COMMENTS	RESPONSES
EXHIBIT B	

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

SOIL WATER AIR PROTECTION ENTERPRISE
2656 29th Street, Suite 201
Santa Monica, California 90405
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 452-5555
Fax: (310) 452-5550
Email: prosenfeld@swape.com

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 unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. 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 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, 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 dozens of sites and has testified as an expert witness on more than ten cases involving exposure to air contaminants from industrial 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., 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 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 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 Iowa District Court For Wapello County
Jerry Dovico, et al., Plaintiffs vs. Valley View Sine LLC, et al., Defendants
Law No,: LALA105144 - Division A
Rosenfeld Deposition, August 2015

In The Iowa District Court For Wapello County
Doug Pauls, et al.,, et al., Plaintiffs vs. Richard Warren, et al., Defendants
Law No,: LALA105144 - Division A
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 Third Judicial District County of Dona Ana, New Mexico
Betty Gonzalez, et al. Plaintiffs vs. Del Oro Dairy, Del Oro Real Estate LLC, Jerry Settles and Deward DeRuyter, Defendants
Rosenfeld Deposition: July 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 United States District Court Western District of Oklahoma
Tommy McCarty, et al., Plaintiffs, v. Oklahoma City Landfill, LLC d/b/a Southeast Oklahoma City Landfill, et al. Defendants.
Case No. 5:12-cv-01152-C
Rosenfeld Deposition: July 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 of Southern District of Texas Galveston Division
Kyle Cannon, Eugene Donovan, Genaro Ramirez, Carol Sassler, and Harvey Walton, each Individually and on behalf of those similarly situated, *Plaintiffs*, vs. BP Products North America, Inc., *Defendant.*
Case 3:10-cv-00622
Rosenfeld Deposition: February 2012
Rosenfeld Trial: April 2013

In the Circuit Court of Baltimore County Maryland
Philip E. Cvach, II et al., *Plaintiffs* vs. Two Farms, Inc. d/b/a Royal Farms, Defendants
Case Number: 03-C-12-012487 OT
Rosenfeld Deposition: September 2013

COMMENTS	RESPONSES
EXHIBIT C	

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

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Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

Geologic and Hydrogeologic Characterization
Industrial Stormwater Compliance
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
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 25 years of experience in environmental policy, assessment and remediation. 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) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014;
- 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 100 environmental impact reports since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, Valley Fever, 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 industrial facilities.
- Manager of a project to provide technical assistance to a community adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- 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.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

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 taught physical geology (lecture and lab and introductory geology at Golden West College in Huntington Beach, California from 2010 to 2014.

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 examination, 2009-2011.

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October 8, 2021

Via Email and Overnight Mail

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300 North Coast Highway
Oceanside, CA 92054
Email: SMadera@oceansideca.org

Re: Comments on Draft Supplemental Environmental Impact Report for the Ocean KAMP Project in the City of Oceanside, County of San Diego (SCH Number 2006111033)

Dear Mr. Madera:

J-1

We are writing on behalf of San Diegans for Sustainable, Economic and Equitable Development ("SD SEED") regarding the Draft Supplemental Environmental Impact Report ("DSEIR") prepared by the City of Oceanside ("City) for the Ocean KAMP Project (Tentative Map (T19-00004),[1] Development Plan (D19-00016),[2] Conditional Use Permit ("CUP") (CUP19-00021)[3] (SCH Number

[1] The Tentative Map proposes to divide the Project site into sixteen (16) lots, of which nine (9) lots would be for residential uses. City of Oceanside, *Draft Supplemental Environmental Impact Report; Ocean KAMP Resort, Spa, Adventure* at 1-7 (August 2021)(hereinafter "DSEIR"). A lease agreement between the City and Applicant would be required for use of an approximately 1.95-acre parcel (APN 160-270-77) in the southwestern corner of the Project site that is currently owned by the City. *Id.* The City also has a water well designated for placement within this parcel, which could be used to extract groundwater. *Id.*

[2] The Project site zoning is Community Commercial ("CC"). DSEIR at 3-5. The Land Use Element of the City's General Plan specifies that the CC designation is to provide the community with commercial centers with commercial establishments as well as entertainment and dining. *Id.* Residential and open space uses are not allowed by right in the CC designation but may be permitted with the approval of a Mixed-Use Development Plan and a CUP. *Id.*

[3] A CUP is required for the proposed hotel uses and approval of the Mixed-Use Development Plan, as described above in Footnote 2. DSEIR at 1-7.

