From: Lisa Danz <lmdanz@gmail.com>
Sent: Tuesday, February 20, 2024 11:06 PM
To: Reena Rao <RRao@fremont.gov>; Charles Liu <cliu@fremont.gov>; Craig Steckler <CSteckler@fremont.gov>; Benjamin Yee <BYee@fremont.gov>; Jasmine Basrai <jbasrai@fremont.gov>; Yonggang Zhang <yzhang@fremont.gov>; Shobana Ramamurthi <sramamurthi@fremont.gov>
Cc: Mark Hungerford <mhungerford@fremont.gov>; Joel Pullen <JPullen@fremont.gov>
Subject: Feb 22 items 4.2 & 4.3 -- support staff recommendation

Dear Fremont Planning Commissioners,

As someone who cares about housing affordability, solving climate change, and walkable communities, I urge you to support staff recommendation on items 4.2 and 4.3: deny the appeals and maintain the approval of the two mixed-use housing projects at Fremont Hub and Gateway Plaza, respectively.

I'm a neighbor of Fremont Hub, and I know from personal experience that it would be a fantastic location for mixed-use, dense, walkable infill housing. It's hard to be car-free in Fremont, but living right next to Fremont Hub makes it possible. We can access groceries, restaurants, pet supplies, and a veterinarian all within a 15-minute walk. It would be even better to live *in* Fremont Hub, in a project that's designed to improve sidewalk access and prioritize people over cars. That's also a great location for bus access, with relatively frequent buses on both Fremont and Mowry.

Gateway Plaza is even better as far as transit access. It's shocking how few apartments are near Fremont BART. That scarcity drives up the price of apartments in that area (which, incidentally, is why my household decided to live a half-hour walk away when we moved here in 2018). Gateway Plaza has the benefit of being a short walk from a major transit hub, as well as being full of retail businesses that meet daily needs such as groceries, coffee, and restaurants.

Dense infill housing that makes it easier to live car-free is *good* for the environment. The alternative is suburban sprawl, which adds vehicle-miles-traveled (thus worsening climate change) and destroys valuable natural lands and habitats. Attacking dense infill projects on environmental grounds is ignoring the big picture.

Please keep these mixed-use housing projects moving forward, and deny the appeals in items 4.2 and 4.3.

Sincerely,
Lisa Danz

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February 22, 2024

Via Hand Delivery and Email

Fremont Planning Commission
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Re: Agenda Item 3 - Supplemental Comments on Appeal to Planning Commission of Zoning Administrator Approval of Gateway Plaza Apartments Project (PLN2024-00091; PLN2023-00198)

Dear Honorable Commissioners Liu, Zhang, Basrai, Rao, Ramamurthi, Steckler, and Yee; Mr. Hungerford, and Mr. Pullen:

We are writing on behalf of East Bay Residents for Responsible Development ("East Bay Residents" or "EBRRD") to provide supplemental comments on our appeal of the December 12, 2023 Fremont Zoning Administrator approval of the Discretionary Design Review Permit submitted by Kimco Realty ("Applicant") to the City of Fremont ("City") for the Gateway Plaza Apartments Project (PLN2023-00198) ("Project") and approval of the CEQA Environmental Consistency Checklist ("CEQA Checklist") prepared for the Project (collectively, the "Appeal"). These comments also respond to the Staff Report prepared for the February 22, 2024

Planning Commission hearing on our Appeal,[1] and the Responses to Appeal Memorandum prepared by Lamphier-Gregory.[2]

The Project proposes to construct a 206-unit apartment building within the Gateway Plaza Shopping Center at 36190 Paseo Padre Parkway in the Central Community Plan Area under exemptions from the California Environmental Quality Act ("CEQA")[3] pursuant to CEQA Guidelines Section 15332, Infill Development Projects, and pursuant to CEQA Guidelines Section 15183, and CEQA Guidelines Sections 15162 and 15164. The City's reliance on a CEQA Guidelines Section 15332 (Class 32) Infill Exemption, a streamlining exemption pursuant to CEQA Guidelines Section 15183, and a CEQA addendum pursuant to CEQA Guidelines Section 15162 and 15164 for project approval is misplaced, and a Project-level EIR must be prepared.

We prepared these comments with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig[4] and air quality and hazardous resources experts Matt Hagemann and Paul Rosenfeld from Soil Water Air Protection Enterprise ("SWAPE").[5] Their analysis demonstrates that the Project has significant air quality, health risk and noise impacts which are peculiar to the Project, more than previously analyzed in the prior planning EIRs, and which are not fully mitigated by the City's existing mitigation measures or standard development requirements.

East Bay Residents respectfully requests that the Planning Commission uphold this appeal, vacate the Zoning Administrator's December 12, 2023 decision to approve the Project, and require Staff to withdraw the CEQA Checklist in order to prepare a legally adequate project-level environmental impact report ("EIR") for the Project to address all potentially significant impacts of the Project.

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[1] Fremont Planning Commission Report (ID # 5092) Meeting of February 22, 2024, p. 2 (hereinafter, "Staff Report").
[2] Memorandum from Scott Gregory, Lamphier-Gregory to Mark Hungerford, Senior Planner City of Fremont Community Development, Response to Appeal of Gateway Plaza Apartments Project and its CEQA Document (Feb. 8, 2024), (hereinafter, "Response to Appeal").
[3] Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.
[4] Ms. Jue's Comments ("Jue Appeal Comments") and CV are attached hereto as **Attachment A**
[5] SWAPE's Comments ("SWAPE Comments"), along with Mr. Hagemann and Mr. Rosenfeld's CVs are attached hereto as **Attachment B.**

I. BASIS FOR APPEAL

The basis for East Bay Residents' appeal is set forth in these comments, and in East Bay Residents' December 12, 2023 comments to the Zoning Administrator.[6] The Zoning Administrator's reliance on a Class 32 Infill Exemption under California Environmental Quality Act[7] ("CEQA") Guidelines Section 15332 ("Class 32" or "Infill Exemption"), a streamlining exemption pursuant to CEQA Guidelines Section 15183 ("Community Plan Exemption"),[8] and a CEQA addendum pursuant to CEQA Guidelines Sections 15162 and 15164, violated CEQA and were not supported by substantial evidence because the Project was not contemplated in the 2011 General Plan Update, and has new or more severe significant impacts than previously analyzed in the 2011 General Plan Update EIR which are peculiar to the Project site and were not known and could not have been known at the time of the EIR's certification because the Project had not yet been proposed when the 2011 EIR was certified. These impacts include potentially significant air quality, public health, and noise impacts, which require disclosure and mitigation in a project-level EIR.

II. APPELLANTS' BACKGROUND

Appellants East Bay Residents is an unincorporated association of individuals and labor organizations directly affected by the Project. The association includes Fremont residents Patrick Buffy, Ray Burks, Ralph Neves, as well as the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and their families who live and/or work in the City of Fremont and Alameda County. EBRRD's members would be directly affected by the Project's unmitigated impacts. Individual members may also work on the Project itself. They would therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of EBRRD also have an interest in enforcing the City's planning and zoning laws and 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. Indeed,

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[6] See **Exhibit C**.
[7] Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.
[8] CEQA Checklist, p. 4-5.

continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Residents' members are concerned about projects that are built without providing opportunities to improve local recruitment, apprenticeship training, and retention of skilled workforces, and without providing lifesaving healthcare expenditures for the construction workforce.

III. OVERVIEW OF CEQA REQUIREMENTS

CEQA has two basic purposes, neither of which is satisfied by the City's decision to forego an EIR and rely on a CEQA Consistency Checklist for the Project. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[9] To fulfill this function, the discussion of impacts in a CEQA document must be detailed, complete, and "reflect a good faith effort at full disclosure."[10] An adequate CEQA document must contain facts and analysis, not just an agency's conclusions.[11] The City's CEQA analysis must disclose all potential direct and indirect, significant environmental impacts of the Project.[12]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[13] If an IS/MND or an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[14] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[15] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the CEQA document to meet this obligation.

Under CEQA, a lead agency must not only adopt measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding

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[9] 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *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.
[10] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[11] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[12] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[13] CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[14] Pub. Resources Code §§ 21002.1(a), 21100(b)(3).
[15] *Id.*, §§ 21002-21002.1.

instruments.[16] A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[17] This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[18]

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether tiering or another appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared CEQA document could be used for the project, among other purposes.[19] The initial study must accurately describe the project, identify the environmental setting, identify environmental effects and show "some evidence" to support those conclusions, and a discussion of ways to mitigate the significant effects of the project, if any.[20]

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.[21] An exemption is improper where a project may result in significant environmental impacts.[22] If there is a reasonable possibility of a significant effect on the environment, then the project must be reviewed under CEQA and mitigation measures may be considered only as part of that CEQA review.[23] Similarly, reliance on CEQA tiering or streamlining from prior EIRs is improper where a project may have significant effects that were not previously examined, are more severe than previously analyzed, or require mitigation beyond existing requirements.[24]

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[16] CEQA Guidelines § 15126.4(a)(2).
[17] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[18] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
[19] CEQA Guidelines §§ 15060, 15063(c).
[20] CEQA Guidelines § 15063(d) (emphasis added).
[21] *See, e.g.,* Pub. Resources Code § 21100.
[22] 14 CCR § 15332(d).
[23] 125 CA4th at 1102.
[24] 14 CCR §§ 15162; 15183; 15183.3.

IV. THE CITY'S DECISION NOT TO PREPARE A SUBSEQUENT EIR PURSUANT TO SECTION 15162 AND 15164 WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

When a proposed project is a modified version of a previously approved project for which an EIR or an IS/MND has been prepared, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
> (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[25]

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> > (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

[25] Pub. Resources Code § 21166; CEQA Guidelines § 15162.

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[26]

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.[27]

CEQA Guidelines, section 15164 states the following concerning the use of addendums:

> (a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
> (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.
> (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
> (d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
> (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The

[26] CEQA Guidelines §§ 15162(a)(1)-(3).
[27] CEQA Guidelines § 15162(b).

explanation must be supported by substantial evidence.

In any case, the decision must be supported by substantial evidence.[28] Here, the City's decision not to prepare a subsequent CEQA document in the form of a Project-level EIR was not supported by substantial evidence and is contrary to substantial evidence from Appellants' experts demonstrating that one or more of the triggering events under CEQA Guidelines section 15162 and 15164 has occurred.

A. A Subsequent EIR Must Be Prepared Because Feasible Mitigation May Further Reduce The Project's Significant Environmental Impacts

The Staff Report's Response to Appeal ("Staff Report") acknowledges that "the specifics of the Gateway Plaza Apartment Project, or any other individual development project, were not known and could not have been known when the General Plan EIR was prepared in 2011."[29] Appellants agree that the specifics of the Project were not contemplated in 2011 for the preparation of the General Plan EIR and its Mitigation Monitoring and Reporting Program ("MMRP").

Feasible mitigation measures and alternatives which are considerably different from those analyzed in the previous EIR, and in some cases did not exist when the 2011 EIR was prepared, are presented in the SWAPE Comments and Jue Comments which would substantially reduce one or more significant effects on the environment, but these measures have not been adopted as Project mitigation measures or alternatives.[30] These include Tier 4 Final Engine Tier requirements, ULSD diesel, use of an electric generator, and measures to reduce truck idling times. Additionally, Ms. Jue identifies noise mitigation in the form of a Construction Vibration Plan and noise reduction barriers, which would further reduce the Project's significant unmitigated construction noise impacts on the nearby Kaiser Hospital.

[28] *Id*. §§ 15162 (a), 15164(e), and 15168(c)(4).
[29] Response to Appeal, p. 2.
[30] *See* CEQA Guidelines §§ 15162(a)(1)-(3).

B. Air Quality Mitigation Recommended by SWAPE is Considerably Different from Mitigation Previously Analyzed and Would Substantially Reduce the Project's Significant Effects on the Environment

As demonstrated in SWAPE's report attached hereto, the Project results in significant air quality impacts from diesel particulate matter ("DPM") emissions which are more severe than previously analyzed and require additional mitigation beyond that required in the General Plan MMRP.

SWAPE conducted a quantified health risk analysis ("HRA") which found that the Project's operational emissions exceed Bay Area Air Quality Management District ("BAAQMD") thresholds of 10 in one million cancer risk. Specifically, *SWAPE found that the Project results in an excess cancer risk of 11.3 in one million for Project operation, and an excess cancer risk of approximately 17.3 in one million over the course of a residential lifetime.*[31] *SWAPE concludes that even with implementation of the General Plan's mitigation measures as laid out in the MMRP, and reliance on BAAQMD's Basic Construction Mitigation Measures, the Project would still result in a significant, unmitigated health risk impact.*[32] Additional mitigation measures are therefore required to reduce the significant cancer risk from Project operation to less than significant levels. The evidence presented by SWAPE constitutes new information demonstrating that the Project has new and more severe health risk impacts than previously analyzed in the GP EIR, triggering the need for a subsequent EIR under CEQA Guidelines Section 15162.[33]

SWAPE's comments also demonstrate that mitigation measures which are substantially different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, which the City and project proponents declined to adopt.[34] SWAPE recommends feasible mitigation to further reduce the Project's DPM emissions which were not available or considered when the GP EIR was adopted.

First, SWAPE recommends that because the Project is within 500 feet of a hospital, the Project should require proponents to use Tier 4 equipment for all engines above 50 horsepower.[35] The Kaiser Permanente IVF Clinic is within 90 feet north of the Project and the Kaiser Hospital is approximately 415 feet to the east of

[31] SWAPE Comments, p. 8-9.
[32] SWAPE Comments, p. 9-10.
[33] 14 CCR § 15162 (a)(3).
[34] 14 CCR § 15162 (a)(3)(C), (D).
[35] SWAPE Comments, p. 10.

the Project.[36] The General Plan's MMRP does not require the use of Tier 4 Final Engines or Tier 4 Engines generally. As such, the requirement to include Tier 4 and Tier 4 Final Engines would be considerably different from the absence of such a requirement in the General Plan's MMRP. Tier 4 Final Engines as mitigation is feasible and "considerably different from [mitigation] analyzed in the previous EIR [and] would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative."[37]

Tier 4 Final Engines may not have been contemplated in the General Plan EIR in 2011 because they did not begin to be phased in under CARB regulations until 2013 (2 years after the GP EIR was certified).[38] Additionally:

> Tier 3 engines were manufactured between 2006 and 2011 and [] continue[d] to be produced until Tier 4 engines are completely phased in. Tier 4 engines are the newest and some incorporate hybrid electric technology; they began phase in of small engines (less than 75 horsepower) in 2008. Larger equipment is phased in between 2012 and 2014 with an increasing percentage of equipment required to meet the new standards.[39]

Tier 4 Final Engines are feasible and would "reduce the Project's emissions", according to SWAPE.[40] Unlike in 2011, Tier 4 equipment is readily available in the construction market. Following 2014, "[n]ew stationary and nonroad CI engines are equipped by the engine manufacturer with emission controls to meet the Tier 4 final emission standards…"[41] But these may not have been readily available in 2011. According to SWAPE Tier 4 Final equipment is both necessary and feasible to reduce the Project's significant air quality and health risk impacts identified.[42]

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[36] Air Quality, Energy, and Greenhouse Gas Emissions Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (September 22, 2023), p. 29.
[37] CEQA Guidelines §§ 15162(a)(1)-(3).
[38] See "San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, *available at:* https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6.
[39] Alameda County, Sand Hill Wind Project Draft Environmental Impact Report (November 2013), https://www.acgov.org/cda/planning/landuseprojects/documents/Ch03-03_AQ_DEIR.pdf; South Coast Air Quality Management District 2011 Portable Engine Tier Ratings, http://www.aqmd.gov/home/permits/equipment-registration/perp/portable-engine-tier-ratings.
[40] SWAPE Comments, p. 10.
[41] US EPA, FACT SHEET: Proposed Amendments to the Standards for Performance for Stationary Compression Ignition Internal Combustion Engines, https://www.epa.gov/stationary-engines/fact-sheet-proposed-amendments-standards-performance-stationary-compression.
[42] SWAPE Comments, p. 10.

Second, the GP MMRP also lacked feasible mitigation measure recommended by SWAPE that the Project include Diesel nonroad construction equipment used on site for more than 10 total days shall have either (1) engines meeting EPA Tier 4 nonroad emissions standards or (2) emission control technology verified by EPA or CARB for use with nonroad engines to reduce PM emissions by a minimum of 85% for engines for 50 hp and greater and by a minimum of 20% for engines less than 50 hp.[43] This measure, and others recommended by SWAPE to reduce air pollution impacts would in fact be feasible and are "considerably different from [mitigation] analyzed in the previous EIR [and] would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[44]

The City may contend that implementation of the City's Standard Development Requirements ("SDRs")[45] related to construction emissions[46] satisfies this requirement. That contention is misplaced because the SDRs were not in place when the 2011 EIR was certified and therefore were not considered at the time and are considerably different than the mitigation in the GP EIR. Moreover, the SDRs do not specify Tier 4 equipment. A subsequent EIR must therefore be prepared to adequately mitigate the Project's air quality and health risk impacts.

Additionally, as explained in our prior comments to the Zoning Administrator, a backup generator is required by California Building Code due to the presence of elevators in the proposed residential building.[47] But the Air Quality analysis prepared for the Project failed to analyze this source of operational emissions. California Building Code Title 24, Part 2 § 2702.2.2 requires that "Standby power shall be provided for elevators and platform lifts."[48] Where, as here, a building has an accessible floor four or more stories above an emergency exit, the building must have an elevator with a standby power for the elevator equipment.[49] The Project is therefore required to have standby power in the form of a back-up generator for the onsite elevator. Backup generators commonly emit DPM and other criteria pollutant and GHG emissions.[50] The Project does not

[43] SWAPE Comments, p. 11.
[44] CEQA Guidelines §§ 15162(a)(1)-(3).
[45] FMC Chapter 18.218.
[46] FMC § 18.218.050(a)(2).
[47] California Building Code Title 24, Part 2 § 2702.2.2.
[48] California Building Code Title 24, Part 2 § 2702.2.2.
[49] *Id.* § 1009.4.1; 3008.8.
[50] See e.g. Air Quality Implications Of Backup Generators in California, California Energy Commission, available at https://www.google.com/search?q=Backup+generators+DPM+and+other+criteria+pollutant+and+GHG+emissions+california&client=firefox-b-1-d&sca_esv=dcfe5edb8f188ebf&sxsrf=ACQVn0_m-

include a condition requiring the use of all-electric backup generators; therefore, emissions from the Project's backup generator are reasonably foreseeable. But the Air Quality analysis fails to analyze the Project's back-up generator's air quality and GHG emissions impacts in comparison to BAAQMD thresholds or on nearby sensitive receptors.

