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VIA E-Mail and U.S. Mail

Maurice Brenyah-Addow
Community & Economic Development Department
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Re: **Comments on Draft Initial Study/Mitigated Negative Declaration for the Pencco Iron Salts Manufacturing Facility Project (Case No. AP-23-0167, SCH No. 2025010603)**

Dear Mr. Brenyah-Addow:

We write on behalf of Safe Fuel and Energy Resources California ("SAFER CA") to comment on the Draft Initial Study/Mitigated Negative Declaration[1] ("MND") prepared by the City of Pittsburg ("City") pursuant to the California environmental Quality Act[2] ("CEQA") for the Pencco Iron Salts Manufacturing Facility Project (Case No. AP-23-0167, SCH No. 202501603) ("Project") proposed by Pencco, Inc ("Applicant"). A-1

The MND fails to provide a comprehensive and meaningful evaluation of all the Project's possible adverse effects and lacks substantial evidence to support its conclusion that there will be no significant environmental impacts with the implementation of mitigation. As detailed below, substantial evidence supports a fair argument that the proposed Project may cause potentially significant, unmitigated air quality, public health, geology, hazards, and land use impacts, which requires the City to prepare an environmental impact report ("EIR").

[1] City of Pittsburg, Pennco Iron Salst Manufacturing Facility: Draft Initial Study/Mitigated Negative Declaration (Jan. 2025) (hereinafter "MND"), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/17101/638731534770730000.
[2] Pub. Res. Code §§ 21000 *et seq.*

I. INTRODUCTION

The proposed Project would produce iron salts for wastewater and drinking water treatment.[3] It would be developed on 1.38-acres within the existing Corteva (formerly Dow Chemical) industrial complex at 901 Loveridge Road in Pittsburg, California.[4] The Corteva complex includes chemical manufacturing plants, water processing facilities, loading and unloading areas, materials and waste storage sites, vehicle and equipment maintenance and fueling areas, as well as closed and operating landfills.[5]

The Project would repurpose existing buildings onsite for a control lab, office space, and a maintenance facility.[6] Additional site components would include a containment area for the manufacturing process, an open truck parking lot with loading docks and scales, and automobile parking with associated landscaping.[7] Key facility components include: 10 reactor tanks of various sizes, 18 storage tanks of various sizes, two-stage air scrubber system, a cooling tower, a filter press, ore and scrap containment areas, an overhead crane, air compressors, and sump pump drains.[8]

A-2

The manufacturing process involves dissolving iron ore and high-purity scrap iron with chlorine and hydrochloric acid (HCL).[9] These reactions take place in specially designed reactors built to withstand corrosive conditions.[10] The resulting iron salts would be transported to wastewater and drinking water treatment plants across California.[11] Raw materials would be delivered to the facility by truck, while HCL and chlorine would be supplied via pipeline from existing chlorine plants within the Corteva complex.[12]

Construction of the Project would occur intermittently over approximately 14 months, typically taking place Monday through Friday from 8:00 a.m. to 5:00 p.m.[13]

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[3] MND at p. 1.
[4] *Id.* at p. 2.
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Id.* at p. 5.
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Id.* at p. 12.

The construction process would involve demolition, site preparation, grading, building construction, equipment installation, paving, and architectural coating.[14] Key construction activities include the removal of 16,000 cubic yards of soil, removal of 27,000 square feet of existing pavement, and installation of 26,000 square feet of new pavement.[15]

A-2 cont.

Based on our evaluation of the MND and supporting documents, we conclude that the MND fails to comply with CEQA. Specifically, the MND fails to comprehensively assess, disclose, and mitigate potentially significant adverse impacts related to air quality, public health, hazards, geology, and land use arising from both construction and operation of the Project. There is substantial evidence supporting a fair argument that the Project may result in potentially significant, unmitigated impacts. To address these defects and potentially significant impacts, the City must prepare an EIR that fully discloses, analyses, and mitigates the Project's potentially significant impacts, while also exploring viable alternatives.

