



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 1500
Oakland, CA 94612

www.lozeaudrury.com
michael@lozeaudrury.com

December 3, 2019

By E-mail

Joshua McMurray, Community Development Director
Community Development Department
City of Oakley
3231 Main Street
Oakley, CA 94561
mcmurray@ci.oakley.ca.us

Re: Comment on the Draft Environmental Impact Report for the Oakley Logistics Center Project (SCH No. 2019029113).

Dear Mr. McMurray:

2-1

I am writing on behalf of Laborers International Union of North America Local Union 324 ("LIUNA") concerning the Draft Environmental Impact Report ("DEIR") for the Oakley Logistics Center Project (SCH No. 2019029113) (the "Project") in Oakley. After reviewing the DEIR, we conclude that the DEIR fails to analyze all environmental impacts and implement all necessary mitigation measures. We request that the City of Oakley ("the City") prepare a recirculated DEIR ("RDEIR") in order to address the concerns discussed below.

This comment has been prepared with the assistance of wildlife biologist Shawn Smallwood Ph.D, environmental consulting firm SWAPE, and traffic expert Daniel T. Smith. Dr. Smallwood's comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety. SWAPE's comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety. Mr. Smith's comment and curriculum vitae are attached as Exhibit C hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

2-2

The property for the Project is approximately 375.7 acres, located at 6000 Bridgehead Road in the City of Oakley and is identified by Assessor's Parcel Numbers (APNs) 037-020-008, -009, -010, -014, through -022. The Project site would be approximately 143.3 acres, consisting of five buildings, totaling 2 million square feet with an accompanying 1,358 parking spots.

The Project would demolish existing structures and utility remnants and construction of the proposed buildings would be over two phases. Specific uses for the proposed buildings



2-2
Cont'd

Oakley Logistics Center Project
December 3, 2019
Page 2 of 12

would be subject to site-specific development standards in the proposed Planned Unit Development ("PUD"). Access to the Project site would be provided by a main entrance located at the intersection of Wilbur Avenue and Bridgehead Road, with two secondary access points on Bridgehead Road.

II. LEGAL STANDARD

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). *See, e.g.*, Pub. Res. Code ("PRC") § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal. App. 4th 98, 109.

2-3

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. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "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.'" *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564. 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." *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.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564. 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." CEQA Guidelines § 15002(a)(2). 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." PRC § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The EIR is the very heart of CEQA. *Dunn-Edwards* 9 Cal.App.4th at 652. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be



Oakley Logistics Center Project
December 3, 2019
Page 3 of 12

insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings City Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

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.'" *Berkeley Jets* 91 Cal. App. 4th at 1355 (emphasis added) (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391-409, fn. 12). As the court stated in *Berkeley Jets*, "A prejudicial abuse of discretion occurs 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'" *Berkeley Jets* 91 Cal. App. 4th at 1355. More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

Sierra Club v. City of Fresno (2018) 6 Cal.5th 502, 510, citing *Laurel Heights Improvement Assn.* 47 Cal.3d at 405. "Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document." *Id.* at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including 'detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" *Id.*, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197 (*Bakersfield*). As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

Id. at 514.

III. DISCUSSION

A. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

2-3
Cont'd

2-4



Oakley Logistics Center Project
December 3, 2019
Page 4 of 12

2-4
Cont'd

The comment of Dr. Shawn Smallwood is attached as Exhibit A. Dr. Smallwood has identified several issues with the DEIR for the Project. His concerns are summarized below.

1. The DEIR provides an inadequate baseline to analyze the Project's impacts on biological resources at the Project site.

The DEIR states that 10 special-status species of wildlife "are considered to have a low or moderate potential to occur within the subject property." DEIR, p. 4.2-35. However, Dr. Smallwood himself detected 11 special-status species on the Project site after only a brief survey restricted to the western edge of the Project site. Ex. A, p. 7. Further, another 31 special-status species of birds have been detected near the Project site according to eBird records. *Id.* Based on Dr. Smallwood's review of the available habitat descriptions, range maps, sighting records, and the 662 trees located on the site, 60 special-status species of vertebrate wildlife have the potential to occur on the Project site. *Id.* Dr. Smallwood notes that there may be 1,000s of nests located on the property with the capacity to produce tens of thousands of birds – a large percentage of which would be destroyed by the Project. *Id.*, p. 7.