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J-1 This comment is introductory in nature and the author's characterization of the Project and the SEIR. No further response is necessary.

2006111033) ("Project"). The Project is located in the City on approximately 94.25 acres of land north of Mission Avenue and State Route 76, immediately east of Foussat Road and west of Fireside Street.[4] The Project site includes 15 parcels, comprised of APNs 160-270-31, -79, and -82; 160-280-14, -48, -49, -50, -51, -53, -54, and -55; 160-290-58, -60, -63; as well as 160-270-77.[5]

The Project proposes a mixed-use development consisting of residential, commercial, and open space uses.[6] The proposed residential component includes 700 multi-family units.[7] The Project also includes approximately 486,100 square-feet of commercial space uses, including a 300-room hotel with associated facilities, surf lagoon, and up to 126,400 square-feet of retail, medical, office, dining, and fitness facilities.[8]

J-1 cont.

The DSEIR is intended to supplement the Pavilion Final Environmental Impact Report ("Pavilion FEIR"), which was certified by the City on November 19, 2008.[9] Pursuant to Sections 15162 and 15163 of the California Environmental Quality Act ("CEQA") Guidelines, the DSEIR states that it evaluates only the environmental impacts that are potentially greater than effects disclosed in the Pavilion FEIR, and omits an analysis of effects expected to be similar or identical to those assessed for the prior Project.[10] The DSEIR asserts that "[m]odifications particularly relate to potential changes in proposed land uses associated with the new Project (i.e., mixed-use, including residential development, versus the primarily retail uses previously analyzed in the Pavilion FEIR) and/or where changes in regulations or City plans may require new analysis."[11]

J-2

The DSEIR fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "to list ways in which the significant effects of such a project might be minimized."[12] First and foremost, the decision to supplement the

[4] City of Oceanside, *Notice of Availability of Draft Environmental Impact Report* at 1.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] DSEIR at 1-2.
[10] *Id.*
[11] *Id.*
[12] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

J-2 The SEIR does not fail to serve as an informational document. Pursuant to CEQA §21166, *"when an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: (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. (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."*

J-2 cont.

Pavilion FEIR for the Ocean KAMP Project pursuant to CEQA Guidelines Section 15163 is a prejudicial abuse of discretion. The Ocean KAMP Project is an entirely new project, rather than a minor modification of the previous Pavilion Project.[13] Accordingly, the City is required to engage in an initial study of the Project to determine whether an EIR is required under Public Resources Code Section 21151.

J-3

Second, even if a subsequent or supplemental EIR was appropriate (which it was not), there have been substantial changes from the prior Pavilion Project which will require major revisions of the Pavilion FEIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects, and there is new information demonstrating that the Project will have new and more severe effects than analyzed in the Pavilion FEIR that trigger the need for a more comprehensive new or subsequent EIR.[14] The environmental analysis in the DSEIR is inadequate to support the City's reliance on CEQA Guidelines Section 15163 and not supported by substantial evidence.

J-4

In particular, the DSEIR fails to analyze the 'whole of the action' by improperly segmenting review of the Project's residential uses, and impermissibly deferring this analysis to unspecified future review at the time of development plans.[15] The Project Description in the DSEIR is also not "accurate, stable and finite" as required by CEQA's informational requirements due to numerous omissions regarding the Project's residential uses (e.g., maps, site plans, designs, materials, what buildings would be built, number of buildings, units per building) and uncertainty regarding Project timelines.[16] Baseline data to establish existing conditions for noise and transportation/traffic was inaccurate and unsupported, thereby undermining meaningful public review. Ambient noise levels were established by brief, isolated measurements taken at the southern edge of the Project site only, which are wholly inadequate to ensure an accurate evaluation of the Project's significant noise impacts. With regards to the baseline data for traffic impacts, the DSEIR found that the Project's commercial and hotel components would generate less Vehicle Miles Travelled ("VMT") than the purported baseline, which strongly suggests that the data relied on hypothetical conditions that improperly skewed the baseline.