A-3

These comments were prepared with the assistance and expertise of air quality and toxicologist, James J. J. Clark, Ph.D., whose detailed comments and qualifications are included as Attachment A.[16] The City must respond to Dr. Clarks' comments separately and fully.

II. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California's industrial facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's industrial projects. Failure to adequately address the environmental impacts of such projects poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

A-4

[14] *Ibid.*
[15] *Ibid.*
[16] **Attachment A**, Letter to Andrew J. Graf, Adams Broadwell Joseph & Cardozo from James J.J. Clark, Ph.D., Clark & Associates Environmental Consulting, Inc. re: Comments on Draft Initial Study/Mitigated Negative Declaration for Pencco Iron Salts Manufacturing Facility, City of Pittsburg, California SCH No. 2025010603 (Feb. 21, 2025) (hereinafter "Clark Comments").

The members represented by the participants in SAFER CA live, work, recreate, and raise their families in the City, Contra Costa County, and the surrounding area. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating labor organizations could also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

A-4 Cont.

SAFER CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits while minimizing adverse environmental and other impacts on local communities. SAFER CA and its members are concerned about projects like this one that risk serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[17] It is in this spirit we offer these comments.

III. THE CITY MUST PREPARE AN ENVIRONMENTAL IMPACT REPORT

CEQA mandates that lead agencies prepare an EIR for projects that may have significant environmental effects.[18] The purpose of an EIR is to ensure that the public and decision-makers are fully informed about potential environmental consequences before decisions are made, thus promoting informed decision-making and protecting the environment.[19]

A-5

The "fair argument" standard underscores a preference for EIR preparation. Under this standard, an EIR must be prepared if there is substantial evidence in the record indicating a fair argument that the project could significantly impact the environment.[20] This standard sets a "low threshold" for triggering environmental review through an EIR, rather than through a mitigated negative declaration,

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[17] Pub. Res. Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.
[18] Pub. Res. Code § 21000; 14 Cal. Code Regs. ("CEQA Guidelines") § 15002.
[19] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.
[20] Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 1501-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.Appl.4th 1597, 1601-02.

A-5 Cont.

which is only appropriate if all potentially significant effects of the project are avoided or reduced to insignificance.[21]

"Substantial evidence" required to support a fair argument means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[22] In cases where it's uncertain whether substantial evidence exists regarding a project's potential environmental effects, the lead agency must consider expert opinion and facts.[23] If there is disagreement among experts about the significance of an effect on the environment, the lead agency shall treat the effect as significant and prepare an EIR.[24]

A-6

A. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Hazard Impacts

1. The MND Fails to Analyze Health Risks from Soil and Groundwater Contamination

The proposed Project site is included on the Cortese list due groundwater contamination.[25] The Corteva industrial complex has historically been used to produce chlorine, sodium hydroxide, hydrogen, and chlorinated solvents such as carbon tetrachloride and tetrachlorethylene ("PCE").[26] As a result, the site has an extensive history of hazardous material use and contamination.[27]

A-7

However, the MND fails to adequately assess or mitigate risks associated with this contamination. While the MND acknowledges the potential for residual contamination, it only generally states that "soils underlying the pavement slated for removal could be impacted with residual contaminants including hydrocarbons, metals, or pesticides."[28] This statement is insufficient because the MND fails to fully analyze the extent of the contamination at the Project site and does not include mitigation measures to address potential human health and environmental risks.

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[21] Pub. Res. Code § 21080(c)(2); CEQA Guidelines § 15070(b).
[22] CEQA Guidelines § 15384(a).
[23] *Id.* § 15064(g).
[24] *Ibid.*
[25] MND at p. 58.
[26] Clark Comments at p. 7.
[27] MND at p. 54; Clark Comments at p. 7.
[28] MND at p. 54.