2-5

Dr. Smallwood also notes that without the benefit of appropriate surveys, the City dismisses potential impacts on special-status species of bats because no acoustic detectors were deployed, nor were any surveys performed at night using a thermal-imaging camera or eyes on the sky. *Id.* at 8. Without being informed by these appropriate surveys, the City cannot rule out any of the bat species in Table 3 of the DEIR as dependent on the site for foraging or stopover roosting habitat. *Id.*

2-6

Dr. Smallwood also points out that the DEIR makes additional mistakes in determining and analyzing the impacts to biological resources on the Project site. First, the DEIR provides a flawed analysis of potential burrowing owl impacts, starting by pigeon-holing burrowing owls into an unrealistically narrow portion of the environment. The DEIR states "[b]urrowing owls inhabit dry open rolling hills, grasslands, desert floors, and open bare ground with gullies and arroyos." DEIR, p. 4.2-35. However, Dr. Smallwood notes that in fact, "burrowing owls inhabit a variety of environments, so long as tall structures such as trees occur in low density (as is the case over large portions of the project site)." Ex. A, p. 8. Dr. Smallwood identified several other fallacies in the DEIR's analysis of burrowing owls including the following: whether ground squirrels occur on the site; that burrowing owls are discouraged from the site because the grassland areas are routinely mowed; and the City's conclusions over burrowing owl occurrence likelihoods without having performed detection surveys. *Id.* Dr. Smallwood disproves all of these fallacies and concludes that the DEIR's conclusions should be founded on the appropriate detection surveys, which have not yet been performed at the Project site. *Id.* at 8, 12.

2-7

Second, the DEIR's analysis of golden eagle impacts fails to incorporate specific impacts to the species that are recognized in the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("ECCC HCP/NCCP") but are specifically called out as not covered by the ECCC HCP/NCCP. Dr. Smallwood highlights wind turbine collisions and the expansion of the Los Vaqueros Reservoir as specific impacts that are recognized by the ECCC HCP/NCCP. *Id.* at 13. Since a majority of the Project site is within the ECCC HCP/NCCP area,



2-7 Cont'd	<p>Oakley Logistics Center Project December 3, 2019 Page 5 of 12</p> <p>and the DEIR relies on it within its Biological Resources analysis, Dr. Smallwood concludes that the DEIR needs to be revised in light of these additional impacts and how they bear cumulatively on the loss of stopover and flyover habitat for golden eagles due to the Project. <i>Id.</i></p>
2-8	<p>Third, the City concludes that Swainson's hawks will not nest on the Project site because the "Del Antico Basin is surrounded by subdivisions and a vineyard." DEIR, p. 4-36. Dr. Smallwood points out that this conclusion is reached right after summarizing Swainson's hawk nest attempts at the Project site in 2011, 2012, and 2018, and Swainson's hawk sightings on the site in 2019. Ex. A, p. 13. "In reality, Swainson's hawks will nest in urban environments, so long as they are within one mile of foraging habitat." <i>Id.</i> The Project will permanently remove at least one nest site, and would cause a significant impact on Swainson's hawks' access to forage. For these reasons, Dr. Smallwood states that the EIR must be revised to appropriately address these impacts and so that it is informed by detection surveys that meet California Department of Fish and Wildlife's ("CDFW") guidelines. <i>Id.</i></p>
2-9	<p>Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. <i>Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.</i> (2010) 48 Cal. 4th 310, 321. Section 15125(a) of the CEQA Guidelines states in pertinent part that a lead agency's environmental review under CEQA:</p> <p>"...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."</p> <p>See, <i>Save Our Peninsula Committee v. County of Monterey</i> (2001) 87 Cal.App.4th 99, 124-125 ("Save Our Peninsula.") By failing to correctly assess the presence of wildlife at the site, the DEIR fails to provide an accurate baseline from which to analyze the Project's impacts on wildlife.</p>
2-10	<p>2. <u>The DEIR fails to adequately address the potential adverse impact on habitat fragmentation and wildlife movement.</u></p> <p>After reviewing the DEIR, Dr. Smallwood identified that the DEIR fails to analyze the Project site for potential impacts on wildlife movement in the area. Ex. A, p. 14. The DEIR states that "significant wildlife movement corridors do not exist within the land area adjacent to the project site, including the off-site utility improvement areas." DEIR, p. 4 2-41. However, as Dr. Smallwood points out, this statement is based on a false CEQA standard. Ex. A, p. 13. CEQA asks whether a project will "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors . . ." <i>Id.</i> The CEQA standard requires the agency to address impacts to wildlife movement regardless of whether the movement is channeled by a corridor. <i>Id.</i> Through Dr. Smallwood's expertise and observations, volant wildlife target open spaces for travel paths, even</p>



