclusion that GHG impacts would be significant and unavoidable is not supported by substantial evidence and violates CEQA. The City must prepare a revised DEIR to adequately disclose, assess, and mitigate all of the Project's air quality impacts, and to incorporate all feasible GHG mitigation measures.

These comments were prepared with the assistance of technical experts Matt Hagemann and Hadley Nolan of Soil Water Air Protection Enterprise ("SWAPE"). SWAPE's technical comments and curriculum vitae are attached to this letter as Attachment 1 and are submitted to the City in addition to the comments contained herein. The City must respond to SWAPE's comments separately and individually.

## **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 health and environmental impacts associated with the Project. 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 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.

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## II. Applicable Legal Framework: CEQA

The California Environmental Quality Act and the EIR process have two primary functions. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>1</sup> In this regard, “[CEQA’s] 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>2</sup> The EIR is the very heart of CEQA and 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>3</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and the implementation of all feasible mitigation measures.<sup>4</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>5</sup> If a 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>6</sup>

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<sup>1</sup> 14 C.C.R. § 15002(a)(1).

<sup>2</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>3</sup> *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”) (citing *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

<sup>4</sup> Pub. Resources Code §§ 21002, 21002.1(b)-(c); 14 C.C.R. § 15002(a)(2)-(3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>5</sup> 14 C.C.R. § 15002(a)(2).

<sup>6</sup> Pub. Resources Code § 21081; 14 C.C.R. § 15092(b)(2)(A)-(B).

### **III. The DEIR's Conclusion That Air Quality Impacts From Project Operations Would Be Less Than Significant Is Not Supported By Substantial Evidence**

In furtherance of CEQA's most fundamental purpose, an EIR must fully disclose all potentially significant impacts of the project under consideration. Further, when making a determination as to the significance of project impacts, the lead agency's determination must be supported by accurate scientific and factual data for each impact.<sup>7</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying its conclusion.<sup>8</sup>

Here, the DEIR includes as a threshold of significance for air quality impacts whether or not the Project would expose sensitive receptors to substantial pollutant concentrations.<sup>9</sup> For purposes of this threshold, the DEIR includes a health risk assessment to evaluate the risk posed to nearby sensitive receptors from exposure to toxic air contaminant ("TAC") emissions generated during Project construction.<sup>10</sup> With the implementation of Mitigation Measure MM AQ1.1, the DEIR concludes that construction-related health risk impacts would be reduced to a less than significant level.<sup>11</sup>

However, the DEIR wholly fails to evaluate the health risk impacts posed to nearby residences as a result of exposure to emissions generated during Project operation. The DEIR identifies multiple sensitive receptors near the Project site, the closest of which is a residential receptor located approximately five feet south of the Project site.<sup>12</sup> Several other residential receptors are located to the east and to the north.<sup>13</sup> Despite this, Appendix C includes a single brief sentence that "[o]peration of the project is not expected to cause any localized emissions that could expose

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<sup>7</sup> 14 C.C.R. § 15064(b).

<sup>8</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal. App. 3d 692, 732.

<sup>9</sup> DEIR at p. 26.

<sup>10</sup> DEIR at pp. 28-30; Appendix C at pp. 17-22.

<sup>11</sup> DEIR at pp. 28-30.

<sup>12</sup> DEIR at p. 25.

<sup>13</sup> DEIR at p. 29, Figure 3.2-1.

sensitive receptors to unhealthy air pollutant levels,” and omits any analysis whatsoever of the Project’s operational emissions.<sup>14</sup>

Because operation of the Project will result in a new source of emissions, including increased vehicle traffic, the failure to perform a comprehensive assessment of the Project’s potential impacts renders the DEIR’s conclusion that the Project would have a less than significant air quality impact not supported by substantial evidence. As discussed further below, the DEIR’s failure to perform an operational health risk assessment conflicts with the most recent guidance of the Bay Area Air Quality Management District (“BAAQMD”) and the Office of Environmental Health Hazards Assessment (“OEHHA”) on this topic. Most importantly, it also prevents the public and decisionmakers from performing an informed evaluation of all of the Project’s potentially significant environmental impacts, in violation of CEQA. SWAPE’s comments provide substantial evidence that the Project operations may result in potentially significant air quality impacts.<sup>15</sup> Accordingly, the City must prepare a revised DEIR to fully disclose and analyze the Project’s operational health impacts and to incorporate appropriate mitigation measures as needed.