A lead agency cannot evade its responsibility by failing to gather relevant data.[29] Under CEQA, an agency must conduct a thorough investigation of environmental hazards and propose specific, enforceable mitigation measures.[30]

Moreover, the GeoTracker listing for the site identifies benzene, mercury, other chlorinated hydrocarbons, PCE, toluene, trichloroethylene, and vinyl chloride as potential contaminants of concern.[31] Dr. Clark's review of groundwater data from nearby monitoring wells confirms the presence of multiple hazardous contaminants, including PCE, in close proximity to the Project site.[32] He found that many of these chemicals were detected at concentrations exceeding screening thresholds set by the Department of Toxic Substances Control ("DTSC"), underscoring the potential risks.[33]

A-7 Cont.

For example, PCE at a well approximately 300 feet from the Project site showed a concentration of 4,200 µg/L, well in excess of DTSC's screening threshold of 1,600 µg/L.[34] Dr. Clark's findings provide substantial evidence supporting a fair argument that onsite workers could be exposed to harmful indoor air contamination during operation due to vapor intrusion. Despite these documented high concentrations, the MND fails to analyze this risk for indoor workspaces at the Project site.[35]

Dr. Clark's findings also demonstrate that disturbing potentially contaminated soil during construction may result in significant health risks, particularly to construction workers, who may be exposed to hazardous chemicals through direct contact, inhalation of contaminated dust, or volatilization from groundwater. The failure to assess these potentially significant risks and implement protective measures renders the MND legally deficient under CEQA.

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[29] *Sundstrom v. County of Mendicino* (1988) 202 Cal.App.3d 296, 311; *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 674; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 n. 14.

[30]

[31] State Water Resources Control Board, GeoTracker, Dow Chemical Co Pittsburg Facility (SL20210828), https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL20210828 (last visited Feb. 21, 2025).

[32] Clark Comments at pp. 7-9.

[33] *Ibid.*

[34] *Id.* at p. 7-8.

[35] *Ibid.*

A-7 Cont. Therefore, substantial evidence supports a fair argument the proposed Project would result in potentially significant hazard impacts.

2. The MND Fails to Analyze Compliance with the California Accidental Release Program

The MND states that the Project would be regulated by California Accidental Release Program ("CalARP") as part of the existing Corteva industrial complex.[36] CalARP requires facilities handling regulating substances above threshold quantities to prepare a risk management plan ("RMP"),[37] which includes an offsite consequences analysis based on a worst case-release scenario for each regulated chemical.[38] Facilities are then classified into one of four program levels, each requiring specific protocols for chemical hazard analysis and management plans for routine and non-routine situations.

However, the MND fails to explain why a separate RMP is not required, despite the Project's anticipated use of approximately 12,000 pounds per hour of hydrochloric acid, 6,000 pounds per hour of sulfuric acid, and 6,000 pounds per hour of chlorine – all of which is regulated under CalARP.[39] Critically, the MND does not
A-8 disclose whether the total quantity of these substances contained within the Project's process exceeds CalARP thresholds. This omission is significant, as exceeding these limits could trigger additional regulatory and mitigation requirements. The lack of analysis prevents a clear understanding of whether the Project increases hazardous materials risks.[40]

Moreover, given the high quantities of hydrochloric acid, sulfuric acid, and chlorine on the Project site, Dr. Clark recommends that the City perform a quantitative risk assessment using standard modeling tools for assessing toxic gas clouds, such as the U.S. Environmental Protection Agency's ("EPA") Areal Locations of Hazardous Atmospheres ("ALOHA") model.[41]

By failing to determine whether the Project's chemical use exceeds regulatory thresholds requiring preparation of an independent RMP, the MND improperly

[36] MND at p. 56.
[37] 19 Cal. Code Regs. §§ 5050.1, 5050.4.
[38] *Id.* §§ 5080.3.
[39] MND at p. 10.
[40] Clark Comments at p. 13.
[41] *Ibid.*

A-8 Cont.

defers analysis of significant hazardous materials impacts in violation of CEQA. CEQA requires a full and transparent assessment of potential environmental and public safety risks at the earliest stage, yet the MND lacks any meaningful evaluation of the Project's potential to increase chemical hazards.