2-10
Cont'd

Oakley Logistics Center Project
December 3, 2019
Page 6 of 12

if they have to fly over some urbanized areas to do so. *Id.* at 14. While at the Project site, Dr. Smallwood even noticed thousands of blackbirds of multiple species flying over the Project site. *Id.* Because many species of wildlife likely use the Project site for movement across the area, and because the Project would further cut wildlife off from stopover and staging habitat, the DEIR should be revised to adequately address the Project's potential impacts on habitat fragmentation and wildlife movement.

2-11

3. The DEIR fails to address the potential significant impacts on wildlife from vehicle collisions due to increased traffic from the Project.

According to the DEIR, the Project would generate about 4,292 daily trips. DEIR, p. 4.4-20. The increase in vehicle trips are likely to result in increased wildlife fatalities because vehicle collisions kill wildlife. Ex. A, p. 14. However, Dr. Smallwood points out that the City failed to analyze the impacts of the Project's added road traffic on special-status species of wildlife. *Id.* According to Dr. Smallwood many of the animals that would be killed by the traffic generated by the Project would be located far from the Project's construction footprint because they would be crossing roads traversed from cars and trucks originating from or headed toward the Project site. *Id.* Vehicle collisions account for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts of such collisions have often been found to be significant at the population level. *Id.* at 15-16. In terms of avian mortality, it is estimated that vehicle collisions result in the death of 89 million to 340 million birds per year. *Id.* at 16. Because the impact of vehicle collisions on wildlife was not addressed in the DEIR, the EIR must be revised to appropriately assess the wildlife mortality that the Project will cause due to increased traffic on existing roadways, and should also provide mitigation measures for such impacts.

2-12

4. The DEIR fails to adequately mitigate the adverse impacts on biological resources.

The DEIR relies on the ECCC HCP/NCCP as the mechanism that would adequately mitigate impacts to special-status species within the portion of the Project site included in the ECCC HCP/NCCP permit area. DEIR, p. 4.2-512. However, as Dr. Smallwood points out, the City's conclusion is not supported by substantial evidence because wildlife, such as burrowing owls, are rapidly declining in numbers and productivity despite the mitigation measures provided for in the ECCC HCP/NCCP. Ex. A, p. 17. Dr. Smallwood concludes that it is insufficient to merely pay the ECCC HCP/NCCP mitigation fee, and that the City should also follow CDFW's guidelines to adequately mitigate the impacts caused by the Project. *Id.*

2-13

Dr. Smallwood also identifies several more problems with the mitigation proposed in the DEIR for impacts to biological resources. For example, Dr. Smallwood notes that due to the flawed interpretation of the CEQA standard and the scientific definition of "corridor," the City erroneously concludes no mitigation is required for project impacts on wildlife movement in the region. *Id.* at 18. Since many special-status species of wildlife use the Project site for stopover, staging, and flyover habitat, the loss of access to this site will increase the distance between remaining open species and will increase the energy costs of wildlife movement in the region. *Id.*