J-5

[13] *See* 14 Cal. Code Regs. ("CCR") § 15163(a)(2). Per CEQA Guidelines Section 15163, a Supplemental EIR can be prepared if only *minor* additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.
[14] Pub. Resources Code § 21166; 14 CCR § 15162(a).
[15] *See* DSEIR at 2-8.
[16] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.
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J-2 (cont.) Further consistent with CEQA Guidelines 15163, *"(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if: (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation."*

The following provisions of Section 15163 also apply: *(b) The supplement to the EIR need only contain the information necessary to make the previous EIR adequate for the project as revised*.

The comment does not accurately describe the project or the applicable law. As demonstrated by the SEIR and the project materials, as it relates to the proper inquiry regarding the nature and magnitude of the environmental impacts, only minor additions or changes were necessary to make the 2008 Pavilion EIR adequate for purposes of the project. Although not required for CEQA compliance, in furtherance of informed decision making, the City, as Lead Agency decided to prepare the complete SEIR that includes a discussion of all environmental topics addressed in the 2008 Pavilion EIR plus the additional topics of energy, wildfire, and vehicle miles travelled that had been added to the CEQA Guidelines Appendix G since certification of the certified EIR. When a Lead Agency decides to prepare any EIR, a Notice of Preparation (NOP) must be issued. No Initial Study is required to be prepared to support the NOP or prior to developing an EIR.

J-3 As described in the Introduction to the SEIR, the SEIR was prepared in accordance with the California Environmental Quality Act (CEQA), as codified in California Public Resources Code (PRC) Section 21000 et. seq., and the State CEQA Guidelines in the Code of Regulations, Title 14, Division 6, Chapter 3, particularly CEQA Guidelines Section 15163, addressing Supplemental EIRs. The Ocean KAMP Project SEIR is intended to serve as a supplement to the Pavilion FEIR. The supplemental analysis focused on the changes in proposed land uses associated with the revised project (i.e., mixed-use, including residential development, versus the primarily retail uses previously analyzed in the Pavilion FEIR)

J-3 (cont.) and/or where changes in the CEQA guidelines, applicable regulations or City plans may require new analysis. Elements of the prior analysis that are found to be largely unchanged were not re-analyzed in detail in the SEIR. A summary analysis of those areas for which impacts remain the same was also provided for the reader's and decision maker's use. The analysis in the SEIR was therefore developed consistent with the intent of CEQA Guidelines Section 15163 and was based on substantial evidence.

J-4 The SEIR does not improperly segment or defer analysis of any component of the proposed project, including the residential component. The comment does not accurately describe the applicable CEQA requirements. An EIR is legally adequate if it makes a good faith effort at full disclosure and provides a reasonable analysis of the project's significant environmental impacts. The phrase "whole of the action" quoted in the comment refers to the entire project as proposed for approval. As it relates to the residential component, the only actions before the City are a tentative subdivision map establishing residential development lots for a maximum of 700 residential units and the mixed-use development plan that includes residential design guidelines, residential typologies, and residential development regulations to supplement the regulations found in the project site's zoning. The specific designs for the individual residential phases are not known yet so the approvals for the same are not requested. Nonetheless, the Project Description provided in the SEIR is accurate, stable, finite, and developed at the appropriate level of detail to support the residential tentative map application and other discretionary actions proposed. The Project Description establishes the maximum residential density for the project, the location and typology of the future residential developments, including design and architectural features, density by lot, landscaping, open space requirements and expected parking. The SEIR's approach to the analysis of the residential component, which the comment fails to acknowledge will be subject to future City discretionary, design review approvals prior to any development, comports with the information disclosure requirements of CEQA. The description of the residential uses and timeline for construction and operation of the project as a whole are consistent and stable throughout the supporting technical reports and the analyses presented throughout the EIR.

J-5 The project includes the development of approximately 126,000 SF of retail / commercial uses. This portion of the project is evaluated as a "Retail" use. Per the City's Traffic Impact Analysis Guidelines, locally serving retail uses are presumed to decrease VMT. However, retail projects over 50,000 SF are considered regionally serving and require the preparation of a VMT analysis. The threshold for the determination of a significant transportation VMT impact for Retail uses is any net increase in total Regional VMT.