3. The MND Mischaracterizes the Soil Management Plan as a Project Design Feature, Resulting in Improper Deferral of Mitigation

The MND improperly classifies the soil management plan ("SMP") as a project design feature ("PDF") rather than a mitigation measure, which undermines the analysis of the project's environmental impacts and constitutes an improper deferral of mitigation in violation of the CEQA.

The MND acknowledges the potential for discovering unanticipated soil contamination during grading, excavation, and soil removal given the Project's location within the Corteva chemical manufacturing complex.[42] In response, the MND states that the Project would implement an SMP to establish protocols for notifications, health and safety measures, sampling and analysis, monitoring, soil removal, stockpiling, water quality protection, and transportation.[43] However, by categorizing the SMP as a PDF rather than a mitigation measure, the MND avoids conducting a full analysis of potential soil contamination impacts and fails to ensure the enforceability of necessary remedial actions.

A-9

CEQA mandates that an MND disclose and analyze all potentially significant impacts of a project and include enforceable mitigation measures to reduce those impacts to a less-than-significant level. PDFs, in contrast, are features of the project's design that inherently minimize environmental impacts without the need for additional mitigation. A critical distinction between PDFs and mitigation measures is that mitigation must include specific performance standards and enforcement mechanisms to ensure its effectiveness.[44] By treating the SMP as a PDF, the MND improperly characterizes it as an intrinsic component of the project rather than a required response to a potentially significant environmental impact.

Furthermore, the MND improperly defers mitigation by failing to identify specific remediation measures or establish clear performance standards. CEQA does not allow deferral of mitigation unless the MND: (1) commits to specific

[42] MND at pp. 12, 54-55.
[43] *Ibid.*
[44] *Lotus v. Department of Transp.* (2014) 223 Cal.App.4th 645, 656-58, n. 8.

mitigation strategies, (2) identifies the type of measures to be implemented, and (3) sets objective performance standards to ensure effectiveness.[45] Moreover, a lead agency may not rely on a corrective action plan to mitigate potential impacts of site contamination when the plan's mitigation measures are not disclosed in the record.[46] Here, the MND merely states that an SMP will be prepared in the future, without defining its specific components, remedial actions, or performance criteria. The lack of specificity renders the SMP unenforceable and fails to ensure that environmental impacts will be mitigated to less than significant.

A-9 Cont.

For these reasons, the MND's treatment of the SMP as a PDF rather than a mitigation measure violates CEQA. The City must properly characterize the SMP as a mitigation measure, conduct a full analysis of the project's soil contamination impacts, and establish clear, enforceable mitigation measures with defined performance standards to ensure compliance with CEQA.

B. The MND Lacks Substantial Evidence to Conclude the Project's Air Quality and Public Health Risks Are Less than Significant

The MND includes a health risk assessment ("HRA") to evaluate the health impacts on nearby receptors from exposure to toxic air contaminants ("TACs"), including diesel particulate matter ("DPM") during construction and emissions from haul trucks, the cooling tower, and the scrubber during operation. However, Dr. Clark identifies multiple critical deficiencies in the HRA that render its findings wholly unreliable. These flaws undermine the credibility of the risk assessment and fail to provide a scientifically valid basis for concluding that air quality and public health impacts would be less than significant. Substantial evidence provided by Dr. Clark shows the impacts may be significant, requiring the City to prepare an EIR to thoroughly analyze and mitigate the Project's significant health risks.

A-10

1. The Health Risk Assessment Fails to Use Readily Available Data from the On-Site Meteorological Station

The HRA fails to justify the selection of the meteorological data used for air dispersion modeling, despite Bay Area Air Quality Management District ("BAAQMD") guidance requiring the use of the most representative data available.

A-11

[45] CEQA Guidelines § 15126.4(a)(1)(B)
[46] *Citizens for Responsible Equitable Envt'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 332.