2-13 Cont'd	<p>Oakley Logistics Center Project December 3, 2019 Page 7 of 12</p>
2-14	<p>Since the DEIR does not address these impacts, it must be revised and address how these impacts should be mitigated. <i>Id.</i> Further, only 10% of the special-status species in the DEIR Tables 2 and 3 are covered by the ECCC HCP/NCCP, which means that payment of the ECCC HCP/NCCP mitigation fees wouldn't mitigate the Project's impacts to 90% of the special-status species potentially occurring at the Project site. <i>Id.</i> at 19.</p>
2-15	<p>Due to Dr. Smallwood's analysis of the DEIR and the potential significant impacts the Project will have on biological resources, the City must prepare and circulate a revised DEIR incorporating the above concerns and suggested mitigation measures.</p>
2-16	<p>B. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Air Quality</p> <p>SWAPE, an environmental consulting firm, reviewed the air quality analysis in the EIR. SWAPE's comment letter is attached as Exhibit B and their findings are summarized below.</p> <p>The DEIR for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the DEIR. This results in an underestimation of the Project's emissions. As a result, the DEIR fails to provide substantial evidence that the Project will not have significant air quality impacts and an RDEIR is required to properly analyze these potential impacts.</p>
2-17	<p>Specifically, SWAPE identified the following issues with the DEIR's input parameters:</p>
2-18	<ul style="list-style-type: none"> • unsubstantiated reduction in carbon intensity factor;
2-19	<ul style="list-style-type: none"> • failure to account for total amount of material import/export;
2-20	<ul style="list-style-type: none"> • incorrectly assumes tier 4 final equipment;
2-21	<ul style="list-style-type: none"> • failure to include all demolition;
2-22	<ul style="list-style-type: none"> • unsubstantiated mobile mitigation measures; and • unsubstantiated energy mitigation measure.
2-23	<p>SWAPE's analysis on these issues can be found in Exhibit B, pages 2-9.</p> <p>Additionally, the DEIR fails to implement all feasible mitigation measures to reduce emissions. The DEIR determines that the Project's VOC and NOx emissions would exceed the thresholds set forth by the Bay Area Air Quality Management District ("BAAQMD"). DEIR, p. 4.1-31, Table 4.1-8. As a result, the Project proposes several mitigation measures to reduce the Project's VOC and NOx emissions. <i>Id.</i> at 4.1-31. Even after implementing these mitigation measures, however, the DEIR concludes that the Project's construction NOx emissions would still be significant. <i>Id.</i> While SWAPE agrees that the Project would result in a significant construction NOx impact, SWAPE finds the DEIR's conclusion that these impacts are</p>



	↑
	Oakley Logistics Center Project December 3, 2019 Page 8 of 12
2-23 Cont'd	"significant and unavoidable" to be incorrect. Ex. B, p. 9. SWAPE examined the DEIR and found that not all feasible mitigation measures were implemented in the DEIR. <i>Id.</i> at 10. SWAPE listed additional mitigation measures that should be identified and incorporated in an EIR in order to reduce the Project's air quality impacts to the maximum extent possible. <i>Id.</i> at 21-25. These include, among other examples, using ultra-low sulfur diesel fuel (ULSD) or a biodiesel blends to fuel equipment on site, using electric and hybrid powered construction equipment and the use of a construction vehicle inventory tracking system.
2-24	An agency may adopt a statement of overriding considerations only <i>after</i> it has imposed all feasible mitigation measures to reduce a project's impact to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.) CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. (Pub. Res. Code § 21002.) As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has "[e]liminated or substantially lessened all significant effects on the environment where feasible." Until all feasible mitigation is reviewed and incorporated into the Project's design, impacts from construction NOx cannot be considered significant and unavoidable.
2-25	C. The DEIR Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions The DEIR concludes that the Project will not have a significant health risk impact on nearby sensitive receptors. But in making this conclusion, the City never conducted a construction or operational health risk assessment ("HRA") for nearby, existing sensitive receptors. DEIR, p. 4.1-40. The DEIR attempts to provide a number of justifications for why the City did not include a construction or operational HRA, but as SWAPE explains, none of the justifications are adequate. Ex. B, pp. 10-12.
2-26	In an effort to determine the Project's potential health risk to nearby sensitive receptors, SWAPE prepared a screening-level HRA. The results demonstrate that the Project may have a significant health-risk impact. SWAPE found that the excess cancer risk for children located approximately 400 meters away, over the course of the Project construction and operation, is approximately 12 in one million. <i>Id.</i> at 15. The excess cancer risk over the course of a residential lifetime is approximately 21 in one million. <i>Id.</i> The BAAQMD threshold for excess cancer risk is 10 in one million. Because the child and lifetime cancer risks exceed the BAAQMD's significance threshold of 10 in one million, the City must prepare an RDEIR with a revised HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors.
2-27	D. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project from Greenhouse Gases The DEIR determined that the Project will have significant and unavoidable Greenhouse Gas ("GHG") impacts even after the implementation of mitigations measures. DEIR, p. 4.1-50.
	↓