In order to calculate the project induced change to regional VMT, the traffic engineer, Linscott, Law and Greenspan (LLG), coordinated with SANDAG to input the project into the SANDAG Series 13 Year 2020 Travel Demand Model.

Two models were obtained: a total gross regionwide VMT report for baseline (without project) conditions, and a total gross regionwide VMT report including the proposed project. The "without project" model includes about 33-acres of "community shopping center" land uses on the project site. Since the site is currently vacant these land uses are likely associated with the previously contemplated and approved, but never developed Pavilion retail project. The "with project" model includes a 300-room hotel, 126,000 SF of retail/commercial uses, and 700 residential dwelling units on the site.

The City's Traffic Impact Analysis Guidelines do not provide specific guidance regarding the appropriate baseline to be considered when assessing a retail/commercial land use's effect on the regional VMT. ITE's *Guidelines for Transportation Impact Studies in the San Diego Region* (May 2019), which was also consulted for guidance, recommend that "regional-serving retail projects be presumed to have significant VMT impacts if they increase VMT above the level that would occur for conditions *without the project*." Since the approved Pavilion project could be developed at any time, it's inclusion in the baseline condition is considered appropriate based on coordination with City staff.

An EIR addressing development of the project site with the previously proposed Pavilion project was certified by the City of Oceanside in 2008, making it more than a "hypothetical allowable condition" as posited by the commenter. The Pavilion project could be developed at any time,

J-5 (cont.) making its inclusion in the "without project" model appropriate. The *Woodward Park* case study noted in the comment is not an apt comparison. The erroneously considered baseline in this case included the "maximum-size development allowable on the project site under existing plan and zoning designations", which is a markedly different assumption than considering the development of a specific project with an approved EIR.

Regarding the project's hotel use, which is also noted in the comment - the City's Traffic Impact Analysis Guidelines do not provide specific guidance pertaining to the analysis of regionally serving hotels. Therefore, the City of San Diego's guidelines were assumed, which direct hotel land uses to be analyzed under the "Commercial" land use methodology. The threshold for the determination of a significant transportation VMT impact for Commercial uses is 15% below the average Regional VMT per employee, which is considered the "baseline" condition. Therefore, the decrease in overall regional VMT is not applicable to the hotel use.

For the noise baseline discussion, please refer to Response J-13.

J-6 Finally, the DSEIR fails to adequately disclose and mitigate the new and more severe impacts related to noise, transportation/traffic, air quality, health risks, greenhouse gas ("GHG") emissions, water quality and supply, biological resources, and hazards. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[17] As set forth below, the DSEIR, in tandem with the Pavilion FEIR, does not comply with these requirements of the CEQA. The City of Oceanside, as the lead agency, must withdraw the DSEIR and prepare a legally adequate, project-level EIR to address the potentially significant impacts described in this comment letter and the attached expert comments. In the alternative, the City must prepare a subsequent EIR pursuant to CEQA Guidelines Section 15162 to address the substantial changes in the Project, and the new and more severe impacts of the current Project that were not analyzed or mitigated in the Pavilion FEIR.

J-7 We prepared our comments with the assistance of technical experts, including air quality, GHG emissions, and geologic hazards experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., at Soil / Water / Air Protection Enterprise ("SWAPE"); traffic and transportation expert Daniel T. Smith Jr., P.E.; and biological resources expert Scott Cashen, M.S. SWAPE's comments, Mr. Hagemann's *curriculum vitae*, and Mr. Rosenfeld's *curriculum vitae* are attached to this letter as Exhibit A. Mr. Smith's comments and his *curriculum vitae* are attached to this letter as Exhibit B. Mr. Cashen's comments and his *curriculum vitae* are attached to this letter as Exhibit C.

I. STATEMENT OF INTEREST

J-8 SD SEED is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the San Diego region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the United Association of Plumbers, Steamfitters, Refrigeration & HVAC Service Technicians Local 230, the International Association of Bridge and Structural Ironworkers Local 229, and Sprinkler Fitters Local 669, along with their members, their families, and other individuals who live and work in the San Diego region.