The HRA relies on meteorological data from the Concord-Buchanan Field,[47] an airport 12 miles west of the Project site, instead of using data from the on-site meteorological station.[48]

Meteorology, including prevailing wind speeds and directions, is critical in determining how pollutants disperse and where the greatest health risks occur.[49] Refined air dispersion models, such as AERMOD, rely on meteorological data to simulate pollutant transport.[50] BAAQMD maintains AERMOD-ready datasets for 35 sites in the Bay Area, including one at the Corteva industrial complex.[51] Despite the availability of on-site meteorological data, the HRA instead relies on data from 12 miles away from the Project site, which does not reflect site-specific conditions.[52]

CEQA requires that the lead agency accurately describe the baseline conditions against which the project's environmental impacts are measured.[53] By relying on meteorological data from a motoring station situated in an area with significantly different terrain, land uses, and weather patterns, the MND fails to establish the appropriate baseline, leading to a distorted assessment of potential impacts.

A-11 Cont.

Moreover, CEQA requires that an agency's conclusions be supported by substantial evidence, which excludes evidence that is clearly erroneous, inaccurate, or lacking a scientific basis.[54] Here the use of meteorological data from an unrelated location when site-specific data is readily available introduces fundamental errors that undermine the integrity of the MND's conclusions. Because the baseline conditions are misrepresented, the MND's impact analysis is

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[47] Clark Comments at p. 12; see also MND, appen. B.
[48] Clark Comments at p. 12.
[49] Bay Area Air Quality Management District, Air Quality Guidelines Appendix E: Recommended Methods for Screening and Modeling Local Risks and Hazards (2022) p. E-35, *available at* https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/appendix-e-recommended-methods-for-screening-and-modeling-local-risks-and-hazards_final-pdf.pdf?rev=b8917a27345a4a629fc18fc8650951e4&sc_lang=en.
[50] *Id*. at p. E-37.
[51] *Id*. at p. E-38; *see also* Bay Area Air Quality Management District, AERMOD-Ready Meteorological Data, https://www.baaqmd.gov/en/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools/ceqa-modeling-data (last updated Nov. 15, 2022).
[52] Clark Comments at p. 12.
[53] CEQA Guidelines § 15125; *Communities for a Better Env't v. South Coast Air Quality Mgmt Dist.* (2010) 48 Cal.App.4th 310, 320 n. 5.
[54] *Id*. § 15384(a).

A-11 Cont.

inherently flawed and cannot support the conclusion that air quality and health impacts are less than significant.

2. The Health Risk Assessment Fails to Apply Proper Age Sensitivity Factors Resulting in Underestimated Cancer Risk

Studies have shown that young people are more sensitive than adults to many carcinogens.[55] In response, OEHHA developed age sensitivity factors ("ASFs") to account for increased vulnerability to carcinogens during early-life exposure.[56] However, the HRA significantly underestimates cancer risks associated with diesel particulate matter (DPM) exposure during Project construction by using incorrect ASFs in its calculations.[57]

A-12

Specifically, the HRA uses an incorrect ASF of 4.75 for age 3 and completely omits any consideration of utero exposure.[58] In contrast, OEHHA recommends an ASF of 10 for the third trimester to age 2 and an ASF of 3 for ages 2 through 15.[59] By failing to apply these scientifically established factors, the MND grossly underestimates cancer risks for infants and children, who are the most vulnerable populations.[60] This omission fundamentally skews the risk assessment, leading to an inaccurate analysis and unsupported conclusion that exposure risks are insignificant.[61]

3. The Health Risk Assessment Fails to Justify a Reduction in Exposure Duration Which Leads to Underestimated Health Risks

The HRA assumes that off-site workers would be exposed to health risk for 250 days per year.[62] However, the MND states that the Project will operate 260 days per year at peak levels (24 hours per day, five days per week).[63] The City

A-13

[55] Office of Environmental Health Hazard Assessment, Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments (Feb. 2015) pp. 8-4 to 8-5 (hereinafter "OEHHA Guidance Manual"), *available at* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.
[56] *Ibid.*
[57] Clark Comments at p. 10-11.
[58] *Id.* at p. 11.
[59] Clark Comments at p. 11; OEHHA Manual at p. 8-5.
[60] Clark Comments at p. 11.
[61] *Ibid.*
[62] *Ibid.*; MND, appen. B.
[63] MND, appen. B.

offers no justification for why it reduces the exposure duration by 4 percent.[64] Because the HRA does not reflect the Project's true operational hours, the MND underestimates the cancer and hazard impacts to off-site workers. Consequently, the MND lacks substantial evidence to conclude this impact is less than significant.