Given the site's proximity to Kaiser Permanente Hospital, and the IVF clinic within 90 feet, the air quality and health risk impacts of the back-up generator may be significant, but are insufficiently analyzed and mitigated. SWAPE recommends feasible mitigation to reduce potential generator emissions including a recommendation that "generators on site shall be fueled with ultra-low sulfur diesel fuel (ULSD) or a biodiesel blend approved by the original engine manufacturer with sulfur content of 15 ppm or less."[51] This measure, and others recommended by SWAPE to reduce air pollution impacts, are "considerably different from [mitigation] analyzed in the previous EIR [and] would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[52] The City should include these measures in a subsequent EIR, as required by CEQA.

C. Noise and Vibration Impacts are More Severe than Previously Analyzed and Mitigation Recommended by Wilson Ihrig is Considerably Different from Mitigation Analyzed Previously and Would Substantially Reduce the Project's Significant Effects on the Environment

The City's noise analysis lacks substantial evidence to conclude that the Project would not expose nearby sensitive receptors to excessive construction and traffic noise from the Project. Construction noise impacts may therefore be more severe than analyzed in the General Plan EIR. As demonstrated in Wilson Ihrig's Comments, "vibration from demolition and similar sources would far exceed NIH criteria and **generate significant impacts that require mitigation**."[53] An exemption may be improper and an EIR must be prepared to adequately analyze the Project's potentially significant noise impacts to nearby sensitive receptors.

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[51] SWAPE Comments, p. 11.

[52] CEQA Guidelines §§ 15162(a)(1)-(3).

[53] Jue Appeal Comments, p. 3 (emphasis in original).

Mitigation proposed by Deborah Jue of Wilson Ihrig to address these significant noise and vibration impacts is considerably different from measures enacted in the General Plan EIR MMRP for construction vibration, because the MMRP included only vibration reduction *recommendations,* not binding mitigation.[54] The Construction Vibration Mitigation Measure NOI-5 in the General Plan MMRP recommends that:

> Mitigation Measure NOI-S: Limitations on Construction Activities Generating Excessive Vibration. The following best practice measures when applicable are *recommended* to reduce vibration from construction activities:
>
> - Comply with construction hours ordinance to limit hours of exposure.
> - Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.
> - Minimize or avoid using vibratory rollers and tampers near sensitive areas.
> - When vibration sensitive structures are adjacent to a subject site, survey condition of existing structures and when necessary perform site specific vibration studies to direct construction activities. Contractors shall continue to monitor effects of construction activities on surveyed sensitive structures and offer repair or compensation for damage.
> - Construction management plans for substantial construction projects shall include predefined vibration reduction measures, notification requirements for properties within 200 feet of construction schedule, and contact information for on-site coordination and complaints.

Given that these measures are best practice measures recommended to reduce vibration from construction activities, they are not binding mitigation and are considerably different from binding mitigation proposed by Ms. Jue to feasibly reduce construction vibration impacts.

Ms. Jue recommends that the Project proponent be required to include a Construction Vibration Plan:

- Collect information from medical facilities regarding vibration sensitive equipment, identify applicable criteria and existing measures these facilities employ to control vibration.
- If necessary, conduct vibration measurements to document existing conditions and confirm that existing isolation systems

[54] Fremont General Plan EIR, MMRP, p. 46, https://www.fremont.gov/home/showpublisheddocument/837/637750631772530000.

would be sufficient to control construction vibration to acceptable levels.

- Identify additional vibration control measures such as
    - schedule around medical equipment operational hours,
    - use low-vibration excavation and demolition techniques,
    - provide upgrades to on-site vibration isolation systems.
    - Plan submittal subject to review from vibration sensitive stakeholders and approval by the City of Fremont.

This proposed measure to reduce significant construction impacts from construction vibration sensitive receptors at the Kaiser Hospital complex is "considerably different from [mitigation] analyzed in the previous EIR [and] would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[55]

Further, Deborah Jue recommends feasible construction mitigation measures which are considerably different from the nonbinding recommendations proposed by the General Plan. Ms. Jue recommends the Project proponent be required to include a Construction Noise Plan, to include:

- Collect information from nearby commercial and medical facilities regarding noise sensitive uses that could be exposed to on-going construction noise
- Identify noise control measures such as
    - schedule around noise sensitive use operational hours,
    - provide temporary noise barriers that provide a minimum STC 25 rating and block direct and flanking noise (e.g., 3-sided enclosure)
    - minimum 8 ft height, but 10 to 15 ft height may be needed
    - provide 10 dBA minimum reduction.

Ms. Jue's expert recommendation that mitigation include quantifiable reductions in construction noise impacts is considerably different from mitigation proposed in the General Plan MMRP. As such, a subsequent EIR should be prepared to adequately analyze and mitigate the Project's potentially significant construction noise and vibration impacts.

[55] CEQA Guidelines §§ 15162(a)(1)-(3).

III. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT APPROVAL OF THE PROJECT UNDER A CEQA INFILL EXEMPTION

The City improperly determined that the Project qualifies for Infill Exemption under CEQA Guidelines Section 15332.[56] CEQA is "an integral part of any public agency's decision making process."[57] It was enacted to require public agencies and decision makers to document and consider the environmental implications of their actions before formal decisions are made.[58] CEQA requires an agency to conduct adequate environmental review prior to taking any discretionary action that may significantly affect the environment unless an exemption applies.[59] Thus, exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.[60]

To rely on a categorical exemption, the City must determine, based on substantial evidence, that approval of the Project would not result in any significant effects on the environment.[61] In order to qualify for an Infill Exemption, projects must be consistent with the general plan, and cannot have any significant effects relating to traffic, noise, air quality, or water quality.[62] Here, the Project fails to conform with the General Plan and the Fremont City Center Community Plan, and has significant unmitigated effects on air quality and from noise, which preclude reliance on an exemption.

A. The Infill Exemption

CEQA Guidelines Section 15332 provides an exemption from CEQA for "benign infill projects that are consistent with the General Plan and Zoning requirements" of a municipality and that satisfy the following criteria:

(a) *The project is consistent with the applicable general plan designation and all applicable general plan policies* as well as with applicable zoning designation and regulations.

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[56] CEQA Checklist, p. 4-5.
[57] Pub. Resources Code § 21006.
[58] *Id*., §§ 21000, 21001.
[59] *Id.,* § 21100(a); *see also* CEQA Guidelines § 15004(a).
[60] *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.
[61] Pub. Res. Code §§ 21080(b)(9); 21084(a); *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269 (lead agency must provide "substantial evidence to support [their] finding that the Project will not have a significant effect.")
[62] 14 CCR § 15332.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
(c) The project site has no value as habitat for endangered, rare or threatened species.
(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
(e) The site can be adequately served by all required utilities and public services.[63]

The Project fails to meet the requirements of Section 15332(a) and (d) because, as discussed below, the Project is likely to result in inconsistencies with the General Plan and the Fremont City Center Community Plan and may result in potentially significant impacts to air quality and noise. For these reasons, the Project fails to qualify for the Infill Exemption.

Moreover, CEQA exemptions are negated where an exception applies pursuant to CEQA Guidelines, Section 15300.2, and Public Resources Code, Section 21084. Such exceptions apply under the following circumstances:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
2. *The project and successive projects of the same type in the same place will result in cumulative impacts;*
3. *There are "unusual circumstances" creating the reasonable possibility of significant effects;*
4. The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
5. The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
6. The project may cause a substantial adverse change in the significance of an historical resource.[64]

[63] 14 CCR § 15332 (emphasis added).
[64] 14 CCR § 15300.2; Pub. Resources Code § 21084 (emphasis added).

Here, a CEQA exemption is inapplicable because: 1) the record does not contain substantial evidence that approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality; 2) the project and successive projects of the same type in the same place will result in cumulative impacts; and 3) there is a reasonable probability that the project will have a significant effect on the environment due to "unusual circumstances" given the proximity of the Kaiser hospital next to the Project site.[65]

A. Standard of Review for the Infill Exemption

The infill exemption requires a lead agency provide "substantial evidence to support [their] finding that the Project will not have a significant effect."[66] "Substantial evidence" 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. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.[67] If a court locates substantial evidence in the record to support the City's conclusion, the City's decision will be upheld.[68]

The record demonstrates that neither the City nor the Applicant have provided substantial evidence demonstrating that the Project qualifies for the Infill Exemption, or any other categorical exemption. In fact, there is substantial evidence demonstrating that the Project may result in significant air quality, public health, and noise impacts which precludes reliance on the infill exemption and require preparation of an EIR.

B. The City Cannot Rely on a Categorical Infill Exemption or Any Other CEQA Exemption to Approve the Project Because Substantial Evidence Demonstrates that the Project May Result in Significant Air Quality Impacts

In order to approve the Project under an exemption, the City must determine, based on substantial evidence, that approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The Project is across the street from the Kaiser Foundation Fremont

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[65] 14 CCR § 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 C4th 1086.
[66] *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.
[67] CEQA Guidelines § 15384.
[68] *Bankers Hill Hillcrest*, 139 Cal.App.4th at 269.

Hospital.[69] Occupants of hospitals are considered sensitive receptors. The Kaiser Permanente IVF Clinic is within 90 feet of the Project.[70]

SWAPE's analysis determined that the City failed to evaluate the toxic air contaminant emissions associated with Project operation or indicate the concentrations at which such pollutants would trigger adverse health effects.[71] Without making a reasonable effort to connect the Project's operational TAC emissions to the potential health risks posed to nearby receptors, the Project is inconsistent with the requirement to correlate the Project-generated emissions with potential adverse impacts on human health.[72]

SWAPE recalculated the Project's health risk impacts in a quantitative health risk analysis ("HRA"). The CEQA Checklist's Air Quality and GHG Analysis indicated that operational activities will generate approximately 20 pounds of DPM per year throughout operation.[73] SWAPE calculated the excess cancer risk associated with Project operation is approximately 11.3 in one million for infants, children, and adults.[74] SWAPE also estimated an excess cancer risk of approximately 17.3 in one million over the course of a residential lifetime.[75] As such, the operational and lifetime cancer risk exceeds the BAAQMD threshold of 10 in one million, resulting in a potentially significant air quality and health risk impact not previously addressed or mitigated by the General Plan EIR. The City cannot rely on a categorical exemption, or any other CEQA exemption, because the Project may result in significant impacts to air quality and public health which require mitigation before the Project can lawfully be approved.

Moreover, emissions from the Project's mandatory backup generator may result in potentially significant air quality emissions. California Building Code Title 24, Part 2 § 2702.2.2 requires that "Standby power shall be provided for elevators and platform lifts."[76] Where, as here, a building has an accessible floor four or more stories above an emergency exit, the building must have an elevator

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[69] CEQA Checklist, p. 7.
[70] Air Quality, Energy, and Greenhouse Gas Emissions Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (September 22, 2023), p. 29.
[71] SWAPE Comments, p. 3.
[72] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 134 Cal.App.4th 1184, *1220 (*"After reading the EIRs, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIRs.").
[73] SWAPE Comments, p. 4.
[74] SWAPE Comments, p. 9.
[75] *Id.*
[76] California Building Code Title 24, Part 2 § 2702.2.2.

with a standby power for the elevator equipment.[77] The Project is required to have standby power in the form of a back-up generator for the onsite elevator. But the Air Quality analysis fails to analyze the Project's back-up generator's air quality and GHG emissions impacts in comparison to BAAQMD thresholds or on nearby sensitive receptors. Given the proximity to Kaiser Permanente Hospital, and the IVF clinic within 90 feet, the air quality and health risk impacts of the back-up generator may be significant, but are insufficiently analyzed and mitigated. The City cannot rely on a categorical exemption, or any other CEQA exemption, because the Project may result in significant impacts to air quality which require mitigation.

C. The City Cannot Rely on a Categorical Infill Exemption or Any Other CEQA Exemption to Approve the Project Because the Project May Result in Significant Impacts From Noise

An EIR must be prepared because the Project results in significant noise impacts, precluding reliance on an Infill Exemption or any other CEQA exemption. The Project results in significant construction noise emissions which are not exempt from the Noise Ordinance. Deborah Jue calculated that "[n]oise from the hoe ram during demolition… would be significant and requires mitigation."[78]

But, the Project's Noise Analysis incorrectly analyzes the Project's noise impacts and is not remedied by the Staff Report or Response to Appeal. The Response to Appeal doubles down on the use of an inadequate distance at the center of the site, by stating this is a "common professional best practice and a logical means for approximating the average construction noise from a larger construction site."[79] The Project's Noise Analysis analyzes the Project's noise impacts to Kaiser Hospital with a 600-foot distance between the center of construction to sensitive receptors in the hospital. This metric is incorrect, and unsupported by substantial evidence.[80] In fact, the construction noise will be heard by receptors in Kaiser as close as 400 feet away from the edge of the Project's construction site. The Noise Memo states that "[t]he nearest noise-sensitive use is the Kaiser Hospital to the east, approximately 400 feet from the eastern edge of the project site."[81] But, when quantifying whether noise impacts will be significant, the Noise Memo relies on a distance of 630 feet from Kaiser hospital.[82] Ms. Jue determined this metric is misplaced and unsupported by substantial evidence because "the significant impact

[77] *Id.* § 1009.4.1; 3008.8.
[78] Jue Appeal Comments, p. 3.
[79] Response to Appeal, p. 7.
[80] Jue Appeal Comments, p. 2.
[81] Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (Oct. 31, 2023), p. 13.
[82] *Id.* at 17.

on noise sensitive receptors close to one edge of the project would be obscured by using a larger distance. In this case, the choice to use 630 feet instead of 400 feet is a 58% increase in distance that undervalues the noise impact by 4 dBA."[83]

Thus, the City's conclusion that noise impacts will be less than significant is therefore inconsistent with the City's own noise analysis and not supported by substantial evidence. An exemption is improper and an EIR must be prepared to adequately analyze the Project's potentially significant noise impacts to nearby sensitive receptors.

D. The Proximity of the Kaiser Hospital to the Project Site and Resulting Significant Impacts Are Unusual Circumstances Which Preclude Reliance on a Categorical Exemption

CEQA prohibits categorical exemptions where an exception applies pursuant to CEQA Guidelines, Section 15300.2. An exception applies where there is a significant effect due to unusual circumstances.[84] The Project's proximity to the Kaiser Hospital is an unusual circumstance due to the health and noise-sensitive nature of the hospital zone.

The Kaiser Permanente IVF Clinic is within 90 feet north of the Project and the Kaiser Hospital is approximately 415 feet to the east of the Project.[85] Per General Plan Policy 10-8.6 and Implementation 10-8.6.A, it is the policy of the City of Fremont to locate hospitals, medical facilities, and other noise sensitive uses and sensitive receptors away from noise and pollution sources. The Project will create significant construction noise and air pollution impacts directly adjacent to the Kaiser hospital, creating an unusual circumstance which conflicts with the City's hospital placement policies and results in significant effects on public health and noise. This circumstance creates an exception to the City's proposed categorical exemption.

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[83] Jue Appeal Comments, p. 2.
[84] 14 CCR § 15300.2(c) ("Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.").
[85] Air Quality, Energy, and Greenhouse Gas Emissions Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (September 22, 2023), p. 29.

IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT APPROVAL OF THE PROJECT UNDER A COMMUNITY PLAN EXEMPTION

CEQA Guidelines Section 15183 (Community Plan) may apply only when a Project does not have impacts that are peculiar to the proposed project or parcel, are new or more significant than previously analyzed, are potentially significant off-site or cumulative impacts, or cannot be substantially mitigated by uniformly applicable development policies or standards.[86]

As discussed above, the Project's site-specific impacts were not analyzed in the General Plan EIR, which was relied upon for both the General Plan Update and the City Center Community Plan. The 15183 Community Plan exemption does not apply to the Project because neither the Fremont City Center Community Plan, nor any of the other planning documents relied on in the Staff Report or CEQA Checklist, actually quantified project-level air quality, health risks, noise impacts, or traffic impacts. This Project was not contemplated in the Community Plan, or General Plan because the Project Application was filed December 12, 2022, long after both plans were adopted by the City.[87] The Fremont City Center Community Plan therefore did not fully address the Project's peculiar and more significant impacts from construction TAC emissions, traffic impacts, and noise, and there is substantial evidence demonstrating that the standard conditions of approval would not substantially mitigate these significant impacts, or reduce them to the greatest extent feasible, as required by CEQA.[88]

The Project will have new or more severe significant impacts than previously analyzed in the General Plan or Community Plan. As discussed herein and in SWAPE's Comments, the Project could pose a significant public health and safety risk to construction workers, nearby residents, and off-site receptors which was not fully disclosed or analyzed under the Fremont City Center Community Plan EIR[89], or General Plan Update EIR. Furthermore, the Project's health risks from TAC emissions during construction and operation are significant and unmitigated. These impacts are peculiar to the Project and require site-specific CEQA analysis.

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[86] 14 CCR § 15183(a)-(c).
[87] City of Fremont, Universal Planning Application, Gateway Plaza MU, APN 507-465-13-1, (Dec. 12, 2022).
[88] PRC § 21081(a).
[89] City of Fremont, California, Fremont City Center Community Plan, (May 19, 2015), https://www.fremont.gov/home/showpublisheddocument/1625/637752665509700000.