[17] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

J-6 The comment offers an opinion that the SEIR does not adequately disclose the project impacts under CEQA. See the response to comment J-2 as this comment raises that same unsubstantiated argument. The SEIR and the other substantial evidence in the City files regarding the project demonstrate that the City properly analyzed and disclosed the project impacts in accordance with CEQA.

J-7 Specific comments contained in Exhibits A and B of the letter are addressed below in responses J-38 through J-55 and J-56 through J-62, respectively.

J-8 This comment provides an introductory statements and opinions. The comment does not address the adequacy of the Draft SEIR. No further response is required.

Individual members of SD SEED and its member organizations include City of Oceanside residents Omar Rivera, Lance Wulff, and Darin Thibodeau. These individuals live, work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

SD SEED has an interest in enforcing 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 the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

J-8 cont.

SD SEED supports the development of commercial, research and development, and office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. Commercial projects should avoid adverse impacts to air quality, public health, climate change, noise, water, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. LEGAL BACKGROUND

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.[18] "CEQA's fundamental goal [is] fostering informed decision-making."[19] "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind."[20]

"The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the

[18] 14 C.C.R. § 15002(a)(1).
[19] *Laurel Heights Improvement Assn.*, 47 Cal.3d at 402.
[20] *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.
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environment within the reasonable scope of the statutory language."[21] CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[22] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures.[23]

A. Subsequent CEQA Review

J-8 cont.

When a previously approved project for which an EIR was prepared is modified, 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.[24]

In assessing the need for subsequent or supplemental environmental review, 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 have occurred:

(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

[21] *Communities for a Better Env't. v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109.
[22] 14 CCR § 15002(a)(1).
[23] 14 CCR§ 15002(a)(2) and (3); *See also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
[24] Pub. Resources Code § 21166; CEQA Guidelines § 15162.

J-8 cont.

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 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]

"The subsequent review provisions,... are [] designed to ensure that an agency that proposes changes to a previously approved project 'explore[s] environmental impacts not considered in the original environmental document.' [internal citation omitted]"[26]

CEQA authorizes a Supplemental EIR only if "*minor* additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation."[27] Because of this limited situation in which a Supplemental

[25] 14 C.C.R. §§ 15162(a)(1)-(3).
[26] *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal. 5th 937, 951.
[27] 14 C.C.R. § 15163(a)(2) (emphasis added).
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J-8 cont.

EIR can be used, CEQA allows it to contain "only the information necessary to make the previous EIR adequate for the project as revised."[28] In all other cases, a new EIR or subsequent EIR is required to fully analyze the revised project and its impacts. As explained by the court in *Friends of Coll. of San Mateo Gardens*, "[a]n agency that proposes changes to a previously approved project must determine whether the changes are '[s]ubstantial' and 'will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.' [internal citation omitted]."[29]

III. THE CITY'S DECISION TO SUPPLEMENT THE PAVILION FEIR FOR THIS PROJECT IS A PREJUDICIAL ABUSE OF DISCRETION

CEQA Guidelines Section 15163 states that an SEIR may be prepared if "only *minor* additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation."[30] Here, the Project, as currently proposed, is an entirely new project rather than a minor modification of the former project analyzed over ten years ago in the Pavilion FEIR. Accordingly, the City should have conducted an initial study of this Project to determine whether an EIR is required under Public Resources Code Section 21151.

J-9

A. The City's Reliance on the Supplemental Review Provisions of CEQA Guidelines Section 15163 is Not Supported by Substantial Evidence

To proceed with a SEIR, the question is whether "the original document retains some relevance to the ongoing decision-making process" and informational value.[31] The court in *California Coastkeeper All. v. State Lands Com.* examined when the supplemental review provisions under Section 15163 apply, concluding that "CEQA Guidelines section 15163 applies when 'an EIR can be made adequate by additions or changes that respond to a limited set of issues'…."[32] "Whether an initial environmental document remains relevant despite changed plans or circumstances—like the question whether an initial environmental document

[28] 14 C.C.R. § 15163(b).
[29] *Friends of Coll. of San Mateo Gardens,* 1 Cal. 5th at 950.
[30] 14 C.C.R. § 15163(a)(2) (emphasis added).
[31] *Friends of Coll. of San Mateo Gardens,* 1 Cal. 5th at 951-953.
[32] *California Coastkeeper All. v. State Lands Com.* (2021) 64 Cal. App. 5th 36, 59, *review denied* (July 28, 2021).