A-13 Cont.

4. The MND Lacks Substantial Evidence to Conclude Mitigation Measure AQ-2 Reduces Impacts to Less than Significant

The MND adopts Mitigation Measure AQ-2 to reduce health risk impacts associated with diesel particulate matter ("DPM") emissions from equipment operating during Project construction.[65] AQ-2 requires the use of EPA-certified Tier 4 Final engines for all construction equipment that exceeds 25 horsepower and are used at the site for more than 2 continuous days or 20 hours total.[66]

While Tier 4 Final equipment is available for purchase, it is newer, more costly, and less widely available.[67] If Tier 4 Final equipment is not available for Applicant's use during construction, DPM impacts may remain significant. However, the MND lacks evidence demonstrating that the Applicant has secured or will be able to procure Tier 4 equipment.[68] Without such assurance, the mitigation measure is unenforceable and ineffective.[69]

A-14

To ensure AQ provides real and feasible mitigation, Dr. Clark recommends that the MND require that the Applicant:

1. Demonstrate that the use of noncompliant construction equipment will not result in a significant impact. This demonstration must be based on emission calculations with written findings supported by substantial evidence that is approved by the City.
2. Adopt alternative strategies to the use of Tier 4 Final equipment, which may include reducing the number and/or horsepower rating of construction equipment, limiting the number of daily construction haul truck trips to and

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[64] Clark Comments at p. 11.
[65] MND at p. 26.
[66] *Id*. at pp. 25-26.
[67] Clark Comments at p. 5-6.
[68] *Id*. at p. 6.
[69] Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2); *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 740 (agency improperly delayed implementing mitigation measure while project went forward).

from the Project site, use cleaner vehicle fuel, or limiting the number of individual construciton project phases occurring simultaneously.

A-14 Cont.

3. Retrofit or repower lower tier equipment to meet Tier 4 Final standards by, for example, using equipment that has been retrofitted with diesel particulate traps or selective catalytic reduction on the next highest tier equipment available to achieve Tier 4 Final standards.

Without these safeguards, AQ-2 lacks enforceability and fails to ensure that DPM impacts will be reduced to less than significant.

C. The MND Lacks Substantial Evidence to Conclude Liquefication Impacts Are Insignificant

The MND acknowledges, and mapping confirms,[70] that the Project is in a seismic hazard zone.[71] Despite this, the MND dismisses liquefactions risks based on the assumption that the site is "likely" underlain by unconsolidated clay-sand-silt mixtures.[72] However, this assumption is not supported by soil borings or geotechnical studies specific to the site, rendering its conclusion speculative rather than based on substantial evidence.[73]

Instead of conducting a site-specific investigation, the MND improperly defers analysis of liquefication impacts to post-approval review by requiring a geotechnical investigation only after Project approval and prior to final design.[74] However, deferring this analysis to a later stage is inconsistent with CEQA's requirement that the environmental review document provide sufficient analysis to determine whether the project may result in significant impacts, including impacts from liquefaction.[75]

A-15

The MND also improperly defers the development of mitigation measures for liquefaction risks until after project approval. The MND states that geotechnical

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[70] California Geological Survey, Earthquake Zones of Required Investigation Antioch North Quadrangle (Apr. 4, 2019).
[71] MND at p. 40.
[72] *Id*. at pp. 40-41.
[73] *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 171 (initial study should disclose the data or evidence supporting the study's environmental findings).
[74] MND at p. 41.
[75] CEQA Guidelines §§ 15063, 15070; *see also Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

remedies would be required to avoid damage if liquification is identified and lists some potential remedies.[76] However, the MND fails to identify specific mitigation measures or performance standards.[77] This vague and non-committal approach deprives the public and decision-makers of the information necessary to evaluate the Project's actual environmental impacts before approval, in direct violation of CEQA's informational requirements.