As described below, the site-specific analysis conducted for the Project in the CEQA Checklist is legally deficient in several ways and previously adopted mitigation measures and SDRS would not reduce these impacts to less than significant levels. Therefore, the City may not rely on a Community Plan Exemption for Project approval, and must provide detailed analysis of the Project's impacts in a project-level EIR.

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A. The City Cannot Rely on a Community Plan Exemption to Approve the Project Because the Project May Result in Significant Impacts from Noise that Are Peculiar to the Project Site and Not Substantially Mitigated

As detailed above and in Deborah Jue's comments attached, the Project results in potentially significant noise and vibration impacts from construction and construction traffic which are not adequately analyzed or mitigated in the General Plan EIR, Noise Element, or Community Plan.

Ms. Jue determined that noise from traffic will be more significant than analyzed in the General Plan and Community Plan. Ms. Jue determined that the traffic noise analysis included in the Noise Memo does not adequately analyze truck traffic noise which is more severe than the free-flow noise levels analyzed previously.[90] The General Plan Noise Element provides that trucks passing by at 50 feet can reach noise levels of 75-85 dBA.[91] These noise levels may result in a significant noise impact to nearby sensitive receptors.

Ms. Jue concluded that the City's Noise Analysis for the Project is not supported by substantial evidence for its failure to appropriately evaluate the potential significance of temporary noise increases from construction traffic.[92] Moreover, Ms. Jue found that the truck traffic noise analysis should consider the speed and stop-and-go conditions which can generate more severe noise levels than free-flow traffic.[93] Ms. Jue's comments provide substantial evidence demonstrating that noise from the Project may be more severe than previously analyzed. As discussed above, Ms. Jue also concludes that the mitigation measures in the MMRP do not substantially mitigate these impacts. A project-level EIR must be prepared to adequately analyze and mitigate the Project's potentially significant noise impacts before the Project can lawfully be approved.

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[90] Jue Comments, p. 2.
[91] Fremont General Plan Safety and Noise Element (Dec. 2011), p. 10-41; 10-48.
[92] Jue Comments, p. 2.
[93] Jue Comments, p. 2.

The Staff Report's Response to Appeal provides that "[t]emporary construction noise is considered less than significant, provided the Project complies with the construction hours as specified in the City's Noise Ordinance, and implements the Standard Development Requirements of Section 18.218.050(g) of the FMC related to construction noise."[94] The Response to Appeal also asserts that "According to the Fremont Noise Ordinance, temporary construction noise levels generated during permitted construction hours are exempt from compliance with City noise standards."[95] This is not accurate. As demonstrated below, construction noise is not exempt from the City's noise ordinance where it is not for Public Health, Welfare, and Safety Activities.[96]

The Response to Appeal provides that even Construction Period traffic noise, "like all construction noise levels generated during permitted construction hours, construction-period traffic noise is exempt from compliance with City noise standards, and temporary construction noise is considered less than significant."[97] The City is incorrect for grouping construction noise with traffic noise in this way. The Fremont Noise Ordinance provides that "construction work" or "construction activity" shall mean any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or on any private property, public or private right-of-way, streets, structures, utilities, facilities, or other similar property.[98] Construction-period traffic noise does not constitute "construction activity" for purposes of exempting it from compliance with the City's noise standards. The Staff Report's Responses to Appeal is therefore unsupported in its conclusion that construction traffic noise is less than significant. Rather, substantial evidence demonstrates that construction traffic noise is significant, more severe than previously analyzed, and unmitigated, as demonstrated in Deborah Jue's expert comments, requiring preparation of a subsequent EIR.

Moreover, the Municipal Code does not provide an exemption for construction noise as the Response to Appeal asserts. The Fremont Municipal Code includes only the following exemptions from the Noise Ordinance, none of which include the type of construction noise required for Project construction and operation:

> (a) Emergency Work. The provisions of this title shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or in the performance of emergency work, and activities involving

[94] Response to Appeal, p. 8.
[95] *Id.*
[96] Fremont Municipal Code § 9.25.040.
[97] Response to Appeal, p. 10.
[98] Fremont Municipal Code § 9.25.030.

the execution of the duties of duly authorized governmental personnel and others providing emergency response to the general public, including but not limited to sworn peace officers, emergency personnel, utility personnel, and the operation of emergency response vehicles and equipment.

(b) Entertainment Events and Operations. The provisions of this chapter shall not apply to those reasonable sounds emanating from authorized school bands, school athletic and school entertainment events and occasional public and private outdoor or indoor gatherings, public dances, shows, bands, sporting and entertainment events conducted between the hours of 7:00 a.m. and 10:00 p.m., and special events for which a permit has been issued pursuant to Chapter 12.25. In addition, noise associated with activities that are part of urban core operations as defined in Section 18.188.020 or with places of entertainment that are in compliance with Section 5.45.130.

(c) Federal or State Preempted Activities. The provisions of this chapter shall not apply to any other activity the noise level of which is regulated by state or federal law.

(d) Maintenance to Residential Property. The provisions of this chapter shall not apply to noise sources associated with maintenance to property used for residential purposes, provided the activities take place between the hours of 7:00 a.m. and 10:00 p.m.

(e) Garbage Removal. The provisions of this chapter shall not apply to garbage removal services in commercial and mixed-use districts, even if the garbage services are located adjacent to residential districts.

(f) Industrial Districts. The provisions of this chapter shall not apply to industrial districts I-S, I-T, and G-I zones.

(g) Public Health, Welfare and Safety Activities. The provisions of this chapter shall not apply to construction, maintenance and repair operations conducted by public agencies, franchisees of the city and/or utility companies or their contractors which are deemed necessary to serve the best interests of the public and to protect the public health, welfare and safety, including but not limited to trash collection, street sweeping, tree removal, debris and limb removal, removal of downed wires, restoring electrical service, repairing traffic signals, unplugging sewers, vacuuming catch basins, repairing of damaged poles, removal of abandoned vehicles, repairing of water hydrants and mains, gas lines, oil lines, sewers, storm drains, roads, sidewalks, etc.

(Ord. 04-2021 § 1, 4-20-21.)

Project construction does not fall into any of these categories. The Project's construction noise is therefore not exempt from the City's Noise Ordinance, and as demonstrated in Deborah Jue's comments, remains significant and unmitigated.

V. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO APPROVE THE PROJECT'S ENTITLEMENTS

In order to approve a discretionary design review permit, the Zoning Administrator must make the following findings:

(a) *The proposed project is consistent with the general plan, any applicable community or specific plan, planning and zoning regulations, and any adopted design rules and guidelines;*
(b) When a proposed project is inconsistent with an adopted design rule, the purpose and intent of the design rule is met through alternative means;
(c) The multifamily residential1 project's architectural, site, and landscape design *will not be detrimental to the public health or safety*; or a nonmultifamily project's architectural, site, and landscape design will not unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare.[99]

The Project's significant air quality, public health, and noise impacts from construction and operation will render the Project detrimental to the public health and safety. Therefore, the Zoning Administrator lacked the necessary basis to support approval of the discretionary design review permit.

VI. APPEAL FEE

Fremont Municipal Code § 18.300.030(a) requires appellants to pay an appeal "fee." In filing this appeal, Appellants paid the required $1800 pursuant to the City's fee schedule.[100] Pursuant to the fee schedule, Appeals from staff actions to the Planning Commission based on FMC Volume II, Title 18 (Planning and Zoning) are required to pay an $1,800 *deposit*.[101] As described in the City's Land Use and Development Service Deposit Policies (Resolution 2010-23), the City collects deposits "from developers in connection with land use planning applications and

[99] Fremont Municipal Code § 18.235.060 (emphasis added).
[100] City of Fremont Fee Schedule (July 1, 2023), p. 6, https://www.fremont.gov/home/showpublisheddocument/13864/638300253322870000.
[101] *Id.*

development services," then requires the project applicants to replenish deposits when needed to continue processing their project application.[102] The deposit policies clarify that services related to processing development project applications are to be "paid for by those developers and not be borne by the general public."[103] Accordingly, no additional fees, costs, or deposit replenishments may be charged against East Bay Residents related to its administrative appeal of the Zoning Administrator's decision.[104]

When Appellants submitted the Appeal for filing on December 21, 2023, they were also forced to sign a "Reimbursement Agreement," which purports to authorize the City the charge Appellants an undefined and unlimited amount of additional money for "staff review, coordination, and processing costs based on real time expended" on the appeal.[105] City staff informed Appellants that the appeal filing would be rejected unless Appellants signed the Reimbursement Agreement.[106] Appellants were therefore required to sign the Reimbursement Agreement as a condition of filing the Appeal. The Reimbursement Agreement is both an illegal contract that is void as against public policy, and an unduly burdensome requirement which violates EBRRD's due process rights.

California Civil Code Section 1608 codifies the doctrine of contract illegality and provides that "[i]f any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void."[107] Under Civil Code Section1667, "unlawful" is broadly defined as that which is contrary to an express provision of law; contrary to the policy of express law, though not expressly prohibited; or, otherwise contrary to good morals.[108] In determining illegality, the court considers a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts.[109] Contracts

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[102] Resolution No. 2010-23, A Resolution of the City Council of the City of Fremont Revising and Restating the City's Policies and Administrative Procedures Regarding Land Use and Development Service Deposits, https://www.fremont.gov/home/showpublisheddocument/12883/638162823284770000.
[103] *Id.* at p. 1.
[104] *California Teachers Ass'n v. State of Cal.* (1999) 20 Cal. 4th 327, 331.
[105] See City of Fremont, Universal Planning Application, Part II, *Reimbursement Agreement*.
[106] Telephone communication between C. Caro (Adams Broadwell) and M. Hungerford (Fremont planner), 12/21/23. Additionally, Appellants first attempt to file the Appeal on 12/21/23 without completing or signing the Reimbursement Agreement was rejected by planning staff at the counter.
[107] Civil Code § 1608.
[108] Civil Code § 1667.
[109] *Asdourian v. Araj* (1985) 38 Cal.3d 276, 282.

that are against public policy, as with the City's Reimbursement Agreement, are void and unenforceable.[110]

The Reimbursement Agreement is an illegal and unenforceable contract because it is contrary to express laws authorizing members of the public to petition the government for redress of public wrongs,[111] contrary to law requiring Appellants to exhaust administrative appeals in order to maintain the right to file a public interest lawsuit, and is contrary to the laws and "good morals" associated with the public's statutory right to participate in public land use and environmental permitting processes. Any fees or costs which the City may ask Appellants to pay pursuant to the Reimbursement Agreement are void as against public policy and would result in a violation of Appellants' due process rights.

Agencies have the power to charge reasonable fees for filing administrative appeals of decisions.[112] However, such a fee cannot impose a burden upon the exercise of the due process right to a hearing. "The guarantee of procedural due process - a meaningful opportunity to be heard - is an aspect of the constitutional right of access to the courts for all persons..."[113] A cost cannot be imposed on the exercise of a right to a hearing if it has "no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them..."[114] Imposing a substantial and/or open-ended monetary obligation on an individual exercising their due process right to a hearing is unconstitutional if it is imposed simply because an individual is obtaining the due process hearing itself since it chills the exercise of an individual's rights to demand a hearing, which places too great a burden on the exercise of the right to due process.[115]

Pursuant to Municipal Code Section 18.300.030, when an appeal is filed by an interested party, the matter shall be scheduled for a hearing by the planning commission, as applicable. Moreover, the Code states that "[u]ntil all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application, appeal or other matter pertaining to this title as to which a fee, charge or payment of expense is required, nor shall the applicant be permitted to obtain a building permit or establish a use until all applicable fees, charges, and expenses

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[110] Civil Code § 1667*; Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1251; *see Trumbo v. Bank of Berkeley* (1947) 77 Cal.App.2d 704, 710 ("The law does not imply a promise to pay for services illegally rendered under a contract expressly prohibited by statute.").
[111] Cal. Const. Art. III.
[112] See *Friends of Glendora v. City of Glendora* (2010) 182 Cal.App.4th 573, 579–80; see also *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 419.
[113] *Id.*, at 338-39.
[114] *Id.*, at 338.
[115] See *id.*, at 331, 333, 338.

have been paid in full."[116] "Any unused portion of any deposit shall be returned to the person paying the deposit upon completion of the project."[117] If the City were to enforce the Reimbursement Agreement, it may attempt to withhold a decision on the Appeal unless and until Appellants pay the City for "staff review, coordination, and processing costs based on real time expended" on the appeal.[118] This would be a clear violation of Appellants' due process rights.

Any party that desires to bring a lawsuit on this decision is required to exhaust its administrative remedies.[119] CEQA provides an avenue for doing this through Public Resources Code section 21151(c), allowing parties to appeal Zoning Administrator decisions to the Planning Commission and Planning Commission decisions to the City Council. Since East Bay Residents is required to appeal the Zoning Administrator's decision to the Planning Commission (and possibly to the City Council) in order to exhaust administrative remedies, the City cannot impose a fee on the appellant that would chill its exercise of their right to appeal and right to a hearing in front of Planning Commission and City Council.

In *California Teachers Association v. State of California*,[120] a teacher filed a facial challenge to Education Code Section 44944(e) because the statute required teachers to pay the state one-half of the costs of the administrative law judge if they exercised his or her right to a hearing regarding a threatened suspension or dismissal and who did not prevail at the hearing. The costs of the plaintiff's administrative hearing were later calculated to be over $7,000.[121] The plaintiff refused to pay this bill, asserting that such a fee placed an undue burden upon his due process right to a hearing intended to determine whether he should lose his property interest in continued employment.[122] In finding the statute invalid on its face, the Court asserted that the right of access to courts extends to the constitutional right to petition administrative tribunals.[123]

Similar to the statute challenged in *California Teachers Association*, the City's policy regarding fees and costs associated with appealing a Zoning Administrator decision and Planning Commission decision are open-ended and could amount to a substantial monetary obligation simply for obtaining a due process hearing for which there is no alternative. Appellants must appeal the

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[116] Fremont Municipal Code § 18.310.020.
[117] *Id.* at § 18.310.030.
[118] See City of Fremont, Universal Planning Application, Part II, *Reimbursement Agreement*.
[119] See Pub. Res. Code § 21177; *Tomlinson v. County of Alameda* (2012) 54 Cal.4th. 281, 291.
[120] (1999) 20 Cal. 4th 327, 331.
[121] *Id*. at 332.
[122] *Id*.
[123] *Id*. at 335; *Pacific Gas & Electric Co. v. Bear Stearns & Co*. (1990) 50 Cal. 3d 1118, 1135.

Zoning Administrator's decision to the Planning Commission, and ultimately to the City Council, as required by the City's Zoning Code as well as CEQA, in order to exhaust administrative remedies before filing a lawsuit. Just as the statute did in *California Teachers Association*, the potentially substantial and unknown monetary obligation the City may try to impose under the Reimbursement Agreement to challenge the Zoning Administrator's decision will chill Appellants' required exercise of a due process hearing in order to exhaust administrative remedies.

The threat of substantial monetary obligations on Appellants imposed by the Reimbursement Agreement places too great a burden on the exercise of a due process right to a hearing that is required under CEQA in order to access the courts. The City's assertion that Appellants must pay an unknown fee beyond the $1800 appeal fee associated with appealing a Zoning Administrator decision to Planning Commission is contrary to law and void as against public policy.

VII. CONCLUSION

As discussed herein, the Zoning Administrator lacked substantial evidence to rely on a Class 32 Infill Exemption, Community Plan Exemption, or CEQA Addendum for Project approval. The Project results in potentially significant project-level impacts which are peculiar to the Project site and require additional mitigation, thus precluding reliance on any CEQA exemption. The Project does not conform with the General Plan, or Community Plan, and results in significant air quality and noise impacts.

For these reasons, EBRRD respectfully asks that the Planning Commission uphold this Appeal and remand the Project to staff to comply with CEQA and prepare an Initial Study and project-level EIR for the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,

Kelilah D. Federman

Attachments
KDF:acp

EXHIBIT A

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #23-002.38

February 21, 2024

Kelilah Federman, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, California 94080

SUBJECT: Fremont Gateway Plaza Apartments Project, Appeal

Dear Ms. Federman,

As requested, we have reviewed the information in the following documents:

> *Gateway Plaza Apartments Appeal*
> *Staff Report for February 22, 2024 Planning Commission Meeting (Staff Report)*
> *Released February 16, 2024*
>
> *Response to Appeal of Gateway Plaza Apartments Project and its CEQA Document (Response)*
> *Memo submitted to City of Fremont*
> *From Lamphier-Gregory*
> *February 8, 2024*

We previously provided comments on this project in a letter dated December 21, 2023 (Comment Letter) on the following

> *Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments*
> *Memorandum submitted to City of Fremont (Noise Assessment)*
> *From LSA*
> *October 31, 2023*

The Response and Staff Report do not appear to address the substantive issues raised in our original Comment Letter.

It is our understanding that a project which modifies an existing General Plan must be evaluated for potentially significant noise and vibration impacts that are not otherwise addressed in prior CEQA documents.

Comments on the Response and Staff Report

Appeal Response: Construction Period Noise (p. 7)

This addresses Item #1 in our Comment Letter. The Response states that, "(r)eliance on measurements from the center of the construction site is a common professional best practice and a logical means for approximating the average construction noise from a larger construction site."

- While this methodology is appropriate for many noise analyses it is not appropriate for a) noise assessments where potentially significant noise impacts must be disclosed as part of a CEQA exemption that cites a prior EIR and b) where the significant impact on noise sensitive receptors close to one edge of the project would be obscured by using a larger distance. In this case, the choice to use 630 feet instead of 400 feet is a 58% increase in distance that undervalues the noise impact by 4 dBA. As identified in our Comment Letter (Item #1), the **noise impact would be significant and requires mitigation**.
- Use General Plan Implementation 10-8.5.B: Construction Noise Mitigation,
- Construction Noise Plan could include:
    - Collect information from nearby commercial and medical facilities regarding noise sensitive uses that could be exposed to on-going construction noise
    - Identify noise control measures such as
        - schedule around noise sensitive use operational hours,
        - provide temporary noise barriers that provide a minimum STC 25 rating and block direct and flanking noise (e.g., 3-sided enclosure)
        - minimum 8 ft height, but 10 to 15 ft height may be needed
        - provide 10 dBA minimum reduction
- Plan submittal subject to review from

Appeal Response: Construction Period Noise (p. 8)

The Response identifies that the CEQA Environmental Compliance Checklist requires that an assessment be made of the substantial temporary increase of project.