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J-9 As described in Responses J-2 through J-4 above, a Supplemental EIR was determined to be the appropriate environmental document for the proposed project. The project occurs on the same site of the Pavilion project that was analyzed in the previously certified FEIR and although proposed uses are partially different than the existing Community Commercial zoning, the possible impacts of the modified project are within the scope of what is permissible under Section 15163 of the state CEQA Guidelines. As a result of approvals associated with the Pavilion project, the entirety of the project site has been graded and the ground is heavily disturbed, meaning that the project impacts associated with ground disturbance have already occurred and have already been assessed and mitigated by the 2008 Pavilion FEIR. Acknowledging these prior impacts that have already occurred related to ground disturbance at the project site seeks to provide information to the reader in a way that does not minimize the ground-disturbing impacts that have already occurred as a result of the Pavilion project.

Based on the changes to the project described in Section 2.0 Project Description and the analysis and conclusions of the reports addressing the revised project, the City, as Lead Agency decided to prepare a complete Supplemental EIR. As part of this decision, the City decided to analyze all environmental topics of the 2008 Pavilion EIR plus the additional topics of energy, wildfire, and vehicle miles travelled that had been added to the CEQA Guidelines Appendix G since certification of the prior EIR. An NOP was released for the project. No Initial Study is required to be prepared once the decision to prepare a SEIR has been made. Please see response J-2 and J-3 for further and more detailed information on the appropriateness of the SEIR.

requires major revisions due to changed plans or circumstances—is a predominantly factual question. …A court's task on review is [] to decide whether the agency's determination is supported by substantial evidence;…."[33]

Here, the decision to proceed under CEQA's supplemental review provisions is not supported by substantial evidence. The Project is substantially different than the Pavilion Project. It includes an entirely new residential component that was not part of the Pavilion Project, which consisted of a proposed 950,000 square foot ("SF") shopping center with associated retail uses.[34] The stale and outdated analysis in the Pavilion FEIR fails to retain informational value relevant to the decision-making process for this Project. Moreover, changed circumstances under which the Project is undertaken require more than "minor [] changes" to make the Pavilion FEIR adequate for the Project. The City must instead perform an initial study and prepare an EIR.

J-9 cont.

Table 2-1 in the DSEIR identifies some of the differences between the Pavilion FEIR and the currently proposed Project, but fails to adequately disclose the numerous project differences.[35] In reality, this Project is far from an iteration of the former project such that the Pavilion FEIR lacks informational value to the present decision-making process.[36] The Ocean KAMP Project is an entirely new project for which an EIR is required.

First, this Project proposes an entirely different mixed-use development that includes residential, commercial, and open space uses. None of the environmental impacts assessed in the Pavilion FEIR were analyzed with regards to residential uses. Now, approximately thirty-six (36) acres of the Project site will be dedicated to 700 new residential units (e.g., townhomes, condominiums, apartments, and senior housing).[37] As discussed herein and evaluated in the attached expert reports, residential uses present a host of new significant impacts that were not analyzed or even considered in the Pavilion FEIR.[38] For example, residential land uses add

[33] *Friends of Coll. of San Mateo Gardens,* 1 Cal. 5th at 952-953.
[34] DSEIR at 1-2.
[35] *Id.* at 2-4—2-5.
[36] *See Friends of Coll. of San Mateo Gardens,* 1 Cal. 5th at 951-952 ("[U]nder CEQA, when there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations 'turn[ ] on the value of the new information to the still pending decisionmaking process.' [internal citation omitted]"
[37] *Id.*
[38] *Id.*
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J-9 (cont.) The SEIR addresses where changes in the CEQA guidelines, applicable regulations or City plans may require new analysis. Elements of the prior analysis that are unchanged or minor in nature were evaluated and a summary analysis of those areas for which impacts remain the same was provided for the reader's and decision maker's use. For those impact areas that triggered the need to prepare a supplemental EIR, the SEIR demonstrates that the impacts would be mitigated to a level less than significant with proposed mitigation. Therefore, the analysis in the SEIR was prepared consistent with CEQA Guidelines Section 15163.