2-27
Cont'd

Oakley Logistics Center Project
December 3, 2019
Page 9 of 12

However, SWAPE also reviewed the DEIR's GHG analysis and found that the DEIR's analysis was incorrect for several reasons.

First, the DEIR evaluates the Project's consistency with AB 32, SB 32, and the CARB Scoping Plan. However, these policies do not qualify as Climate Action Plans (CAPs) and therefore the DEIR cannot rely on them to determine the Project's GHG impact significance. Ex. B, pp. 16-17.

2-28

Second, the DEIR asserts that the Project would comply with AB 32 because the Project's emissions would be below the BAAQMD's service population efficiency threshold of 4.6 MT CO₂e/Service Population/Year (MT CO₂e/SP/year). However, this is incorrect because the DEIR relies on a flawed CalEEMod model to estimate the Project's GHG emissions and the DEIR compared the Project's emissions to the wrong target year. Ex. B, p. 18. If the DEIR used the correct threshold to adequately evaluate the Project's emissions, a significant impact would have been revealed that was not previously identified or addressed. *Id.*

2-29

Third, SWAPE's modeling demonstrates that the Project will result in a potentially significant GHG impact. SWAPE's updated CalEEMod output files disclose the Project's mitigated emissions, which include approximately 8,960.3 MT CO₂e of total construction emissions and approximately 18,224.6 MT CO₂e/year of annual operational emissions. *Id.* at 19. When SWAPE compared the Project's total GHG emissions to the BAAQMD's bright-line threshold of 1,100 MT CO₂e/year,¹ they found that the Project's GHG emissions exceeded the threshold.

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	298.68
Area	0.07
Energy	11,407.83
Mobile	4,250.91
Waste	1,215.38
Water	1,350.42
Total	18,523.28
Threshold	1,100.00
Exceed?	Yes

¹ "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-4.



Oakley Logistics Center Project
December 3, 2019
Page 10 of 12

2-29
Cont'd

Id. Since the Project will emit approximately 18,523.3 MT CO₂e/year, it exceeds the BAAQMD's 1,100 MT CO₂e/year threshold and a Tier 4 analysis is warranted. *Id.* at 20. SWAPE divided the Project's GHG emissions by a service population value of 2,542 people, as indicated in the DEIR, and found that the Project would emit approximately 7.3 MT CO₂e/SP/year. DEIR, p. 4.1-43. This exceeds the BAAQMD's substantial progress threshold of 2.6 MT CO₂e/SP/year. Ex. B, p. 20.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Annual Emissions	18523.28
Service Population	2542.00
Service Population Efficiency	7.29
Threshold	2.60
Exceed?	Yes

Id. When correct input parameters are used to model the Project's emissions, the Project's total GHG emissions exceed the "Substantial Progress" efficiency threshold for 2030 of 2.6 MT CO₂e/SP/year, thus resulting in a significant impact not previously assessed or identified in the DEIR. *Id.* Therefore, SWAPE recommends the City conduct an updated GHG analysis in an RDEIR. *Id.*

2-30

Fourth, SWAPE's analysis of the DEIR found the assertion that the Project's GHG impact would be unavoidable also to be incorrect. *Id.* SWAPE's review of the Project's proposed mitigation measures demonstrates that the DEIR failed to implement all feasible mitigation measures and therefore the DEIR's conclusion was unsubstantiated. *Id.* Since SWAPE's analysis demonstrates that the Project's GHG emissions may result in a potentially significant impact, SWAPE identified many mitigation measures that are applicable to the Project and likely feasible. *Id.* at 21-27.