- Evaluating the change in the baseline condition is a fundamental tenet of CEQA. The Response appears to rely on construction activities being conducted during permitted hours and within the City's noise standards as the basis of determining less than significant impacts.
- The City's Municipal Code (Noise Assessment pages 10+) contains no noise limits on the allowable relative increase.
- The Noise Assessment does not evaluate the substantial noise increase (Item #2). The construction noise calculated for activities at the "center" of the project shown in Table H would be at least 6 to 12 dBA higher than the baseline noise environment, and using shorter distances for to the edge of the project, the construction noise would be 10 to 23 dBA higher than the baseline noise environment. These **would be significant and require mitigation**. ***It is possible that these significant impacts would remain significant and unavoidable even with mitigation.***
    - Use General Plan Implementation 10-8.5.B: Construction Noise Mitigation,
    - Construction Noise Plan:
        - Collect information from nearby commercial and medical facilities regarding noise sensitive uses that could be exposed to demolition noise
        - Identify noise control measures such as
            - schedule around noise sensitive use operational hours,

- provide temporary noise barriers that provide a minimum STC 25 rating and block direct and flanking noise (e.g., 3-sided enclosure)
- minimum 8 ft height, but 10 to 15 ft height may be needed
- provide 15 dBA reduction where feasible, 10 dBA minimum

- Plan submittal subject to review from noise sensitive stakeholders and approval by the City of Fremont.

The Response states that the "Project's construction does not constitute an unusual circumstance within the surrounding urban environment."

- This statement does not acknowledge the noise sensitive nature of this hospital zone. Per General Plan Policy 10-8.6 and Implementation 10-8.6.A which indicates that the City of Fremont has already taken care to locate hospitals, medical facilities, and other noise sensitive uses away from noise sources.

Appeal Response: Construction Period Vibration (p. 9)

The Response states that the analysis conservatively applied "the FTA threshold of 65 VdB for buildings where vibration might interfere with interior operations (i.e., for operation of most moderately sensitive equipment such as optical microscopes)."

- As noted in our Comment Letter (Item #3), the Noise Assessment does not provide any substantial evidence regarding imaging equipment other than optical microscopes at nearby medical facilities. As noted in footnote 4 to Table E of the Noise Assessment: ***Vibration-sensitive manufacturing or research will require detailed evaluation to define the acceptable vibration levels***. As discussed in our Comment Letter, vibration from demolition and similar sources would far exceed NIH criteria and **generate significant impacts that require mitigation**.
- Mitigation could include a Construction Vibration Plan:
  - Collect information from medical facilities regarding vibration sensitive equipment, identify applicable criteria and existing measures these facilities employ to control vibration.
  - If necessary, conduct vibration measurements to document existing conditions and confirm that existing isolation systems would be sufficient to control construction vibration to acceptable levels.
  - Identify additional vibration control measures such as
    - schedule around medical equipment operational hours,
    - use low-vibration excavation and demolition techniques,
    - provide upgrades to on-site vibration isolation systems.
  - Plan submittal subject to review from vibration sensitive stakeholders and approval by the City of Fremont.

The Response states that the "Project's construction does not constitute an unusual circumstance within the surrounding urban environment."

- The Noise Assessment lacks substantial evidence to make this claim. There were no measurements that document the existing vibration environment at these vibration-sensitive medical facilities.

Non-responsive

The Appeal Response and Staff Report are non-responsive to other issues raised in our Comment Letter, including:

- Noise from a hoe ram during demolition (Item #1b). The temporary noise impact from demolition **would be significant and requires mitigation**.
- General Plan Implementation 10-8.5.B: Construction Noise Mitigation does not adequately mitigate construction noise impacts.
- Recommended mitigation measures include:
    - Construction Noise Plan:
        - Collect information from nearby commercial and medical facilities regarding noise sensitive uses that could be exposed to demolition noise
        - Identify noise control measures such as
            - schedule around noise sensitive use operational hours,
            - provide temporary noise barriers that provide a minimum STC 25 rating and block direct and flanking noise (e.g., 3-sided enclosure)
            - minimum 8 ft height, but 10 to 15 ft height may be needed
            - provide 10 dBA minimum reduction
        - Plan submittal subject to review from noise sensitive stakeholders and approval by the City of Fremont.
- A complete list of "Recommended Measures" for noise and vibration mitigation is missing (Item #5) and no substantial evidence has been provided regarding the ability of these measures to reduce noise impacts below the thresholds of significance. ***Lacking substantial evidence, it may be possible that even with these measures the noise and vibration impacts may still be significant and unavoidable.***

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG

Deborah A. Jue, INCE-USA
Principal

wilson ihrig fremont gateway plaza - d jue comments 02-21-24.docx

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

DEBORAH JUE

Principal

Since joining Wilson Ihrig in 1990, Ms. Jue has been involved in with many projects from environmental assessments and entitlements, through design development, construction documents and construction administration support. As an acoustical consultant, she has provided noise measurement, analysis and recommendations to control noise and vibration both at the interior of the project and at the neighboring properties. She has authored many reports concerning compliance with the requirements of California Noise Insulation Standards, Title 24, local Noise Elements, environmental assessments and Federal noise criteria, and is well aware of the additional design and construction technique requirements to achieve industry standards. Ms. Jue has authored or provided input for many environmental documents and technical studies in accordance with NEPA and California's CEQA regulations, most of them related to surface transportation, and she gives presentations to public officials when necessary to explain construction noise problems, noise mitigation goals, and noise control methods. She can develop construction noise and vibration criteria to address vibration damage potential to nearby buildings and sensitive structures, and vibration annoyance or disruption potential for occupants of nearby buildings.

Education

- M.S. in Mechanical Engineering, University of California, Berkeley, 1998
- B.S. in General Engineering: Acoustics, Stanford University, 1988

Professional Associations (Member)

- American Society of Mechanical Engineers
- Acoustical Society of America
- National Council of Acoustical Consultants
- Institute of Noise Control Engineering
- WTS
- Transportation Research Board, AEP80 Standing Committee Member (2021-2024)

Research and Published Papers

- ACRP Report 175, ACRP 07-14, *Improving Intelligibility of Airport Terminal Public Address Systems*
- NCHRP 25-25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects*
- *Transportation Research Record*, V. 2502, "Considerations to Establish Ground-Borne Noise Criteria to Define Mitigation for Noise-Sensitive Spaces"

Relevant Experience

- California High Speed Rail Caltrain Corridor EIR/EIS, San Francisco to San Jose
- UC Berkeley Northgate Hall A/V Renovations, Berkeley
- MacArthur Station, *long-term construction noise and vibration monitoring*, Oakland
- Safeway @ Claremont & College, *HVAC noise and construction noise monitoring*, Oakland
- ACTC I-80/Ashby, *interchange traffic noise analysis*, Berkeley and Emeryville
- ACTC I-680 Express Lanes, *traffic noise analysis*, Contra Costa County, CA
- Chase Arena, *construction noise and vibration monitoring*, San Francisco

EXHIBIT B

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

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February 16, 2024

Kelilah D. Federman
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601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the Fremont Gateway Plaza Apartments Project

Dear Ms. Federman,

We have reviewed the October 2023 Air Quality, Energy, and Greenhouse Gas Emissions Analysis ("AQ & GHG Memo") for the Fremont Gateway Plaza Apartments Project ("Project") located in the City of Fremont ("City"). The Project proposes to demolish approximately 26,550-square-feet ("SF") of existing retail space and 237 surface parking spaces and construct 206 apartment units, a parking garage containing 263 parking spaces, and an additional 49 surface parking stalls on the 3.23-acre site.

Our review concludes that the AQ & GHG Memo fails to adequately evaluate the Project's health risk impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project may be underestimated and inadequately addressed. A project level EIR should be prepared to adequately assess and mitigate the potential health risk impacts that the project may have on the environment.

Air Quality

Diesel Particulate Matter Emissions Inadequately Evaluated

The AQ & GHG Memo conducts a health risk analysis ("HRA") evaluating impacts as a result of exposure to diesel particulate matter ("DPM") emissions from Project construction. Specifically, the AQ & GHG Memo estimates that the maximum cancer risk posed to nearby, existing residential sensitive receptors as a result of Project construction would be 6.00 in one million (see excerpt below) (p. 29, Table D).

Table D: Inhalation Health Risks from Project Construction to Off-Site Receptors with Supplemental Construction Measures

Project Construction	Carcinogenic Inhalation Health Risk in One Million	Chronic Inhalation Hazard Index	Acute Inhalation Hazard Index	Annual $PM_{2.5}$ Concentration ($\mu g/m^3$)
Maximally Exposed Individual	6.00	0.004	0.000	0.022
Threshold	**10.0**	**1.0**	**1.0**	**0.30**
Exceed?	**No**	**No**	**No**	**No**

Source: LSA (August 2023).
$PM_{2.5}$ = particulate matter less than 2.5 microns in size
$\mu g/m^3$ = micrograms per cubic meter

However, while the AQ & GHG Memo also estimates that the maximum cancer risk posed to future Project residents as a result of existing stationary sources, the AQ & GHG Memo fails to mention the toxic air contaminant ("TAC") impacts or evaluate the health risks associated with Project operation. The AQ & GHG Memo's evaluation of the Project's potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for three reasons.

First, the AQ & GHG Memo fails to mention the exposure assumptions, such as the age sensitivity factors ("ASF") or fraction of time at home ("FAH") values, for the construction-related HRA whatsoever. Until the AQ & GHG Memo substantiates the use of correct exposure assumptions, the HRAs may underestimate the cancer risk posed to nearby, existing sensitive receptors as a result of Project construction. Furthermore, according to the *Risk Assessment Guidelines* provided by the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, the AQ & GHG Memo's HRA should have used the following equation:[1]

A. Equation 8.2.4 A: $$RISK_{inh\text{-}res} = DOSE_{air} \times CPF \times ASF \times ED/AT \times FAH$$

7. $RISK_{inh\text{-}res}$ = Residential inhalation cancer risk
8. $DOSE_{air}$ = Daily inhalation dose (mg/kg-day)
9. CPF = Inhalation cancer potency factor ($mg/kg\text{-}day^{-1}$)
10. ASF = Age sensitivity factor for a specified age group (unitless)
11. ED = Exposure duration (in years) for a specified age group
12. AT = Averaging time for lifetime cancer risk (years)
13. FAH = Fraction of time spent at home (unitless)

[1] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-7, Equation 8.2.4.

However, the AQ & GHG Memo fails to mention or provide a dose and risk equation to calculate the Project's construction cancer risk. As such, we cannot verify that the AQ & GHG Memo's HRA is accurate, and the Project's construction-related cancer risk may be underestimated.

Second, by failing to prepare a quantified operational HRA, the Project is inconsistent with CEQA's requirement to make "a reasonable effort to substantively connect a project's air quality impacts to likely health consequences."[2] According to the AQ & GHG Memo, operation of the Project is anticipated to generate 898 daily vehicle trips, which would generate additional exhaust emissions and expose nearby sensitive receptors to DPM emissions (p. 2). However, the AQ & GHG Memo fails to evaluate the TAC emissions associated with Project operation or indicate the concentrations at which such pollutants would trigger adverse health effects. Without making a reasonable effort to connect the Project's operational TAC emissions to the potential health risks posed to nearby receptors, the Project is inconsistent with CEQA's requirement to correlate the Project-generated emissions with potential adverse impacts on human health.

Third, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015. This guidance document describes the types of projects that warrant the preparation of an HRA. Specifically, OEHHA recommends that all short-term projects lasting at least 2 months assess cancer risks.[3] Furthermore, according to OEHHA:

> "Exposure from projects lasting more than 6 months should be evaluated for the duration of the project. In all cases, for assessing risk to residential receptors, the exposure should be assumed to start in the third trimester to allow for the use of the ASFs (OEHHA, 2009)."[4]

OEHHA also recommends that an exposure duration of 30 years should be used to estimate the individual cancer risk at the maximally exposed individual resident ("MEIR").[5] While the AQ & GHG Memo fail to provide the expected lifetime of the proposed Project, we can reasonably assume that the Project would operate for at least 30 years, if not more. Thus, operation of the Project exceeds the 2-month and 6-month requirements set forth by OEHHA and should be evaluated for the entire 30-year residential exposure duration, as indicated by OEHHA guidance. As these recommendations reflect the most recent state health risk policies, a full CEQA analysis should be prepared to include an analysis of health risk impacts posed to nearby sensitive receptors from DPM emissions generated during Project operation.

Fourth, while the AQ & GHG Memo includes an HRA evaluating the Project's health risk impacts to nearby, existing receptors as a result of Project construction, the AQ & GHG Memo fails to evaluate the

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[2] "Sierra Club v. County of Fresno." Supreme Court of California, December 2018, a*vailable at:* https://ceqaportal.org/decisions/1907/Sierra%20Club%20v.%20County%20of%20Fresno.pdf.
[3] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-18.
[4] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-18.
[5] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 2-4.

combined lifetime cancer risk as a result of Project construction and operation together. According to OEHHA guidance, "the excess cancer risk is calculated separately for each age grouping and then summed to yield cancer risk at the receptor location."[6] However, the AQ & GHG Memo's HRA fails to sum each age bin to evaluate the combined cancer risk over the course of the Project's total construction and operation. This is incorrect, and such an updated analysis should be prepared to quantify and sum the entirety of the Project's construction and operational health risks together to compare to the BAAQMD threshold of 10 in one million.

Screening-Level Analysis Demonstrates Potentially Significant Health Risk Impact

In order to conduct our screening-level risk assessment we relied upon AERSCREEN, which is a screening level air quality dispersion model.[7] The model replaced SCREEN3, and AERSCREEN is included in the OEHHA and the California Air Pollution Control Officers Associated ("CAPCOA") guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs").[8, 9] 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 using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary HRA of the Project's operational health risk impact to residential sensitive receptors using the annual $PM_{2.5}$ exhaust estimates from the AQ & GHG Memo's CalEEMod output files, as recommended by the BAAQMD.[10] Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. [11] Subtracting the 739-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project's operational DPM for an additional 27.98 years.[12] The AQ & GHG Memo's operational CalEEMod emissions indicate that operational activities will generate approximately 20 pounds of DPM per year throughout operation. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the variability in daily

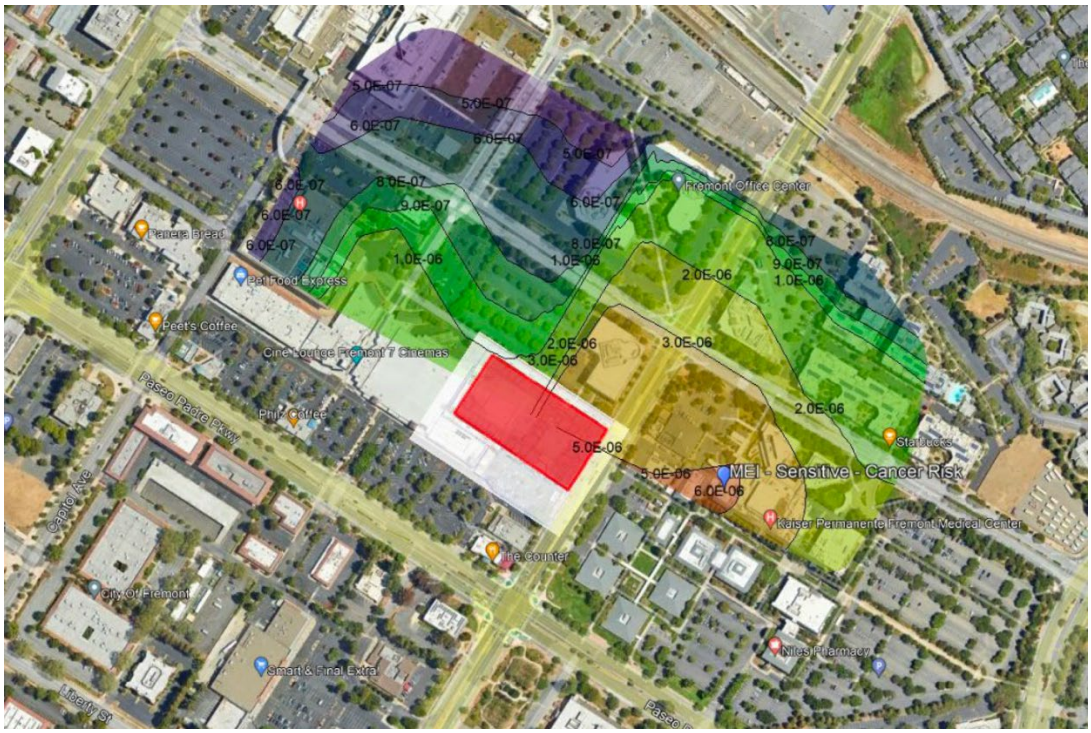
[6] "Guidance Manual for preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 8-4
[7] "AERSCREEN Released as the EPA Recommended Screening Model," U.S. EPA, April 2011, *available at:* http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf
[8] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.
[9] "Health Risk Assessments for Proposed Land Use Projects." CAPCOA, July 2009, *available at:* http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.
[10] "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, *available at*: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 8-8.
[11] "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at:* https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-18.
[12] See Attachment B for health risk calculations.

vehicle trips over Project operation, we calculated an average DPM emission rate by the following equation:

$$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{20.0\ lbs}{365\ days} \times \frac{453.6\ grams}{lbs} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} = \mathbf{0.000288\ g/s}$$

Using this equation, we estimated an operational emission rate of 0.000288 g/s. Operation was simulated as a 3.23-acre rectangular area source in AERSCREEN, with approximate dimensions of 162- by 81-meters. A release height of three meters was selected to represent the height of stacks of operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution. The population of Fremont was obtained from U.S. 2020 Census data.[13]

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project Site. The United States Environmental Protection Agency ("U.S. EPA") suggests that the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10% in screening procedures.[14] According to the AQ & GHG Memo, the nearest sensitive receptor is the Kaiser Permanente Fremont Medical Center (see excerpt below) (Attachment B, p. 4).