A-15 Cont.

Given these deficiencies, the City lacks substantial evidence to conclude that the Project's liquefication impacts are less than significant. The City must conduct a comprehensive geotechnical analysis and identify performance standards for mitigation in an EIR before determining that liquefication risks are insignificant.

D. The MND Fails to Conduct the Required Hazardous Materials Assessment, Resulting in an Unsupported Land Use Consistency Determination

The MND's conclusion that the Project would not conflict with a land use plan, policy, or regulation adopted to mitigate environmental effects is unsupported by substantial evidence.[78] Specifically, the MND fails to demonstrate compliance with the City's 2040 General Plan goals, policies, and actions regarding hazardous materials, which require a thorough assessment and mitigation of contamination risks before redevelopment occurs.

A-16

The 2040 General Plan includes Goal-11-5, which is intended to minimize risk to life and property from the generation, storage, and transportation of hazardous materials and waste.[79] To achieve this goal, the 2040 General Plan requires that discretionary development applications provide detailed information on the historical use of hazardous materials, including potential past soil and groundwater contamination.[80] If contamination is identified, mitigation measures must be implemented to ensure the exposure risks are reduced to acceptable levels consistent with EPA and/or DTSC standards.[81] The 2040 General Plan EIR

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[76] MND at p. 41.
[77] CEQA Guidelines § 15126.4(a)(1)(B).
[78] MND at p. 66.
[79] City of Pittsburg, Revised Adoption Draft: 2040 General Plan (Apr. 25, 2024) p. 11-13, *available at* https://www.pittsburgca.gov/home/showpublisheddocument/16189/638499779715030000.
[80] *Id.* at p. 11-14.
[81] *Ibid.*

concluded that compliance with this requirement would reduce impacts related to hazardous materials to less-than-significant level.[82]

A-16 Cont.

Here, the MND does not provide detailed information on residual contamination from past industrial activities, nor does it identify mitigation as required by the 2040 General Plan. The record lacks substantial evidence that a comprehensive site assessment has been conducted or that mitigation measures meeting EPA and DTSC standards will be implemented before redevelopment. For example, the MND does not include a Phase I Environmental Site Assessment, meaning there is no systematic evaluation of the site's history, potential contamination sources, or the need for further investigation. Without this information, the MND's conclusion that the Project complies with applicable land use policies is unsubstantiated and legally deficient under CEQA.

IV. CONCLUSION

A-17

Substantial evidence supports a fair argument that the Project may have a significant health risk due to exposure to soil and groundwater contamination, necessitating the preparation of an EIR. The MND lacks substantial evidence to support its conclusions that impacts on air quality, public health, geology, hazards, and land use are less than significant. Additionally, the MND fails to adequately describe the existing environmental setting, which is a critical deficiency under CEQA. The MND also improperly defers hazard mitigation and includes insufficient air quality mitigation, failing to ensure meaningful environmental protection.

Given these deficiencies, the City must prepare an EIR evaluating and mitigating the Project's potentially significant environmental impacts, identify enforceable performance standards, and incorporate feasible mitigation measures, as required by CEQA. A full EIR is necessary to ensure informed decisionmaking and to safeguard the public and environmental health.

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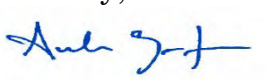
[82] City of Pittsburg, Draft Environmental Impact Report for the Pittsburg 2040 General Plan Update (Dec. 2023) pp. 3.8-29 to 3.8-30, *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15671/638379669665730000; *see also* City of Pittsburg, Final Environmental Impact Report for the Pittsburg 2040 General Plan Update (Apr. 2024), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/16112/638485347808600000.

Thank you for your consideration of these comments.

Sincerely,



Andrew J. Graf

Attachment
AJG:acp

7787-001acp