#### **A. The DEIR Failed to Evaluate Health Risks Resulting From Project Operations.**

As explained in the DEIR, the Project would be smaller than the BAAQMD CEQA Air Quality Guidelines Operational Criteria Pollutant Screening Size.<sup>16</sup> With a maximum of 361 dwellings, the Project is below the BAAQMD screening size for both condos/townhouses and mid-rise apartments.<sup>17</sup> Because the Project is below the screening size, consistent with BAAQMD guidance, the DEIR forgoes further assessment of the Project’s operational criteria pollutant emissions.

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<sup>14</sup> DEIR, Appendix C at p. 14.

<sup>15</sup> Attachment 1, Letter from Matt Hagemann & Hadley Nolan, SWAPE, to Collin McCarthy regarding Comments on the Agrihood Project, at pp. 4-6 (May 29, 2018) (“SWAPE Comments”).

<sup>16</sup> DEIR at p. 30.

<sup>17</sup> *Id.*

However, the DEIR's justification for not assessing the Project's operational criteria pollutant emissions does not also justify failing to conduct an operational health risk assessment to assess impacts to nearby sensitive receptors. In fact, as SWAPE's comments explain, the failure to include an operational HRA for the Project directly conflicts with BAAQMD and OEHHA guidance in this area.

First, BAAQMD's CEQA Guidelines apply separate screening criteria for health risk assessments and criteria pollutants.<sup>18</sup> BAAQMD's Guidelines recommend that "any proposed project that includes the siting of a new source or receptor assess associated impacts within 1,000 feet, taking into account both individual and nearby cumulative sources (i.e., proposed project plus existing and foreseeable future projects).<sup>19</sup> While the DEIR acknowledges that multiple sensitive receptors exist within 1,000 feet of the Project site, along with existing substantial sources of TACs, the DEIR evaluates only the impact of those existing sources on future residents, not including the Project's operational emissions.<sup>20</sup>

Second, BAAQMD has established the Community Air Risk Evaluation (CARE) Program, which identifies communities that experience higher levels of air pollution than others.<sup>21</sup> Communities identified by the CARE Program are typically located near pollution sources such as freeways, large industrial facilities, or distribution centers. Review of the impacted communities identified by the CARE Program demonstrates that the Project will be located in one of these areas.<sup>22</sup> This designation shows that emissions associated with the Project have a heightened potential to effect nearby sensitive receptors.<sup>23</sup> Since the nearest sensitive receptor is located only 5 feet away from the Project site, and because the Project is located

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<sup>18</sup> California Environmental Quality Act Air Quality Guidelines, BAAQMD, at p. 3-1, 5-1 (May 2017) (discussing criteria pollutant analysis separately from local community risk and hazard impacts).

<sup>19</sup> *Id.* at p. 5-2 (Emphasis added); SWAPE Comments at p. 2.

<sup>20</sup> See DEIR at pp. 31-32.

<sup>21</sup> Community Air Risk Evaluation Program, BAAQMD, <http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program> (last updated 8/20/2014).

<sup>22</sup> *Id.*

<sup>23</sup> See Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, BAAQMD, at pp. 6, 13-21, 23-26 (Mar. 2014), available at <http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program/documents>; Improving Air Quality & Health in Bay Area Communities: Community Air Risk Evaluation Program Retrospective & Path Forward (2004-2013), BAAQMD, at p. 44 (Apr. 2014), available at <http://www.baaqmd.gov/plans-and-climate/community-air-risk-evaluation-care-program/documents>.

within a CARE community, this receptor, and the numerous receptors surrounding the Project site, will be impacted by the emissions generated by the Project throughout its operational life.<sup>24</sup>

Third, failing to conduct a proper HRA for Project operations conflicts with the most recent OEHHA guidance for preparing health risk assessments. In February 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*.<sup>25</sup> This guidance document describes the types of projects that warrant the preparation of an HRA. In this case, Project operation will generate vehicle trips, which will generate additional exhaust emissions and expose nearby sensitive receptors to DPM emissions.<sup>26</sup> The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident.<sup>27</sup> Thus, OEHHA guidelines also instruct that health risk impacts from Project operation should have been evaluated in the DEIR.