[13] "Fremont." U.S. Census Bureau, 2020, *available at:* https://datacommons.org/place/geoId/0626000.
[14] "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." U.S. EPA, October 1992, *available at:* http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf.

Review of Google Earth indicates that the hospital is approximately 125 meters from the Project site. Thus, the single-hour concentration estimated by AERSCREEN for Project operation is approximately 0.3391 µg/m^3 DPM at approximately 125 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.03391 µg/m^3 for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA, as recommended by BAAQMD.[15] Specifically, guidance from OEHHA and the California Air Resources Board ("CARB") recommends the use of a standard point estimate approach, including high-point estimate (i.e. 95th percentile) breathing rates and age sensitivity factors ("ASF") in order to account for the increased sensitivity to carcinogens during early-in-life exposure and accurately assess risk for susceptible subpopulations such as children. The residential exposure parameters, such as the daily breathing rates ("BR/BW"), exposure duration ("ED"), age sensitivity factors ("ASF"), fraction of time at home ("FAH"), and exposure frequency ("EF") utilized for the various age groups in our screening-level HRA are as follows:

[15] "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. 56; see also "Recommended Methods for Screening and Modeling Local Risks and Hazards." BAAQMD, May 2011, *available at:* http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx, p. 65, 86.

Exposure Assumptions for Residential Individual Cancer Risk						
Age Group	**Breathing Rate** (L/kg-day)[16]	**Age Sensitivity Factor**[17]	**Exposure Duration** (years)	**Fraction of Time at Home**[18]	**Exposure Frequency** (days/year)[19]	**Exposure Time** (hours/day)
3rd Trimester	361	10	0.25	0.85	350	24
Infant (0 – 2)	1090	10	2	0.85	350	24
Child (2 – 16)	572	3	14	0.72	350	24
Adult (16 – 30)	261	1	14	0.73	350	24

For the inhalation pathway, the procedure requires the incorporation of several discrete variates to effectively quantify dose for each age group. Once determined, contaminant dose is multiplied by the cancer potency factor ("CPF") in units of inverse dose expressed in milligrams per kilogram per day ($mg/kg/day^{-1}$) to derive the cancer risk estimate. Therefore, to assess exposures, we utilized the following dose algorithm:

$$Dose_{AIR,\,per\ age\ group} = C_{air} \times EF \times \left[\frac{BR}{BW}\right] \times A \times CF$$

where:

$Dose_{AIR}$ = dose by inhalation (mg/kg/day), per age group
C_{air} = concentration of contaminant in air (µg/m3)
EF = exposure frequency (number of days/365 days)
BR/BW = daily breathing rate normalized to body weight (L/kg/day)

[16] "Air Toxics NSR Program Health Risk Assessment Guidelines." BAAQMD, December 2016, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/permit-modeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en#:~:text=To%20assess%20potential%20inhalation%20exposure%20to%20offsite%20workers%2C%20OEHHA%20recommended,for%20an%20eight%2Dhour%20day, p. 6; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.

[17] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 8-5 Table 8.3.

[18] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 5-24; see also: "Air Toxics NSR Program Health Risk Assessment Guidelines." BAAQMD, December 2016, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/permit-modeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en#:~:text=To%20assess%20potential%20inhalation%20exposure%20to%20offsite%20workers%2C%20OEHHA%20recommended,for%20an%20eight%2Dhour%20day, p. 4, 5.

[19] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 5-24.

A = inhalation absorption factor (default = 1)
CF = conversion factor (1x10-6, µg to mg, L to m3)

To calculate the overall cancer risk, we used the following equation for each appropriate age group:

$$Cancer\ Risk_{AIR} = Dose_{AIR} \times CPF \times ASF \times FAH \times \frac{ED}{AT}$$

where:

$Dose_{AIR}$ = dose by inhalation (mg/kg/day), per age group
CPF = cancer potency factor, chemical-specific $(mg/kg/day)^{-1}$
ASF = age sensitivity factor, per age group
FAH = fraction of time at home, per age group (for residential receptors only)
ED = exposure duration (years)
AT = averaging time period over which exposure duration is averaged (always 70 years)

Consistent with the 739-day construction schedule, the annualized average concentration for operation was used for the remainder of the 30-year exposure period, which makes up the latter 0.23 years of the infant stage of life, the entire child stage of life (2 – 16 years), and the entire adult stage of life (16 – 30 years). The results of our calculations are shown in the table below.

The Maximally Exposed Individual at an Existing Residential Receptor

Age Group	Emissions Source	**Duration** (years)	**Concentration** (ug/m3)	Cancer Risk
3rd Trimester	Construction	0.25	*	*
	Construction	*1.77*	***	***
	Operation	*0.23*	*0.0339*	*1.09E-06*
Infant (0 - 2)	Total	2		1.09E-06
Child (2 - 16)	Operation	14	0.0339	8.84E-06
Adult (16 - 30)	Operation	14	0.0339	1.36E-06
Lifetime		**30**		**1.13E-05**

* Construction cancer risk calculated separately in the AQ & GHG Memo

As demonstrated in the table above, the excess cancer risks for infants, children, and adults at the MEIR located approximately 125 meters away, over the course of Project operation, are approximately 1.09, 8.84, and 1.36 in one million, respectively. The excess cancer risk associated with Project operation is approximately 11.3 in one million. Furthermore, when summing the Project's operational cancer risk, as

estimated by SWAPE, with the AQ & GHG Memo's construction-related cancer risk of 6.00 in one million, we estimate an excess cancer risk of approximately 17.3 in one million over the course of a residential lifetime.[20] As such, the operational and lifetime cancer risk greatly exceeds the BAAQMD threshold of 10 in one million, resulting in a potentially significant impact not previously addressed in the General Plan EIR or identified by the AQ & GHG Memo.

Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection. The purpose of the screening-level HRA is to demonstrate the potential link between Project-generated emissions and adverse health risk impacts. According to the U.S. EPA:

> "EPA's Exposure Assessment Guidelines recommend completing exposure assessments iteratively using a tiered approach to 'strike a balance between the costs of adding detail and refinement to an assessment and the benefits associated with that additional refinement' (U.S. EPA, 1992).
>
> In other words, an assessment using basic tools (e.g., simple exposure calculations, default values, rules of thumb, conservative assumptions) can be conducted as the first phase (or tier) of the overall assessment (i.e., a screening-level assessment).
>
> The exposure assessor or risk manager can then determine whether the results of the screening-level assessment warrant further evaluation through refinements of the input data and exposure assumptions or by using more advanced models."

As demonstrated above, screening-level analyses warrant further evaluation in a refined modeling approach. As our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, a full CEQA analysis should be prepared to include a refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation. If the refined analysis similarly concludes that the Project would result in a significant health risk impact, then mitigation measures should be incorporated, as described below in the "Feasible Mitigation Measures Available to Reduce Emissions" section.

Mitigation

Feasible Mitigation Measures Available to Reduce Emissions

Our analysis demonstrates that the Project would result in potentially significant health risk impacts that may need to be mitigated further. In an effort to reduce the Project's emissions, we identified several mitigation measures that would feasibly reduce the Project's significant health risk and air quality impacts and are applicable to the proposed Project. We recognize that the City relies on implementation of the BAAQMD's Basic Construction Mitigation Measures, along with the General Plan's Mitigation

[20] Calculated: 11.3 in one million + 6.00 in one million = 17.3 in one million.

Monitoring and Reporting Program.[21],[22] However, we found that even with the implementation of these measures, the Project still may result in a potentially significant health risk impact.

To reduce the Project's emissions, we recommend consideration of SCAG's 2020 *RTP/SCS* PEIR's Air Quality Project Level Mitigation Measures ("PMM-AQ-1"), as described below.[23] All proposed mitigation, including use of Tier 4 Final equipment, is both necessary and feasible to reduce the significant air quality and health risk impacts identified.

SCAG RTP/SCS 2020-2045
Air Quality Project Level Mitigation Measures – PMM-AQ-1: In accordance with provisions of sections 15091(a)(2) and 15126.4(a)(1)(B) of the *State CEQA Guidelines*, a Lead Agency for a project can and should consider mitigation measures to reduce substantial adverse effects related to violating air quality standards. Such measures may include the following or other comparable measures identified by the Lead Agency:
a) Minimize land disturbance.
d) Stabilize the surface of dirt piles if not removed immediately.
e) Limit vehicular paths on unpaved surfaces and stabilize any temporary roads.
f) Minimize unnecessary vehicular and machinery activities.
n) Utilize existing power sources (e.g., power poles) or clean fuel generators rather than temporary power generators.
p) As appropriate require that portable engines and portable engine-driven equipment units used at the project work site, with the exception of on-road and off-road motor vehicles, obtain CARB Portable Equipment Registration with the state or a local district permit. Arrange appropriate consultations with the CARB or the District to determine registration and permitting requirements prior to equipment operation at the site.
q) Require projects within 500 feet of residences, hospitals, or schools to use Tier 4 equipment for all engines above 50 horsepower (hp) unless the individual project can demonstrate that Tier 4 engines would not be required to mitigate emissions below significance thresholds.
r) Projects located within the South Coast Air Basin should consider applying for South Coast AQMD "SOON" funds which provides funds to applicable fleets for the purchase of commercially available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.
s) Projects located within AB 617 communities should review the applicable Community Emissions Reduction Plan (CERP) for additional mitigation that can be applied to individual projects.
t) Where applicable, projects should provide information about air quality related programs to schools, including the Environmental Justice Community Partnerships (EJCP), Clean Air Ranger Education (CARE), and Why Air Quality Matters programs.

[21] CEQA Checklist, pg. 25.
[22] "Resolution No. 2011-68." Fremont General Plan Update, available at: https://www.fremont.gov/home/showpublisheddocument/837/637750631772530000
[23] "4.0 Mitigation Measures." Connect SoCal Program Environmental Impact Report Addendum #1, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_addendum_4_mitigationmeasures.pdf?1606004420, p. 4.0-2 – 4.0-10; 4.0-19 – 4.0-23; See also: "Certified Final Connect SoCal Program Environmental Impact Report." Southern California Association of Governments (SCAG), May 2020, *available at:* https://scag.ca.gov/peir.

u) Projects should work with local cities and counties to install adequate signage that prohibits truck idling in certain locations (e.g., near schools and sensitive receptors).

y) Projects that will introduce sensitive receptors within 500 feet of freeways and other sources should consider installing high efficiency of enhanced filtration units, such as Minimum Efficiency Reporting Value (MERV) 13 or better. Installation of enhanced filtration units can be verified during occupancy inspection prior to the issuance of an occupancy permit.

z) Develop an ongoing monitoring, inspection, and maintenance program for the MERV filters.

aa) Consult the SCAG Environmental Justice Toolbox for potential measures to address impacts to low-income and/or minority communities.

bb) The following criteria related to diesel emissions shall be implemented on by individual project sponsors as appropriate and feasible:

- Diesel nonroad vehicles on site for more than 10 total days shall have either (1) engines that meet EPA on road emissions standards or (2) emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%
- Diesel generators on site for more than 10 total days shall be equipped with emission control technology verified by EPA or CARB to reduce PM emissions by a minimum of 85%.
- Nonroad diesel engines on site shall be Tier 2 or higher.
- Diesel nonroad construction equipment on site for more than 10 total days shall have either (1) engines meeting EPA Tier 4 nonroad emissions standards or (2) emission control technology verified by EPA or CARB for use with nonroad engines to reduce PM emissions by a minimum of 85% for engines for 50 hp and greater and by a minimum of 20% for engines less than 50 hp.
- Emission control technology shall be operated, maintained, and serviced as recommended by the emission control technology manufacturer.
- Diesel vehicles, construction equipment, and generators on site shall be fueled with ultra-low sulfur diesel fuel (ULSD) or a biodiesel blend approved by the original engine manufacturer with sulfur content of 15 ppm or less.
- The construction contractor shall maintain a list of all diesel vehicles, construction equipment, and generators to be used on site. The list shall include the following:
    i. Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment.
    ii. Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation.
    iii. For the emission control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date and hour-meter reading on installation date.
- The contractor shall establish generator sites and truck-staging zones for vehicles waiting to load or unload material on site. Such zones shall be located where diesel emissions have the least impact on abutters, the general public, and especially sensitive receptors such as hospitals, schools, daycare facilities, elderly housing, and convalescent facilities.
- The contractor shall maintain a monthly report that, for each on road diesel vehicle, nonroad construction equipment, or generator onsite, includes:
    i. Hour-meter readings on arrival on-site, the first and last day of every month, and on off-site date.
    ii. Any problems with the equipment or emission controls.
    iii. Certified copies of fuel deliveries for the time period that identify:
        1. Source of supply
        2. Quantity of fuel
        3. Quantity of fuel, including sulfur content (percent by weight)

cc) Project should exceed Title-24 Building Envelope Energy Efficiency Standards (California Building Standards Code). The following measures can be used to increase energy efficiency:

- Provide pedestrian network improvements, such as interconnected street network, narrower roadways and shorter block lengths, sidewalks, accessibility to transit and transit shelters, traffic calming measures, parks and public spaces, minimize pedestrian barriers.
- Provide traffic calming measures, such as:
    i. Marked crosswalks
    ii. Count-down signal timers
    iii. Curb extensions iv. Speed tables
    iv. Raised crosswalks
    v. Raised intersections
    vi. Median islands
    vii. Tight corner radii
    viii. Roundabouts or mini-circles
    ix. On-street parking
    x. Chicanes/chokers
- Create urban non-motorized zones
- Provide bike parking in non-residential and multi-unit residential projects
- Dedicate land for bike trails
- Limit parking supply through:
    i. Elimination (or reduction) of minimum parking requirements
    ii. Creation of maximum parking requirements
    iii. Provision of shared parking
- Require residential area parking permit.
- Provide ride-sharing programs
    i. Designate a certain percentage of parking spacing for ride sharing vehicles
    ii. Designating adequate passenger loading and unloading and waiting areas for ride-sharing vehicles
    iii. Providing a web site or messaging board for coordinating rides
    iv. Permanent transportation management association membership and finding requirement.

These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently, reduce emissions released during Project construction and operation. A full CEQA analysis should be prepared to include all feasible mitigation measures, as well as include updated health risk analysis to ensure that the necessary mitigation measures are implemented to reduce emissions to below thresholds. The full CEQA analysis should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's significant emissions are reduced to the maximum extent possible.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,

Matt Hagemann, P.G., C.Hg.

Paul E. Rosenfeld, Ph.D.

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Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.
B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist
California Certified Hydrogeologist
Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2104, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, perfluorooctanoic acid (PFOA) contamination of groundwater, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Coloradao.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal repesentatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F**. 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukanaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

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Paul Rosenfeld, Ph.D.

Chemical Fate and Transport & Air Dispersion Modeling

Principal Environmental Chemist

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on volatile organic compound filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts to human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risk, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, industrial, military and agricultural sources, unconventional oil drilling operations, and locomotive and construction engines. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities. Dr. Rosenfeld has also successfully modeled exposure to contaminants distributed by water systems and via vapor intrusion.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particulate matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, creosote, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants. Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at sites and has testified as an expert witness on numerous cases involving exposure to soil, water and air contaminants from industrial, railroad, agricultural, and military sources.

Professional History:

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H_2O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist

Publications:

Remy, L.L., Clay T., Byers, V., **Rosenfeld P. E.** (2019) Hospital, Health, and Community Burden After Oil Refinery Fires, Richmond, California 2007 and 2012. *Environmental Health.* 18:48

Simons, R.A., Seo, Y. **Rosenfeld, P**., (2015) Modeling the Effect of Refinery Emission On Residential Property Value. Journal of Real Estate Research. 27(3):321-342

Chen, J. A, Zapata A. R., Sutherland A. J., Molmen, D.R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.,** Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermod and Empirical Data. *American Journal of Environmental Science*, 8(6), 622-632.

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste.* Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2010). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences*. 113–125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.** (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health*. 73(6), 34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries.* Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*. Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. *WIT Transactions on Ecology and the Environment, Air Pollution,* 123 (17), 319-327.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, 70, 002252-002255.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, 70, 000527-000530.

Hensley, A.R. A. Scott, J. J. J. Clark, **Rosenfeld, P.E.** (2007). Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility. *Environmental Research*. 105, 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007). The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities. *Water Science & Technology* 55(5), 345-357.

Rosenfeld, P. E., M. Suffet. (2007). The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment. *Water Science & Technology* 55(5), 335-344.

Sullivan, P. J. Clark, J.J.J., Agardy, F. J., **Rosenfeld, P.E.** (2007). *Toxic Legacy, Synthetic Toxins in the Food, Water, and Air in American Cities.* Boston Massachusetts: Elsevier Publishing

Rosenfeld, P.E., and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash. *Water Science and Technology*. 49(9),171-178.

Rosenfeld P. E., J.J. Clark, I.H. (Mel) Suffet (2004). The Value of An Odor-Quality-Wheel Classification Scheme For The Urban Environment. *Water Environment Federation's Technical Exhibition and Conference (WEFTEC) 2004.* New Orleans, October 2-6, 2004.

Rosenfeld, P.E., and Suffet, I.H. (2004). Understanding Odorants Associated With Compost, Biomass Facilities, and the Land Application of Biosolids. *Water Science and Technology*. 49(9), 193-199.