Due to SWAPE's GHG analysis and findings, an RDEIR must be prepared for the Project taking into consideration the issues addressed in SWAPE's analysis, and additional mitigation measures should be implemented where necessary.

2-31

E. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Traffic.

Certified Traffic Engineer Daniel T. Smith, PE reviewed the DEIR and found that the fundamental problem with the DEIR's traffic analysis is that it analyzes the vast majority of the almost 2 million square foot development as general warehouse use, the lowest traffic generating use among the potential uses allowed under the Planned Unit Development ("PUD") zoning proposed for the Project. Ex. C, p. 1. Therefore, the DEIR fails to comply with CEQA's requirement of a good faith effort to disclose impacts. *Id.*



Oakley Logistics Center Project
December 3, 2019
Page 11 of 12

2-32

The DEIR states that the proposed Project requires a rezone to amend the zoning designation of the site from Specific Plan (SP-3) to Planned Unit Development (P-1). DEIR, p. 1-2. Due to the rezoning of the site, “the buildings are assumed to be capable of accommodating a range of light industrial, warehousing, distribution, e-commerce fulfillment, and light manufacturing uses . . .” *Id.* at 3-7. However, as Mr. Smith points out, the DEIR Transportation and Circulation Analysis section evaluates all but 7.56 percent of the Project as general warehouse use. Ex. C, p. 2. Most of the permissible uses under the PUD generate traffic at rates considerably higher than the trip generation for warehouse use applied to the majority of the Project in the DEIR. *Id.*

Mr. Smith created a table to show the disparity of total and peak period trips between the remaining 92 percent of square foot uses assumed in the DEIR as warehouse uses and trips if considered for other permissible uses in the P-1 zoning.

DAILY AND PEAK HOUR TRIP GENERATION COMPARISON

Land Use	Quantity	Daily Total	AM Pk Tot. ²	PM Pk Tot.
150 Warehousing	1,835,404	3,193	312	349
110 Light Industrial	1,835,404	9,104	1,285	1,156
140 Manufacturing	1,835,404	7,213	1,138	1,230
155 E-Commerce Fulfill	1,835,404	15,014	1,083	2,515
156 Hi Cube Parcel Hub	1,835,404	14,224	1,285	1,175

2-33

Id. at 3. This table shows that the alternative permissible uses would generate from 4,020 to 11,821 more daily trips than the assumed warehouse use evaluated in the DEIR. *Id.* Mr. Smith concludes that this table makes clear several things: 1) had a reasonable mix of uses been considered in the analysis, the number of traffic impacts disclosed and/or the severity of impacts would be greater; 2) the DEIR’s decision to consider the entire 1,835,404 square feet at the lowest trip generating use permissible in the P-1 zoning is inconsistent with CEQA’s demand of a good faith effort to disclose impacts; and 3) had the traffic from a more likely mix of uses in the proposed Project been considered, this would have cast the Reduction Footprint Alternative in an even more favorable light. *Id.*

For these reasons, Mr. Smith concludes that the DEIR’s Transportation and Circulation analysis does not meet the requirements of CEQA and that a revised analysis that considers a logical mix of permissible uses must be performed and the DEIR recirculated. *Id.*

IV. CONCLUSION

2-34

For the foregoing reasons, IJUNA Local Union 324 and its members living in the City of Oakley and the surrounding areas, urge the City to complete a revised DEIR addressing the Project’s significant impacts and mitigation measures.

² We note that the column headings for the AM and PM peak hour trip totals in DEIR Table 4.4-4 are mislabeled. The AM and PM trip totals are actually presented in the columns labeled “Out”



**Letter 2
Cont'd**

**2-34
Cont'd**

Oakley Logistics Center Project
December 3, 2019
Page 12 of 12

Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



Michael Lozeau
Paige Fennie
Lozeau | Drury LLP