Because the DEIR wholly fails to evaluate, without adequate justification, the health risk to nearby receptors resulting from Project operations, the DEIR's conclusion that the Project would not expose sensitive receptors to substantial pollutant concentrations is not supported by substantial evidence.

### **B. Substantial Evidence Shows That The Project May Create Significant Health Risks for Nearby Receptors.**

In order to assess the potential health risks posed by Project operations, SWAPE prepared a screening-level health risk assessment ("HRSA") using information provided in the DEIR.<sup>28</sup> SWAPE's HRSA was prepared using

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<sup>24</sup> SWAPE Comments at p. 3.

<sup>25</sup> Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, OEHHA, February 2015, available at

<https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>

<sup>26</sup> SWAPE Comments at p. 3.

<sup>27</sup> *Id.*; see also Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments at pp. 8-6, 8-15.

<sup>28</sup> SWAPE Comments at pp. 4-6.

AERSCREEN, an air dispersion model recommended by OEHHA and the California Air Pollution Control Officer Association, and methodologies recommended by OEHHA and BAAQMD. A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible, a more refined modeling approach is necessary to evaluate the Project's potential environmental impacts.

As further explained in the attached comments, SWAPE determined that the excess cancer risk to adults, children, and infants at the maximally exposed individual resident ("MEIR") located approximately 100 meters away, over the course of Project operations are 7.9, 71, and 3.2 in one million respectively.<sup>29</sup> Additionally, the combined excess cancer risk over the course of operation at the MEIR is approximately 82 in one million. The child and total operational cancer risks both exceed the BAAQMD's threshold of 10 in one million, establishing a significant impact.<sup>30</sup>

Although SWAPE's analysis represents a screening-level HRA, which is known to be more conservative and err of the side of health protection, SWAPE's analysis provides substantial evidence that Project operations may result in a potentially significant health risk impact that was not identified in the DEIR. As such, the City must prepare an updated DEIR to adequately evaluate the proposed Project's operational health risk impacts, and to incorporate mitigation measures as needed.

#### **IV. The DEIR's Conclusion That GHG Impacts From Project Operations Would Be Significant And Unavoidable Is Not Supported By Substantial Evidence**

For purposes of assessing the Project's GHG emissions, the DEIR adopts as a threshold of significance a "Substantial Progress efficiency metric of 2.6 MT CO<sub>2</sub>e/year/service population."<sup>31</sup> The DEIR explains that this threshold was

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<sup>29</sup> SWAPE Comments at p. 6.

<sup>30</sup> SWAPE Comments at p. 6.

<sup>31</sup> DEIR at pp. 36-37.



determined based on the 2030 GHG reduction goals of Senate Bill 32 and Executive Order B-30-15, taking into account the 1990 inventory and the projected 2030 statewide population and employment levels.<sup>32</sup> The DEIR states that the Project will emit 2,371 metric tons of carbon dioxide equivalents per year (MT CO<sub>2</sub>e/yr) and would generate 3.0 MT CO<sub>2</sub>e/yr per service population.<sup>33</sup> Thus, because the Project's operational GHG emissions would exceed the Substantial Progress efficiency metric of 2.6 MT CO<sub>2</sub>e/year/service population, the DEIR concludes that the Project would result in a significant and unavoidable impact.<sup>34</sup> It is further noted that the Project exceeds the developmental assumption for the site contained in the City's General Plan, and that the Project would result in an increase in severity of development-related GHG emissions previously identified as significant during the adoption of the 2010-2035 General Plan.

Although we agree with the DEIR's conclusion that the Project's operational GHG emissions will result in a significant impact, the DEIR's assertion that these impacts are significant *and unavoidable* is not supported by substantial evidence.<sup>35</sup> CEQA requires that lead agencies mitigate and avoid a project's significant effect on the environment whenever it is feasible to do so.<sup>36</sup> That is, before a lead agency can adopt a statement of overriding considerations and approve a project with significant environmental impacts it must consider and incorporate all feasible mitigation measures.<sup>37</sup> Here, while it appears that the Project will incorporate some design features that will lessen the Project's GHG emissions,<sup>38</sup> the DEIR's GHG analysis includes no discussion of mitigation measures that may reduce the Project's operational GHG emissions; it simply concludes impacts would be significant and avoidable.<sup>39</sup> However, as SWAPE's comments explain, additional, feasible mitigation measures exist that may lessen the Project's GHG impacts.<sup>40</sup>

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<sup>32</sup> DEIR at p. 36; DEIR, Appendix C at p. 13.