Rosenfeld, P.E., and Suffet I.H. (2004). Control of Compost Odor Using High Carbon Wood Ash, *Water Science and Technology*, 49(9), 171-178.

Rosenfeld, P. E., Grey, M. A., Sellew, P. (2004). Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. *Water Environment Research*. 76(4), 310-315.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). Compost Demonstration Project, Sacramento California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Integrated Waste Management Board Public Affairs Office*, Publications Clearinghouse (MS–6), Sacramento, CA Publication #442-02-008.

Rosenfeld, P.E., and C.L. Henry. (2001). Characterization of odor emissions from three different biosolids. *Water Soil and Air Pollution*. 127(1-4), 173-191.

Rosenfeld, P.E., and Henry C. L., (2000). Wood ash control of odor emissions from biosolids application. *Journal of Environmental Quality.* 29, 1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. (2001). Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. *Water Environment Research*. 73(4), 363-367.

Rosenfeld, P.E., and C.L. Henry. (2001). Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants. *Water Environment Research*, 73, 388-393.

Rosenfeld, P.E., and Henry C. L., (2001). High carbon wood ash effect on biosolids microbial activity and odor. *Water Environment Research*. 131(1-4), 247-262.

Chollack, T. and **P. Rosenfeld. (**1998). Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

Rosenfeld, P. E. (1992). The Mount Liamuiga Crater Trail. *Heritage Magazine of St. Kitts*, 3(2).

Rosenfeld, P. E. (1993). High School Biogas Project to Prevent Deforestation On St. Kitts. *Biomass Users Network*, 7(1).

Rosenfeld, P. E. (1998). Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

Rosenfeld, P. E. (1994). Potential Utilization of Small Diameter Trees on Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

Rosenfeld, P. E. (1991). How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

Presentations:

Rosenfeld, P.E., "The science for Perfluorinated Chemicals (PFAS): What makes remediation so hard?" Law Seminars International, (May 9-10, 2018) 800 Fifth Avenue, Suite 101 Seattle, WA.

Rosenfeld, P.E., Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society.* Lecture conducted from Santa Clara, CA.

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Atrazine: A Persistent Pesticide in Urban Drinking Water. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Bringing Environmental Justice to East St. Louis, Illinois. *Urban Environmental Pollution.* Lecture conducted from Boston, MA.

Rosenfeld, P.E. (April 19-23, 2009). Perfluoroctanoic Acid (PFOA) and Perfluoroactane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

Rosenfeld, P.E. (April 19-23, 2009). Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*. Lecture conducted from Tuscon, AZ.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

Rosenfeld, P. E. (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23rd Annual International Conferences on Soils Sediment and Water.* Platform lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (October 15-18, 2007). The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant. *The 23rd Annual International*

Conferences on Soils Sediment and Water. Platform lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. The *23rd Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld P. E. (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

Rosenfeld P. E. (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama. *The AEHS Annual Meeting.* Lecture conducted from San Diego, CA.

Hensley A.R., Scott, A., **Rosenfeld P.E.,** Clark, J.J.J. (August 21 – 25, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006*. Lecture conducted from Radisson SAS Scandinavia Hotel in Oslo Norway.

Hensley A.R., Scott, A., **Rosenfeld P.E.,** Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition.* Lecture conducted from Boston Massachusetts.

Paul Rosenfeld Ph.D. (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference.* Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

Paul Rosenfeld Ph.D. (September 19, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, *Toxicology and Remediation PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. (September 19, 2005). Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP. *PEMA Emerging Contaminant Conference.* Lecture conducted from Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference.* Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference.* Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D. (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

Paul Rosenfeld, Ph.D. (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

Rosenfeld, P. E., Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference* Orlando, FL.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants*.. Lecture conducted from Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

Paul Rosenfeld, Ph.D. (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Using High Carbon Wood Ash to Control Compost Odor. *Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Grey, M. A. (September 22-24, 2002). Biocycle Composting For Coastal Sage Restoration. *Northwest Biosolids Management Association*. Lecture conducted from Vancouver Washington..

Rosenfeld, P.E. and Grey, M. A. (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conferenc*e. Lecture conducted from Indianapolis, Maryland.

Rosenfeld. P.E. (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation.* Lecture conducted from Anaheim California.

Rosenfeld. P.E. (October 16, 2000). Wood ash and biofilter control of compost odor. *Biofest.* Lecture conducted from Ocean Shores, California.

Rosenfeld, P.E. (2000). Bioremediation Using Organic Soil Amendments. *California Resource Recovery Association*. Lecture conducted from Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings*. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America*. Lecture conducted from Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell.* Lecture conducted from Seattle Washington.

Rosenfeld, P.E., C.L. Henry. (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest.* Lecture conducted from Lake Chelan, Washington.

Rosenfeld, P.E, C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America*. Lecture conducted from Anaheim California.

Teaching Experience:

UCLA Department of Environmental Health (Summer 2003 through 20010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded:

California Integrated Waste Management Board. $41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: $10,000 grant awarded to San Diego State University.
Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. $100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. $20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: $10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: $15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. $500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993

Deposition and/or Trial Testimony:

In the Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition, 5-14-2021
Trial, October 8-4-2021

In the Circuit Court of Cook County Illinois
Joseph Rafferty, Plaintiff vs. Consolidated Rail Corporation and National Railroad Passenger Corporation d/b/a AMTRAK,
Case No.: No. 18-L-6845
Rosenfeld Deposition, 6-28-2021

In the United States District Court For the Northern District of Illinois
Theresa Romcoe, Plaintiff vs. Northeast Illinois Regional Commuter Railroad Corporation d/b/a METRA Rail, Defendants
Case No.: No. 17-cv-8517
Rosenfeld Deposition, 5-25-2021

In the Superior Court of the State of Arizona In and For the Cunty of Maricopa
Mary Tryon et al., Plaintiff vs. The City of Pheonix v. Cox Cactus Farm, L.L.C., Utah Shelter Systems, Inc.
Case Number CV20127-094749
Rosenfeld Deposition: 5-7-2021

In the United States District Court for the Eastern District of Texas Beaumont Division
Robinson, Jeremy et al *Plaintiffs*, vs. CNA Insurance Company et al.
Case Number 1:17-cv-000508
Rosenfeld Deposition: 3-25-2021

In the Superior Court of the State of California, County of San Bernardino
Gary Garner, Personal Representative for the Estate of Melvin Garner vs. BNSF Railway Company.
Case No. 1720288
Rosenfeld Deposition 2-23-2021

In the Superior Court of the State of California, County of Los Angeles, Spring Street Courthouse
Benny M Rodriguez vs. Union Pacific Railroad, A Corporation, et al.
Case No. 18STCV01162
Rosenfeld Deposition 12-23-2020

In the Circuit Court of Jackson County, Missouri
Karen Cornwell, *Plaintiff,* vs. Marathon Petroleum, LP, *Defendant.*
Case No.: 1716-CV10006
Rosenfeld Deposition. 8-30-2019

In the United States District Court For The District of New Jersey
Duarte et al, *Plaintiffs,* vs. United States Metals Refining Company et. al. *Defendant.*
Case No.: 2:17-cv-01624-ES-SCM
Rosenfeld Deposition. 6-7-2019

In the United States District Court of Southern District of Texas Galveston Division
M/T Carla Maersk, *Plaintiffs,* vs. Conti 168., Schiffahrts-GMBH & Co. Bulker KG MS "Conti Perdido" *Defendant.*
Case No.: 3:15-CV-00106 consolidated with 3:15-CV-00237
Rosenfeld Deposition. 5-9-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
Carole-Taddeo-Bates et al., vs. Ifran Khan et al., Defendants
Case No.: No. BC615636
Rosenfeld Deposition, 1-26-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
The San Gabriel Valley Council of Governments et al. vs El Adobe Apts. Inc. et al., Defendants
Case No.: No. BC646857
Rosenfeld Deposition, 10-6-2018; Trial 3-7-19

In United States District Court For The District of Colorado
Bells et al. Plaintiff vs. The 3M Company et al., Defendants
Case No.: 1:16-cv-02531-RBJ
Rosenfeld Deposition, 3-15-2018 and 4-3-2018

In The District Court Of Regan County, Texas, 112th Judicial District
Phillip Bales et al., Plaintiff vs. Dow Agrosciences, LLC, et al., Defendants
Cause No.: 1923
Rosenfeld Deposition, 11-17-2017

In The Superior Court of the State of California In And For The County Of Contra Costa
Simons et al., Plaintiffs vs. Chevron Corporation, et al., Defendants
Cause No C12-01481
Rosenfeld Deposition, 11-20-2017

In The Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition, 8-23-2017

In United States District Court For The Southern District of Mississippi
Guy Manuel vs. The BP Exploration et al., Defendants
Case: No 1:19-cv-00315-RHW
Rosenfeld Deposition, 4-22-2020

In The Superior Court of the State of California, For The County of Los Angeles
Warrn Gilbert and Penny Gilber, Plaintiff vs. BMW of North America LLC
Case No.: LC102019 (c/w BC582154)
Rosenfeld Deposition, 8-16-2017, Trail 8-28-2018

In the Northern District Court of Mississippi, Greenville Division
Brenda J. Cooper, et al., *Plaintiffs,* vs. Meritor Inc., et al., *Defendants*
Case Number: 4:16-cv-52-DMB-JVM
Rosenfeld Deposition: July 2017

In The Superior Court of the State of Washington, County of Snohomish
Michael Davis and Julie Davis et al., Plaintiff vs. Cedar Grove Composting Inc., Defendants
Case No.: No. 13-2-03987-5
Rosenfeld Deposition, February 2017
Trial, March 2017

In The Superior Court of the State of California, County of Alameda
Charles Spain., Plaintiff vs. Thermo Fisher Scientific, et al., Defendants
Case No.: RG14711115
Rosenfeld Deposition, September 2015

In The Iowa District Court In And For Poweshiek County
Russell D. Winburn, et al., Plaintiffs vs. Doug Hoksbergen, et al., Defendants
Case No.: LALA002187
Rosenfeld Deposition, August 2015

In The Circuit Court of Ohio County, West Virginia
Robert Andrews, et al. v. Antero, et al.
Civil Action N0. 14-C-30000
Rosenfeld Deposition, June 2015

In The Iowa District Court For Muscatine County
Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant
Case No 4980
Rosenfeld Deposition: May 2015

In the Circuit Court of the 17th Judicial Circuit, in and For Broward County, Florida
Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.
Case Number CACE07030358 (26)
Rosenfeld Deposition: December 2014

In the County Court of Dallas County Texas
Lisa Parr et al, *Plaintiff*, vs. Aruba et al, *Defendant.*
Case Number cc-11-01650-E
Rosenfeld Deposition: March and September 2013
Rosenfeld Trial: April 2014

In the Court of Common Pleas of Tuscarawas County Ohio
John Michael Abicht, et al., *Plaintiffs,* vs. Republic Services, Inc., et al., *Defendants*
Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)
Rosenfeld Deposition: October 2012

In the United States District Court for the Middle District of Alabama, Northern Division
James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.
Civil Action Number 2:09-cv-232-WHA-TFM
Rosenfeld Deposition: July 2010, June 2011

In the Circuit Court of Jefferson County Alabama
Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*
Civil Action No. CV 2008-2076
Rosenfeld Deposition: September 2010

In the United States District Court, Western District Lafayette Division
Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.
Case Number 2:07CV1052
Rosenfeld Deposition: July 2009

EXHIBIT C

ADAMS BROADWELL JOSEPH & CARDOZO
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December 12, 2023

Via Email and Overnight Delivery

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Re: **Agenda Item 2: Gateway Plaza Apartments – 39160 Paseo Padre Parkway (PLN2023-00198)**

Dear Mr. Nguyen and Mr. Hungerford:

On behalf of East Bay Residents for Responsible Development ("East Bay Residents" or "EBRRD"), we submit these comments on the Agenda[1] and Staff Report[2] prepared for Public Hearing Agenda Item 2, the Application for a Discretionary Design Review Permit submitted by Kimco Realty ("Applicant") to the City of Fremont ("City") for the Gateway Plaza Apartments Project (PLN2023-00198) ("Project") as well as the CEQA Environmental Consistency Checklist ("CEQA Checklist") prepared for the Project.[3] The Project proposes to demolish a 26,500-square-foot retail and fitness building into a five-story, 206-unit apartment building with a 265-spot parking garage. The Project is located at 39160, 39300, and 39250 Paseo Padre Parkway, Fremont CA 94538 (APN 507-465-13-1). The Project is located within the Central Community Plan Area. The project site which has a General Plan Designation of City Center, and is located within the City Center

[1] City of Fremont, Agenda, Zoning Administrator Public Hearing, City of Fremont California, 39550 Liberty Street, 3:00 P.M., Niles Conference Room (Dec. 12, 2023).
[2] City of Fremont, Zoning Administrator Permit Staff Report (Dec. 12, 2023).
[3] Informational Item No. 1, PLN2023-00198, Zoning Administrator Hearing (Dec. 12, 2023) ["CEQA Checklist"].

Place Type Zone, with a Zoning Designation of CC-UO (City Center – Urban Office).[4]

City Staff assert that the Project meets the criteria for a Class 32 Infill Exemption under California Environmental Quality Act[5] ("CEQA") Guidelines Section 15332 ("Class 32" or "Infill Exemption") and a streamlining exemption pursuant to CEQA Guidelines Section 15183 ("Community Plan Exemption"),[6] which allows a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an EIR was certified and for which project-specific effects which are peculiar to the project have been previously analyzed. The CEQA Checklist and Staff Report claim that the Project would be consistent with the development density established in the City of Fremont's 2011 City of Fremont General Plan Update, for which the 2011 General Plan Update Environmental Impact Report ("EIR") was prepared, and assert that no project-level EIR is required. The City also relies on CEQA Guidelines Sections 15162 and 15164 to conclude that no subsequent EIR is required based on proposed findings that "[the CEQA Checklist] and other evidence in the record supports the use of the certified General Plan Update EIR for the project pursuant to CEQA Guidelines Sections 15162 and 15164, finding that the mitigation measures from the EIR are applied to and adequate for the proposed project, which is within the scope of the EIR, and that no further CEQA documentation is required."[7]

The City's conclusions are incorrect and unsupported by the record. As explained herein, the City cannot rely on the Class 32 exemption, on a Community Plan Exemption, or any other CEQA exemption or streamlining, because the City seeks to rely on mitigation measures as a basis for concluding that the Project is categorically exempt. The City's reliance on Sections 15183, 15162, and 15164 is also misplaced because the Project was not contemplated in the 2011 General Plan Update, and has new or more severe significant impacts than previously analyzed in the 2011 General Plan Update EIR which are peculiar to the Project site and were not known and could not have been known at the time of the EIR's certification because the Project had not yet been proposed when the 2011 EIR was certified. As a result, the Zoning Administrator ("ZA") lacks substantial evidence to

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[4] Kimco Realty, Project Description – Gateway Plaza Mixed Use Discretionary Design Review (DDR) Submittal, (Dec. 22, 2022), https://www.dropbox.com/scl/fi/a0vxhbsh173r3zotcq833/Project-Description-Gateway-Plaza-DDR-Submittal-2022-12-22-1.pdf?rlkey=1v7tvmwtidsy1gfbghmow36h9&dl=0.
[5] Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.
[6] CEQA Checklist, p. 4-5.
[7] *Id*.

approve the Project, the CEQA Checklist, or the Discretionary Design Review Permit at this time because the City has not complied with CEQA. The ZA also lacks substantial evidence demonstrating that the Project will not be detrimental to the general welfare due to inconsistencies with the General Plan, City Center Community Plan, and applicable local plans.

As discussed herein, the Project is likely to have several project-level individual and cumulative adverse impacts which were not previously analyzed require analysis and may require mitigation pursuant to CEQA. In particular, the Project is across the street from the Kaiser Permanente Fremont Medical Center, and may expose nearby sensitive receptors to significant air pollution, GHG emissions, noise, and hazards from construction and operation of the Project. The record contains inadequate project-level analysis of the Project's air quality, health risk, or noise impacts, and no analysis of whether the site can be adequately served by all required utilities and public services.[8] These impacts are peculiar to the Project and were not analyzed at a project level in the General Plan EIR. The City therefore lacks substantial evidence to support its reliance on a CEQA exemption or CEQA streamlining.

The Project also fails to demonstrate consistency with the General Plan and Fremont City Center Community Plan. The record before the ZA does not contain substantial evidence that the Project will "not be detrimental to the public health or safety [or] unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare" as required for approval of the discretionary design review permit.[9]

We prepared these comments with the assistance of acoustics, noise, and vibration expert Deborah Jue of Wilson Ihrig. Ms. Jue's Comments ("Jue Comments") and CV are attached hereto as **Attachment A**.

East Bay Residents urges the ZA to continue today's hearing and fulfill its responsibilities under CEQA and the Fremont Municipal Code by withdrawing the CEQA Checklist and preparing a project-level EIR to address the issues raised in these comments. We reserve the right to supplement these comments with additional comments, issues, and evidence at later hearings and proceedings related to the Project.[10]

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[8] 14 CCR § 15332(a), (d), (e).
[9] Fremont Municipal Code § 18.235.060(c).
[10] Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; *see Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

I. STATEMENT OF INTEREST

East Bay Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and their families who live and/or work in the City of Fremont and Alameda County.

The individual members of EBRRD live, work, and raise their families in the City and in Alameda County. They would be directly affected by the Project's unmitigated impacts. Individual members may also work on the Project itself. They would therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of EBRRD also have an interest in enforcing the City's planning and zoning laws and 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. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Residents' members are concerned about projects that are built without providing opportunities to improve local recruitment, apprenticeship training, and retention of skilled workforces, and without providing lifesaving healthcare expenditures for the construction workforce.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which the City has satisfied in this case. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[11] The EIR is the "heart" of this requirement,[12] 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

[11] Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) ("CEQA Guidelines"); *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.
[12] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

ecological points of no return."[13] To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[14] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[15]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[16] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency's CEQA analysis.[17] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon an EIR or other environmental document to meet this obligation.