"additional noise attenuation considerations," and can increase the severity of the significant impacts evaluated in the Pavilion FEIR, such as impacts to wildlife and habitats.[39] This Project also proposes entirely new commercial uses, including a 300-room hotel with associated facilities and surf lagoon.[40] The Pavilion FEIR did not evaluate or consider these uses, thereby offering no analysis of impacts related to residential uses, and no relevance or informational value to the analysis of this Project. Finally, the new recreational amenities and open space areas proposed by this Project were not considered or analyzed in the Pavilion FEIR (i.e., "[a]pproximately 20 acres of the site would be dedicated open space, offering opportunities for walking, hiking, running, and biking.")[41]

J-9 cont.

Second, the requested Tentative Map entitlement for this Project is for sixteen (16) lots—nine (9) of which would be for residential uses—as compared to the ten (10) lots evaluated in the Pavilion FEIR.[42]

Third, although the current Project site shares the same general project location with the Pavilion Project,[43] this Project would require 300,000 cubic yards ("CY") of fill material for grading activities in addition to the 496,000 CY of fill needed to raise the site for the former project.[44] This additional volume of fill and grading activities will result in additional construction activities and ground disturbance, and will therefore result in additional impacts related to air quality, GHG emissions, health risks, biological resources, geologic hazards, and water resources, that were not analyzed in the Pavilion FEIR and is not simply a "minor change" from the previous project.

Fourth, the current Project design, drawings, and materials are entirely different from the former project. For example, the resort component of this Project includes new features, like a three-acre surf lagoon/wave pool that is described as an "uncharacteristic land use in the City of Oceanside...."[45] Moreover, the resort "[d]esign would be modern and rectilinear, ... Primary wall features include glass,

[39] DSEIR at 4.2-7; Expert comments by Scott Cashen (September 30, 2021)("Exhibit C")(hereinafter "Cashen").
[40] *Id.*
[41] DSEIR 2-9.
[42] *Id.* at 2-6. Note that the DSEIR incorrectly asserts that there are "6 fewer lots than 2008" when in fact there are six *additional* lots for this Project. *Id.*
[43] *Id.* (current project is a few acres larger).
[44] *Id.*
[45] DSEIR, Appendix G at 5.

metal trimming and wood elements with notable striation."[46] The resort features also include substantial glass fencing around the resort pools and surf lagoon, which was not a part of the former project's design.[47] Residential uses would be designed with "clean modern lines [using] materials associated with classic California coastal modernism."[48] The proposed modern design and materials are substantially different from the former project, which was "influenced by Mediterranean, agrarian, and California Modem aesthetics. Materials include natural-toned cement plaster, simulated stone, and wood and metal siding."[49] Introducing "uncharacteristic land use[s]," new materials, and substantially different designs materially changes the environmental impact analysis in the Pavilion FEIR, especially with regards to impacts on biological resources.[50]

J-9 cont.

Finally, as compared to the project assessed in the Pavilion FEIR, this Project "would increase the number of multiple story structures (and associated increased heights)."[51] For example, "within the four-story resort structure, [a] smaller footprint would be maximized through vertical rather than horizontal (more sprawling) construction."[52]

The aforementioned Project changes and changed circumstances are distinguishable from the changes evaluated in *California Coastkeeper All. v. State Lands Com.*.[53] There, the court held that substantial evidence supported the California State Land Commission's determination that changes to a water desalination plant project, including the installation of one-millimeter stainless steel wedgewire screens and three-port diffusers, and reduction in seawater intake volume, would necessitate only minor additions or changes to make the previous EIR adequate such that the agency could proceed pursuant to the supplemental EIR provisions under CEQA and CEQA Guidelines.[54] By way of comparison, this Project is proposing entirely new land uses, additional lots, 300,000 CY of additional fill material, entirely new design features, different materials, and added multiple

[46] DSEIR at 2-7.
[47] *Id.* at 2-15.
[48] *Id.* at 2-9.
[49] City of Oceanside, *Final Environmental Impact Report for the Pavilion at Oceanside* at S-8 (September 4, 2008)(hereinafter "Pavilion FEIR").
[50] *See e.g.,* Cashen.
[51] DSEIR at 4.1-4.
[52] *Id.* at 2-7.
[53] *California Coastkeeper All.,* 64 Cal. App. 5th at 61.
[54] *Id.*

J-9 cont.

story structures with associated increased heights. As discussed herein and in the attached expert reports, the changes proposed by the Project result in a new and different project than previously analyzed and increase the severity of a multitude of potentially significant impacts that require substantial changes to the Pavilion FEIR. For the foregoing reasons, electing to supplement the Pavilion FEIR for this Project under CEQA Guidelines Section 15163 is a prejudicial abuse of discretion.