<sup>33</sup> DEIR at p. 37.

<sup>34</sup> DEIR at p. 38.

<sup>35</sup> See SWAPE Comments at p. 7.

<sup>36</sup> Pub. Resources Code § 21002.1.

<sup>37</sup> 14 C.C.R. §§ 15126.4, 15091-15092.

<sup>38</sup> DEIR at p. 45.

<sup>39</sup> See 14 C.C.R. § 15126.4 (Requiring that an EIR describe feasible measures which could minimize significant adverse impacts).

<sup>40</sup> SWAPE Comments at pp. 7-10.

SWAPE has identified several mitigation measures that are applicable to the Project that would lessen GHG impacts. Such measures include:

- Incorporate Bike Lane Street Design (On-Site)
  - Incorporating bicycle lanes, routes, and shared-use paths into street systems, new subdivisions, and large developments can reduce VMTs. These improvements can help reduce peak-hour vehicle trips by making commuting by bike easier and more convenient for more people. In addition, improved bicycle facilities can increase access to and from transit hubs, thereby expanding the “catchment area” of the transit stop or station and increasing ridership. Bicycle access can also reduce parking pressure on heavily-used and/or heavily-subsidized feeder bus lines and auto-oriented park-and-ride facilities.
  
- Implement Commute Trip Reduction Program - Voluntary or Required
  - Implementation of a Commute Trip Reduction (CTR) program with employers will discourage single-occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking. The main difference between a voluntary and a required program is:
    - Monitoring and reporting is not required
    - No established performance standards (i.e. no trip reduction requirements)
  - The CTR program should provide employees with assistance in using alternative modes of travel, and provide both “carrots” and “sticks” to encourage employees. The CTR program should include all of the following to apply the effectiveness reported by the literature:
    - Carpooling encouragement
    - Ride-matching assistance
    - Preferential carpool parking
    - Flexible work schedules for carpools
    - Half time transportation coordinator
    - Vanpool assistance
    - Bicycle end-trip facilities (parking, showers and lockers)

- Implement Subsidized or Discounted Transit Program
  - This Project can provide subsidized/discounted daily or monthly public transit passes to incentivize the use of public transport. The Project may also provide free transfers between all shuttles and transit to participants. These passes can be partially or wholly subsidized by the employer, school, or development. Many entities use revenue from parking to offset the cost of such a project.
- Implement Preferential Parking Permit Program
  - The Project can provide preferential parking in convenient locations (such as near public transportation or building front doors) in terms of free or reduced parking fees, priority parking, or reserved parking for commuters who carpool, vanpool, ride-share or use alternatively fueled vehicles. The Project should provide wide parking spaces to accommodate vanpool vehicles.
- 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;
  - Use of groundcovers rather than pavement to reduce heat reflection.
- 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.

Because the DEIR fails to assess the availability and feasibility of additional mitigation measures that may lessen the Project’s significant GHG impacts, and, as described herein, such measures do exist, the DEIR’s conclusion that the Project’s impacts are significant and unavoidable is not supported by substantial evidence. Indeed, the failure to even discuss feasible mitigation measures renders the DEIR inadequate under CEQA. The mitigation measures described here and in the attached SWAPE letter offer a cost-effective and feasible way to reduce GHG emissions resulting from Project operations. CEQA requires that the City incorporate all feasible mitigation measures before it can adopt a statement of overriding considerations and approve the Project. The City must prepare an updated DEIR to evaluate these mitigation measures and ensure that the Project’s impacts are lessened or avoided to the maximum extent feasible.

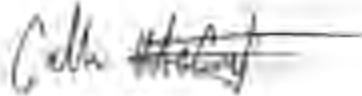
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## V. Conclusion

For the foregoing reasons, the DEIR fails to comply with CEQA. Santa Clara Residents urges the City to address the deficiencies identified in these comments, and to prepare and recirculate a revised DEIR for public review and comment.

Thank you for your attention to these comments.

Sincerely,



Collin S. McCarthy

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Attachments

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