Under CEQA, mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.[18] A CEQA lead agency is precluded from making the required CEQA findings to approve a project unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved. For this reason, an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[19] This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[20]

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.[21] CEQA requires an agency to

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[13] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[14] CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[15] *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.
[16] CEQA Guidelines, § 15002, subd. (a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th, at p. 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[17] Pub. Resources Code, §§ 21002-21002.1.
[18] CEQA Guidelines, § 15126.4, subd. (a)(2).
[19] *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[20] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
[21] CEQA Guidelines, §§ 15060, 15063, subd. (c).

analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.[22] A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."[23] A CEQA exemption may be invoked only if expressly authorized by the CEQA statute or guidelines and if there is no possibility of a significant effect on the environment. Exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.[24]

The CEQA Guidelines explain that when an EIR has been for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, ***on the basis of substantial evidence in the light of the whole record,*** one or more of the following:

> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
> (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
> (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
> (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the

[22] See, e.g., Pub. Resources Code, § 21100.
[23] *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).
[24] *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.

mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[25]

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an Addendum or no further documentation.[26]

The Public Resources Code does not provide for addendums, but they are discussed briefly in the CEQA Guidelines, section 15164. The Natural Resources Agency, which drafts the CEQA Guidelines, has described the purpose of an addendum as a method for making "minor changes" to an EIR:

> The concept of an addendum to an EIR is new in the CEQA [G]uidelines, although such a device has been used by many agencies previously. This section is designed to provide clear authority for the practice and to encourage other agencies to use the device as a way of making minor corrections in EIRs without recirculating the EIR. The addendum is the other side of the coin from the supplement to an EIR. This section provides an interpretation with a label and an explanation of the kind of document that does not need additional public review.[27]

CEQA Guidelines, section 15164 states the following concerning the use of addendums:

> (a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
> (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

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[25] CEQA Guidelines § 15162(a)(1)-(3).
[26] CEQA Guidelines § 15162(b).
[27] *Save Our Heritage Organisation v. City of San Diego*, 28 Cal.App.5th 656, 664–65, 239 Cal. Rptr. 3d 231, 237, review denied (Jan. 16, 2019) ("*SOHO*) (citing the Natural Resources Agency.)

> (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
> (d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
> (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

The lead agency's significance determination for each impact must be supported by substantial evidence, including accurate scientific and factual data.[28] Under CEQA, an agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[29] Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[30] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[31] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[32] In this case, the City's decision not to prepare a subsequent or supplemental EIR for the Project is not supported by substantial evidence because of these unanalyzed and/or unmitigated impacts.

Here, the City has failed to demonstrate that the Project can be lawfully approved based on the CEQA Checklist prepared by the City. The CEQA Checklist does not simply provide "some changes or additions are necessary" to the EIR as is allowed under the Addendum provision.[33] Rather, it includes a new substantive analysis for a large development project which was not specifically analyzed in the General Plan Update EIR. Second, as explained further below, the Project will result in new or more severe significant impacts than analyzed in the General Plan Update EIR. The City's decision not to prepare a subsequent or supplemental EIR

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[28] 14 C.C.R. § 15064(b).
[29] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[30] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[31] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[32] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[33] CEQA Guidelines § 15164(a).

for the project is not supported by substantial evidence.[34]

III. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT APPROVAL OF THE PROJECT UNDER A CEQA INFILL EXEMPTION

The City improperly determined that the Project qualifies for Infill Exemption under CEQA Guidelines Section 15332.[35] CEQA is "an integral part of any public agency's decision making process."[36] It was enacted to require public agencies and decision makers to document and consider the environmental implications of their actions before formal decisions are made.[37] CEQA requires an agency to conduct adequate environmental review prior to taking any discretionary action that may significantly affect the environment unless an exemption applies.[38] Thus, exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.[39]

CEQA requires an agency to analyze whether a project conforms with the applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.[40] Here, the Project fails to conform with the General Plan and the Fremont City Center Community Plan.

A. The Infill Exemption

CEQA Guidelines Section 15332 provides an exemption from CEQA for "benign infill projects that are consistent with the General Plan and Zoning requirements" of a municipality and that satisfy the following criteria:[41]

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

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[34] CEQA Guidelines §§ 15162 (a), 15164(e), and 15168(c)(4).
[35] CEQA Checklist, p. 4-5.
[36] Pub. Resources Code § 21006.
[37] *Id*., §§ 21000, 21001.
[38] *Id.,* § 21100(a); *see also* CEQA Guidelines § 15004(a).
[39] *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.
[40] CEQA Guidelines Appendix G, XI Land Use and Planning.
[41] 14 CCR § 15332.

(c) The project site has no value as habitat for endangered, rare or threatened species.
(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
(e) The site can be adequately served by all required utilities and public services.

The Project fails to meet the requirements of Section 15332(a) and (d) because, as discussed below, the Project is likely to result in inconsistencies with the General Plan and the Fremont City Center Community Plan and may result in potentially significant impacts to air quality and water quality. For these reasons, the Project fails to qualify for the Infill Exemption.

Moreover, CEQA exemptions are negated where an exception applies pursuant to CEQA Guidelines, Section 15300.2, and Public Resources Code, Section 21084. Such exceptions apply under the following circumstances:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
2. *The project and successive projects of the same type in the same place will result in cumulative impacts;*
3. *There are "unusual circumstances" creating the reasonable possibility of significant effects;*
4. The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock, outcroppings, or similar resources, within an officially designated scenic highway, except with respect to improvements required as mitigation for projects for which negative declarations or EIRs have been prepared;
5. The project is located on a site that the Department of Toxic Substances Control and the Secretary of the Environmental Protection have identified, pursuant to Government Code section 65962.5, as being affected by hazardous wastes or clean-up problems; or
6. The project may cause a substantial adverse change in the significance of an historical resource.[42]

Here, a CEQA exemption is inapplicable because: 1) the record does not contain substantial evidence that approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality; 2) the project and successive projects of the same type in the same place will result in

[42] 14 CCR § 15300.2; Pub. Resources Code § 21084 (emphasis added).

cumulative impacts; and 3) there is a reasonable probability that the project will have a significant effect on the environment due to "unusual circumstances."[43]

A. Standard of Review for the Infill Exemption

The infill exemption requires a lead agency provide "substantial evidence to support [their] finding that the Project will not have a significant effect."[44] "Substantial evidence" 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. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.[45] If a court locates substantial evidence in the record to support the City's conclusion, the City's decision will be upheld.[46]

The record demonstrates that neither the City nor the Applicant have provided substantial evidence demonstrating that the Project qualifies for the infill exemption. By contrast, there is substantial evidence demonstrating that the Project may result in significant water quality impacts which precludes reliance on the infill exemption, and there is substantial evidence supporting a fair argument that the Project will result in significant, unmitigated environmental effects that require preparation of an EIR.

B. The City Cannot Rely on a Categorical Infill Exemption to Approve the Project Because the Project May Result in Significant Impacts to Water Quality

In order to approve the Project under an Infill Exemption, the City must determine, based on substantial evidence, that approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality. Here, the Project may result in significant water quality impacts that are specific to the Project, were not analyzed in the General Plan EIR, and which the CEQA Checklist fails to adequately analyze or mitigate.

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[43] 14 CCR § 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 C4th 1086.
[44] *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.
[45] CEQA Guidelines § 15384.
[46] *Bankers Hill Hillcrest*, 139 Cal.App.4th at 269.

The Phase I Environmental Site Assessment identified one recognized environmental condition for the Property:

> A former dry-cleaning facility was located adjacent to the Property, #1 Cleaners (2003-2021) and Gateway Cleaners/Panache Cleaners (1990-2002). According to a 1997 Phase II investigation, tetrachloroethylene (PCE) was detected in soil vapor up to 39,500 ug/m3. Another Phase II investigation was conducted in 2009 which found no impacts to soil or groundwater but did not collect soil vapor samples. This dry cleaner is known to have used PCE until 2002. Due to the former dry cleaner's proximity to the Property and the documented presence of PCE in soil vapor, this former dry cleaner is considered a REC.

The Phase II Report provides that "PCE impacts in the subsurface at the Site and adjacent units, all detections have been compared to their respective San Francisco Bay Regional Water Quality Control Board (RWQCB) Environmental Screening Levels (ESLs) for subslab/soil gas vapor intrusion, groundwater vapor intrusion and direct exposure ***in commercial/industrial settings."***[47] The Phase II ESA failed to compare residual contamination to the more stringent residential ESLs which apply to the Project.

The Project aims to convert the contaminated site to residential use, not commercial/industrial use. Project construction will also disturb soil and groundwater, potentially releasing contaminants during construction. These impacts are peculiar to the Project site and were not known or analyzed at the time the General Plan EIR was prepared because the Project had not been proposed in 2011. The CEQA Checklist fails to analyze the Project's hazardous contamination impacts compared to residential screening levels, which may be significant and unmitigated. The City therefore lacks substantial evidence demonstrating that approval of the Project would not result in any significant effects relating to water quality, as required by CEQA Guidelines Section 15332 or any other exemption from environmental review.[48] Moreover, the onsite contamination may constitute an unusual circumstance where an exemption is likewise inapplicable.

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[47] Focused Phase II Subsurface Environmental Investigation Report, 39250 Paseo Padre Parkway Fremont, California 94538 (July 14, 2023), p. 8, https://www.dropbox.com/scl/fi/5gou7pd7257mnk3l1y8gt/doc_Phase_II_revised_2023.07.14-3.pdf?rlkey=ko2ofv6a2hzhttna9eut75mzy&dl=0.

[48] 14 CCR § 15332.

C. The City Cannot Rely on a Categorical Infill Exemption or Any Other CEQA Exemption to Approve the Project Because the Project May Result in Significant Impacts to Air Quality

In order to approve the Project under an exemption, the City must determine, based on substantial evidence, that approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The Project is across the street from the Kaiser Foundation Fremont Hospital.[49] Occupants of hospitals are considered sensitive receptors. The Kaiser Permanente IVF Clinic is within 90 feet of the Project.[50]

The Air Quality, Energy, and Greenhouse Gas Emissions Analysis ("Air Quality Analysis") prepared for the Project, provides, absent substantial evidence that "Once the project is constructed, the project would not be a source of substantial emissions. Therefore, nearby sensitive receptors are not expected to be exposed to substantial pollutant concentrations during project construction or operation."[51] But the Air Quality Analysis fails to analyze sources of operational emissions, including the back-up generator that will be required for the elevator onsite.

California Building Code Title 24, Part 2 § 2702.2.2 requires that "Standby power shall be provided for elevators and platform lifts."[52] Where, as here, a building has an accessible floor four or more stories above an emergency exit, the building must have an elevator with a standby power for the elevator equipment.[53] The Project is required to have standby power in the form of a back-up generator for the onsite elevator. But the Air Quality analysis fails to analyze the Project's back-up generator's air quality and GHG emissions impacts in comparison to BAAQMD thresholds or on nearby sensitive receptors. Given the proximity to Kaiser Permanente Hospital, and the IVF clinic within 90 feet, the air quality and health risk impacts of the back-up generator may be significant, but are insufficiently analyzed and mitigated. The City cannot rely on a categorical exemption, or any other CEQA exemption, because the Project may result in significant impacts to air quality which require mitigation.

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[49] CEQA Checklist, p. 7.
[50] Air Quality, Energy, and Greenhouse Gas Emissions Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (September 22, 2023), p. 29.
[51] *Id.*
[52] California Building Code Title 24, Part 2 § 2702.2.2.
[53] *Id.* § 1009.4.1; 3008.8.

D. The City Cannot Rely on a Categorical Infill Exemption or Any Other CEQA Exemption to Approve the Project Because the Project May Result in Significant Impacts From Noise

An EIR must be prepared because the Project results in significant noise impacts, precluding reliance on an Infill Exemption or any other CEQA exemption. Here, the Project's Noise analysis analyzes the Project's noise impacts to Kaiser Hospital with a 600-foot distance between the center of construction to sensitive receptors in the hospital. This metric is incorrect, and unsupported by substantial evidence. In fact, the construction noise will be heard by receptors in Kaiser as close as 400 feet away from the edge of the Project's construction site. The Noise Memo states that "[t]he nearest noise-sensitive use is the Kaiser Hospital to the east, approximately 400 feet from the eastern edge of the project site."[54] But, when quantifying whether noise impacts will be significant, the Noise Memo inexplicably relies on a distance of 630 feet from Kaiser hospital.[55]

Table H: Potential Construction Noise Impacts at Nearest Receptor

Receptor (Location)	Composite Noise Level at 50 feet[1] (dBA L_{eq})	Distance from Center of Construction Activities (feet)	Composite Noise Level (dBA L_{eq})
Commercial (West)	88	90	83
Commercial (South)		235	74
Medical Center (North)		290	72
Medical Center (East)		390	70
Kaiser Hospital (East)		630	66

Source: Compiled by LSA (2023).
[1] The composite construction noise level represents the site preparation phases which are expected to result in the greatest noise level compared to other phases.
dBA L_{eq} = average A-weighted hourly noise level

[56]

The CEQA Checklist's conclusion that noise impacts will be less than significant is therefore inconsistent with the City's own noise analysis and not supported by substantial evidence. EBRRD's noise and acoustical expert consultant Deborah Jue of Wilson Ihrig reviewed the CEQA Checklist and determined that

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[54] Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (Oct. 31, 2023), p. 13, https://adamsbroadwell-my.sharepoint.com/:b:/p/dweber/EaVNgjxY-MtEofFKnd8z_ewBR3QUGKqssfKdAY5KgRynJQ?e=XyLkhc.
[55] *Id.* at 17.
[56] Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (Oct. 31, 2023), p. 13, https://www.dropbox.com/scl/fi/shggcx3v2izvsega62oqq/Fremont-Gateway-Plaza-Noise-Memo-20231031.pdf?rlkey=v1lvgglymwet8qylpzpaizgc7&dl=0.

noise from construction of the Project will be potentially significant, but remains unmitigated. Ms. Jue explains that the methodology used in the Noise Memo "is not adequate to identify potentially significant noise and vibration impacts since activities such as demolition and compaction would occur near the north and east property lines, closest to sensitive buildings. The Medical Center appears to be 90 ft to the north of the project, and the Kaiser hospital appears to be 415 ft to the east. Recalculating the noise and vibration impacts could identify significant impacts requiring mitigation."[57] An exemption is improper and an EIR must be prepared to adequately analyze the Project's potentially significant noise impacts to nearby sensitive receptors.

E. The City Cannot Rely on a Categorical Infill Exemption Or Any Other CEQA Exemption to Approve the Project Because the Project May Result in Significant Cumulative GHG Impacts

An EIR must be prepared and an exemption is improper, where, as here, the Project and successive projects of the same type in the same place will result in cumulative impacts.[58] The CEQA Checklist provides that, concurrent with adoption of the 2011 General Plan Update, the City also prepared and certified a General Plan Update EIR (SCH#2010082060). The 2011 General Plan EIR identifies potentially significant environmental impacts in the topics of Transportation and Circulation, Cultural and Archaeological Resources, Air Quality, Agricultural Resources, Noise, Utilities and Service Systems, Hydrology and Water Quality, and Global Climate Change. Mitigation were identified to reduce all potentially significant effects to a less-than-significant level, except for the following:

- Unacceptable levels of service at specified intersections and on specified roadway segments
- Air quality emissions and Clean Air Plan consistency
- Noise increases related to traffic, and noise conflicts of incompatible uses and construction noise
- Potential demolition of cultural and historic resources
- Loss or conversion of prime or unique farmland to urban uses, and
- Cumulative greenhouse gas emissions[59]

The Project will contribute to and exacerbate these impacts. The CEQA Checklist fails to meaningfully address the Project's cumulative impacts and instead states that "[n]o feasible mitigation was found capable of fully reducing

[57] Jue Comments, p. 1.
[58] 14 CCR § 15300.2.
[59] CEQA Checklist, p. 3.

these impacts."[60] The 2011 General Plan results in potentially significant, unmitigated cumulative greenhouse gas emissions, for which no mitigation would fully reduce the significant impacts.[61] Here, the Project's increased contribution to the General Plan's significant exceedances of cumulative greenhouse gas emissions is a project-level impact that is peculiar to the Project site, was not analyzed in the General Plan EIR, and will result in more severe GHG impacts than previously contemplated. These project-specific impacts must be analyzed in a project-level EIR.

The CEQA Checklist states, absent substantial evidence that "[t]here are no further cumulative GHG effects associated with the Project, and an exception under CEQA Guidelines Sec. 15300.2 (b) pertaining to cumulative GHG impacts does not apply to the Project."[62] An exception to the exemption is applicable here, because the Project's construction and operational emissions may result in a cumulatively significant greenhouse gas emissions impact, especially in light of the General Plan's significant cumulative GHG impact.

The CEQA Checklist states that "[t]he project would also be subject to local policies that *may* affect emissions of greenhouse gas emissions."[63] The CEQA Checklist's reference to local policies that "may affect emissions of greenhouse gas emissions" does not constitute adequate mitigation to reduce the Project's potentially significant cumulative greenhouse gas emissions impacts.

IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT APPROVAL OF THE PROJECT UNDER A COMMUNITY PLAN EXEMPTION

CEQA Guidelines Section 15183 (Community Plan) may apply only when a Project does not have impacts that are peculiar to the proposed project or parcel, are new or more significant than previously analyzed, are potentially significant off-site or cumulative impacts, or cannot be substantially mitigated by uniformly applicable development policies or standards.[64]

As discussed above, the Project's site-specific impacts were not analyzed in the General Plan EIR, which was relied upon for both the General Plan Update and the City Center Community Plan. The 15183 Community Plan exemption does not

[60] *Id.*
[61] *Id.* at 3.
[62] *Id.* at 51.
[63] CEQA Checklist, p. 51.
[64] 14 CCR § 15183(a)-(c).

apply to the Project because neither the Fremont City Center Community Plan, nor any of the other planning documents relied on in the Staff Report or CEQA Checklist, actually quantified project-level health risks, noise impacts, hazards, or traffic impacts. This Project was not contemplated in the Community Plan, or General Plan because the Project Application was filed December 12, 2022, long after both plans were adopted by the City.[65] The Fremont City Center Community Plan therefore did not fully address the Project's peculiar and more significant impacts related to soil and groundwater contamination, and from construction TAC emissions, traffic impacts, and noise, and there is substantial evidence demonstrating that the standard conditions of approval would not substantially mitigate these significant impacts, or reduce them to the greatest extent feasible, as required by CEQA.[66]

The Project will have new or more severe significant impacts than previously analyzed in the General Plan or Community Plan. As discussed above, the Project site is highly contaminated and could pose a significant health and safety risk to construction workers, nearby residents, and off-site receptors which was not fully disclosed or analyzed under the Fremont City Center Community Plan EIR[67], or General Plan Update EIR. Furthermore, as discussed herein, the Project's health risks from TAC emissions, and GHG emissions during construction and operation may be significant and unmitigated. These impacts are peculiar to the Project and require site-specific CEQA analysis.

As described below, the site-specific analysis conducted for the Project in the CEQA Checklist is legally deficient in several ways and fails to incorporate all feasible mitigation to reduce these impacts to less than significant levels. Therefore, the City may not rely on a Community Plan Exemption for Project approval, and must provide detailed analysis of the Project's impacts in a subsequent or supplemental EIR.

Similarly, the absence of any previous project-specific analysis renders the City's determination that Standard Development Requirements ("SDRs") would mitigate the impact unsupported. The City's reliance on SDRs to mitigate these impacts, without first analyzing them in an EIR, violates the requirements of Section 15183, rendering it inapplicable to the Project.

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[65] City of Fremont, Universal Planning Application, Gateway Plaza MU, APN 507-465-13-1, (Dec. 12, 2022), https://www.dropbox.com/scl/fi/jf78hu7f65vjrxcmtkkrf/Universal-Application.pdf?rlkey=f8engmvhy41q9xv1nzlsown5s&dl=0.
[66] PRC § 21081(a).
[67] City of Fremont, California, Fremont City Center Community Plan, (May 19, 2015), https://www.fremont.gov/home/showpublisheddocument/1625/637752665509700000.

A. The City Cannot Rely on a Community Plan Exemption to Approve the Project Because the Project May Result in Significant Impacts from Noise

As detailed above and in Deborah Jue's comments attached, the Project results in potentially significant noise impacts from construction which are not adequately analyzed or mitigated in the General Plan EIR, Noise Element, or Community Plan.

Ms. Jue determined that noise from traffic will be more significant than analyzed in the General Plan and Community Plan. Ms. Jue determined that the traffic noise analysis included in the Noise Memo does not adequately analyze truck traffic noise which is more severe than the free-flow noise levels analyzed previously. The General Plan Noise Element provides that trucks passing by at 50 feet can reach noise levels of 75-85 dBA. These noise levels may result in a significant noise impact to nearby sensitive receptors.

Ms. Jue concludes that the City's Noise Analysis for the Project is not supported by substantial evidence for its failure to appropriately evaluate the potential significance of temporary noise increases from construction traffic. Moreover, Ms. Jue found that the truck traffic noise analysis should consider the speed and stop-and-go conditions which can generate more severe noise levels than free-flow traffic.[68] Substantial evidence supports a fair argument that noise from the Project may be more severe than previously analyzed. A project-level EIR must be prepared to adequately analyze and mitigate the Project's potentially significant noise impacts, before the Project can lawfully be approved.

B. The City Cannot Rely on a Community Plan Exemption to Approve the Project Because the Project May Result in Significant Impacts from Hazards

The Project relies on SDRs to reduce hazards impacts to less than significant levels.[69] But the CEQA Checklist does not detail which SDRs will be required to reduce the Project's hazards impacts to less than significant. Moreover, the CEQA Checklist later states that no mitigation measures will be required to reduce the Project's hazards impacts.[70] The CEQA Checklist is therefore internally inconsistent and fails to provide substantial evidence to support the City's proposed finding that the Project would not result in significant, unmitigated hazardous

[68] Jue Comments, p. 2.
[69] CEQA Checklist, p. 52.
[70] *Id.* at 54.

materials impacts. These impacts must be disclosed and mitigated in a project-level EIR.

The CEQA Checklist also provides, absent substantial evidence that "[t]he proposed project would result in no new significant effects, on-site, off-site or cumulative, for this topic and there is no new information indicating a more severe adverse impact than discussed in the General Plan Update EIR."[71] But, the particular contamination of this site was not discussed in the General Plan Update EIR, and was not analyzed or mitigated in the General Plan Update EIR. The General Plan Update EIR refers only to air pollution from toxic air contaminants from dry cleaners, but does not specifically refer to hazardous contamination in soil as a result of dry cleaners historical use.[72] The hazardous contamination onsite may therefore be more severe than previously analyzed in the General Plan Update EIR, and must be analyzed in a Project level EIR at this time, before the Project can lawfully be approved.

V. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO APPROVE THE PROJECT'S ENTITLEMENTS

In order to approve a discretionary design review permit, the Zoning Administrator must make the following findings:

(a) *The proposed project is consistent with the general plan, any applicable community or specific plan, planning and zoning regulations, and any adopted design rules and guidelines;*

(b) When a proposed project is inconsistent with an adopted design rule, the purpose and intent of the design rule is met through alternative means;

(c) The multifamily residential1 project's architectural, site, and landscape design *will not be detrimental to the public health or safety*; or a nonmultifamily project's architectural, site, and landscape design will not unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare.[73]

As shown herein, the Project is inconsistent with the Project does not conform with the General Plan Safety and Noise Element which requires the City to "[m]aintain sufficient regulation of land use and construction to minimize potential health and safety risks associated with future, current or past use of hazardous materials in Fremont."[74] As shown above, the Project will result in potential health

[71] *Id.*
[72] Fremont General Plan Update EIR, p. 4-260.
[73] Fremont Municipal Code § 18.235.060 (emphasis added).
[74] Fremont General Plan, Safety and Noise Element (Dec. 2011), p. 10-60.

and safety risks associated with the onsite contamination that was not adequately mitigated by the Standard Conditions of Approval, nor by the General Plan or Community Plan.

Moreover, the Project does not conform with the requirements of the General Plan Noise Element which requires that construction noise exceeding approximately 62 Ldn is only "Conditionally Acceptable" where the "Specified land use may be permitted only after detailed analysis of the noise reduction requirements and *needed noise insulation features* included in the design."[75] No noise insulation features were included as part of the Project design nor as mitigation for potentially significant noise impacts to Kaiser Hospital.

Table 10-4
Land Use Compatibility for
Community Exterior Noise Environments

Land Use Category	Exterior Noise Exposure (Ldn)															
	<55		55		60		65		70		75		80		>80	
Single-Family and Multi-Family Residential																
Hotels, Motels and other lodging																
Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds																
Schools, Libraries, Museums, Hospitals, Personal Care, Meeting Halls, Churches																
Office Buildings, Business, Commercial, and Professional																
Auditoriums, Concert Halls, Amphitheaters																

NORMALLY ACCEPTABLE:
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special insulation requirements

CONDITIONALLY ACCEPTABLE:
Specified land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features included in the design.

UNACCEPTABLE:
New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies

[76]

[75] Fremont General Plan, Safety and Noise Element (Dec. 2011), p. 10-64 (emphasis added).
[76] Fremont General Plan, Noise and Safety Element, p. 10-64.

Table H: Potential Construction Noise Impacts at Nearest Receptor

Receptor (Location)	Composite Noise Level at 50 feet[1] (dBA L_{eq})	Distance from Center of Construction Activities (feet)	Composite Noise Level (dBA L_{eq})
Commercial (West)	88	90	83
Commercial (South)		235	74
Medical Center (North)		290	72
Medical Center (East)		390	70
Kaiser Hospital (East)		630	66

Source: Compiled by LSA (2023).
[1] The composite construction noise level represents the site preparation phases which are expected to result in the greatest noise level compared to other phases.
dBA L_{eq} = average A-weighted hourly noise level

77

The Project's potential construction noise impacts at the nearest receptors exceeds the General Plan Noise and Safety Elements requirements for "Community Exterior Noise Environments" as shown in the charts above.[78]

The CEQA Checklist fails to mitigate the Project's potentially significant noise impacts, as required by the General Plan's Noise Element. The CEQA Checklist's conclusion that noise impacts will be mitigated to less than significant is not supported by substantial evidence because the City fails to quantify the noise reductions. The Noise Memo does not provide any evidence regarding the ability of SDR measures to reduce noise below the thresholds of significance, and neither are the specific heights and locations of temporary noise barriers for construction identified.[79] Absent this data, the City's determination that noise impacts are less than significant is not supported by substantial evidence.

Moreover, the City cannot approve the discretionary design review permit because the Project may be detrimental to public health due to the potentially significant hazards impacts, cumulative greenhouse gas emissions impacts, and air quality impacts from construction toxic air contaminants, as detailed herein.

VI. THE PROJECT IS INCONSISTENT WITH THE CITY'S HOUSING ELEMENT AND REGIONAL HOUSING NEEDS ASSESSMENT

The City's Housing Element provides that the Project site was contemplated for construction of 645 moderate-income units.[80] This Project only proposes

[77] Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments Project, Fremont, California, (Oct. 31, 2023), p. 13.
[78] *Id.*; Fremont General Plan, Noise and Safety Element, p. 10-64.
[79] Jue Comments, p. 2.
[80] City of Fremont Housing Element (2023-2031), p. 8-51.

construction of 206 apartment units affordable to moderate-income households.[81] This results in a dearth of 439 units contemplated in the General Plan Housing Element, that will not be built and do not bring the City closer to reaching its Regional Housing Needs Allocation ("RHNA") goal. "In order to meet the RHNA targets… 574 new housing units for moderate income would need to be built in Fremont."[82] Additionally, in lieu of providing at least 10% of all units as affordable to low-income households, as required by Fremont Municipal Code § 18.155.030(b), the Applicant has agreed to pay an affordable housing fee in lieu of construction of units affordable to low-income and moderate-income households on site, in conformance with FMC §18.155.085(a).[83] More affordable units must be provided for the Project to be consistent with the City's Housing Element and state law.

The Fremont Municipal Code provides that it is the goal of the City to foster an adequate supply of housing for all persons at all economic levels, thereby ensuring the preservation of an economically balanced community.[84] The Municipal Code recognizes that "[b]etween 2015 and 2020, the private market did not produce sufficient unregulated housing units affordable to households earning extremely low, very low, low, or moderate incomes."[85] Further, the municipal code recognizes that:

> The ability for lower wage workers to live and work in the same city has become increasingly difficult. Local workers that cannot access affordable housing in Fremont face longer, more costly commutes and reduced access to public transit. Additionally, the increased distance between affordable housing and job opportunities contributes to traffic congestion and greenhouse gas emissions.[86]

The Project's failure to provide sufficient affordable housing contravenes the housing goals laid out in the Municipal Code and is detrimental to the general welfare of the City of Fremont.

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[81] Kimco Realty, Project Description – Gateway Plaza Mixed Use Discretionary Design Review (DDR) Submittal, (Dec. 22, 2022).
[82] Fremont General Plan Update DEIR, SCH No. 2010082060 (July 2011), p. 4-30.
[83] City of Fremont, Gateway Plaza Mixed Use, Affordable Housing Plan Proposal, (April 14, 2023), https://www.dropbox.com/scl/fi/tdo7iv6j23em8zvgptaav/Doc_2023-04-14-Affordable-Housing-Proposal-Application-Form-Gateway-Mixed-Use-2.pdf?rlkey=wwa6vnixs3mo7rzwst9hi2z96&dl=0.
[84] Fremont Municipal Code § 18.155.010.
[85] *Id.* at § 18.155.010(b)(2).
[86] *Id.* at § 18.155.010(b)(4).

VII. CONCLUSION

As discussed herein, the City lacks substantial evidence to rely on a Class 32 Infill Exemption, Community Plan Exemption, or CEQA Addendum for Project approval. The Project results in potentially significant project-level impacts which are peculiar to the Project site and require mitigation, thus precluding reliance on any CEQA exemption. The Project does not conform with the General Plan, or Community Plan, and results in significant air quality, hazards, water quality, noise, and traffic impacts. As a result, the Project cannot be approved until the City complies with CEQA and prepares an Initial Study and an EIR for the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,

Kelilah Federman

Kelilah D. Federman

Attachment
KDF:acp

ATTACHMENT A

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #23-002.38

December 12, 2023

Kelilah Federman, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, California 94080

SUBJECT: Fremont Gateway Plaza Apartments Project, Discretionary Design Review

Dear Ms. Federman,

As requested, we have reviewed the information and noise impact analysis in the following documents:

Project Description – Gateway Plaza Mixed Use
Discretionary Design Review (DDR) Submittal
Letter submitted to City of Fremont Community Development
From Kimco Realty
December 22, 2022

Noise and Vibration Impact Analysis for the Fremont Gateway Plaza Apartments
Memorandum submitted to City of Fremont
From LSA
October 31, 2023

It is our understanding that a project which modifies an existing General Plan must be evaluated for potentially significant noise and vibration impacts that are not otherwise addressed in prior CEQA documents.

The LSA memorandum will henceforth be referenced as the "Noise Assessment". Our comments are as follows:

1. The noise and vibration analyses for construction uses a distance from the "center" of the to the nearby sensitive buildings (Table H, page 17) . This methodology is not adequate to identify potentially significant noise and vibration impacts since activities such as demolition and compaction would occur near the north and east property lines, closest to sensitive buildings. The Medical Center appears to be 90 ft to the north of the project, and the Kaiser hospital appears to be 415 ft to the east. Recalculating the noise and vibration impacts could identify significant impacts requiring mitigation.

2. The Noise Assessment does not evaluate the substantial noise increase. Baseline noise was measured and shown in Table F (page 14) and Attachment C, which shows that mid-day noise levels are typically less than 60 dBA Leq (LT-1) during the daytime hours at locations set back from the traffic on Walnut Avenue. Thus, the construction noise calculated for activities at the "center" of the project shown in Table H would be at least 6 to 12 dBA higher than the baseline noise environment. Depending on what activities would be conducted closer to the north and east project property lines, the construction noise could be 10 to 15 dBA higher than the baseline noise environment, which would be significant and require mitigation. It is possible that these significant impacts would remain significant unavoidable even with mitigation.

3. The vibration analysis does not take into account vibration sensitive equipment at the Kaiser Hospital or the nearby Medical Centers and the potentially significant impact construction vibration could have on the operation of such equipment in these facilities.

4. The traffic noise analysis compares the noise increase on a CNEL basis (page 15) without providing any basis for the noise impact criteria. Caltrans evaluates the Leq from traffic noise on the peak noise hour, which is also more appropriate to evaluate the potential significance of temporary noise increases from construction traffic. Truck traffic noise analysis should consider the speed and stop-and-go conditions which can generate higher noise levels than free-flow traffic.

5. The Noise Assessment refers to a section on "Recommended Measures" in the first partial paragraph on page 18 which appears to be missing. There does not appear to be any summary of the noise and vibration reduction or mitigation measures identified through the Noise Assessment. Prior Policies and Implementation goals from the General Plan are cited on pages 7 through 10, and standard requirements from the Fremont Municipal Code are cited on pages 10 and 11. The Noise Assessment does not provide any evidence regarding the ability of these measures to reduce noise below the thresholds of significance, and neither are the specific heights and locations of temporary noise barriers for construction identified.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG

Deborah A. Jue, INCE-USA
Principal

wilson ihrig fremont gateway plaza - d jue comments.docx

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

DEBORAH JUE

Principal

Since joining Wilson Ihrig in 1990, Ms. Jue has been involved in with many projects from environmental assessments and entitlements, through design development, construction documents and construction administration support. As an acoustical consultant, she has provided noise measurement, analysis and recommendations to control noise and vibration both at the interior of the project and at the neighboring properties. She has authored many reports concerning compliance with the requirements of California Noise Insulation Standards, Title 24, local Noise Elements, environmental assessments and Federal noise criteria, and is well aware of the additional design and construction technique requirements to achieve industry standards. Ms. Jue has authored or provided input for many environmental documents and technical studies in accordance with NEPA and California's CEQA regulations, most of them related to surface transportation, and she gives presentations to public officials when necessary to explain construction noise problems, noise mitigation goals, and noise control methods. She can develop construction noise and vibration criteria to address vibration damage potential to nearby buildings and sensitive structures, and vibration annoyance or disruption potential for occupants of nearby buildings.

Education

- M.S. in Mechanical Engineering, University of California, Berkeley, 1998
- B.S. in General Engineering: Acoustics, Stanford University, 1988

Professional Associations (Member)

- American Society of Mechanical Engineers
- Acoustical Society of America
- National Council of Acoustical Consultants
- Institute of Noise Control Engineering
- WTS
- Transportation Research Board, AEP80 Standing Committee Member (2021-2024)

Research and Published Papers

- ACRP Report 175, ACRP 07-14, *Improving Intelligibility of Airport Terminal Public Address Systems*
- NCHRP 25-25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects*
- *Transportation Research Record*, V. 2502, "Considerations to Establish Ground-Borne Noise Criteria to Define Mitigation for Noise-Sensitive Spaces"

Relevant Experience

- California High Speed Rail Caltrain Corridor EIR/EIS, San Francisco to San Jose
- UC Berkeley Northgate Hall A/V Renovations, Berkeley
- MacArthur Station, *long-term construction noise and vibration monitoring*, Oakland
- Safeway @ Claremont & College, *HVAC noise and construction noise monitoring*, Oakland
- ACTC I-80/Ashby, *interchange traffic noise analysis*, Berkeley and Emeryville
- ACTC I-680 Express Lanes, *traffic noise analysis*, Contra Costa County, CA
- Chase Arena, *construction noise and vibration monitoring*, San Francisco