B. The Ocean KAMP Project Requires Preparation of an EIR

J-10

If the modifications or changes render the previous environmental document irrelevant, then courts have held that the agency should instead conduct an initial study pursuant to Section 21151 to determine whether the project may have significant effects on the environment.[55] CEQA mandates that an EIR "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."[56] Unlike an EIR, a SEIR "need only contain the information necessary to make the previous EIR adequate for the project as revised."[57] Thus, the analysis of environmental effects in an SEIR is limited to only those impacts that may result in potentially greater effects than disclosed in the original document.[58] Elements deemed to be unchanged are not even examined in an SEIR.[59]

The DSEIR analyzed an impermissibly narrow scope of environmental impacts that included Aesthetics, Land Use and Planning, Noise, Public Services, Transportation and Traffic, and Utilities and Service Systems.[60] Despite the potential for the Project to result in new or substantially more severe significant impacts to Biological Resources, Hydrology and Water Quality, Geology and Soils, Hazards and Hazardous Materials, Population and Housing, and Wildfires, as supported by evidence provided herein and attached, the DSEIR omits the requisite impact analysis and fails to require new mitigation measures to reduce significant impacts in each of these areas to less than significant levels.

[55] *Id.*
[56] Pub. Res. Code § 21061.
[57] 14 C.C.R. § 15163(b).
[58] *Id.*
[59] *Id.*
[60] DSEIR at 4-2.

J-10 The City as Lead Agency prepared a complete SEIR for the proposed project. The SEIR analyzes all environmental topics of the 2008 Pavilion EIR plus the additional topics of energy, wildfire, and vehicle miles travelled that had been added to the CEQA Guidelines Appendix G since certification of the prior EIR. For each environmental topic, the potential impacts associated with the proposed project were analyzed in light of the analysis and mitigation measures provided in the 2008 Pavilion EIR. Chapter 4 provided detailed analysis of Aesthetics, Land Use and Planning, Noise, Public Services, Transportation and Traffic, and Utilities and Service Systems. As a result of the analyses provided in Chapter 4, only new or more severe impacts were identified associated with Noise and Transportation and Traffic. These impacts were found to be reduced to a level less than significant with the proposed mitigation. As further described in J-9, the proposed mix of uses within the same project footprint and the results of the analysis of these proposed changes are not so different from the Pavilion EIR such that they require preparation of a standalone EIR. In fact, tiering from the prior EIR allows an acknowledgement of the prior activities and impacts associated with the prior ground disturbing activities providing a more comprehensive analysis of the entirety of actions that have occurred on the site. Therefore, the SEIR is the appropriate CEQA document consistent with CEQA Guidelines Section 15163.

Chapter 5 included the analyses of environmental topics that were found to be adequately addressed by the Pavilion EIR and resulting in no new or more severe impacts than the Pavilion EIR, including Agricultural and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, GHG, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, and Paleontological Resources. Issue areas found not to be significant in either the Pavilion EIR or the

The limited list of impacts assessed in the DSEIR also improperly constrains the alternatives analysis.[61] Although an EIR must ensure that "'*all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official,'" the same standard does not apply to a SEIR.[62] Focusing solely on noise and transportation impacts, the DSEIR set forth a cursory alternatives analysis that examined a Reduce Project Alternative in addition to the No Project Alternative, which is statutorily required by CEQA Guidelines Section 15126.6, subdivision (e), and did not meaningfully analyze alternatives that would avoid or less impacts in these other resource areas, as required by CEQA.[63]

J-10 cont.

But for the reliance on the incorrect legal framework, a new EIR for the Project would have analyzed a greater number of impacts, required new mitigation measures, and set forth an adequate alternatives analysis that addressed the full scope of the Project's significant impacts. For the foregoing reasons, the City must instead conduct an Initial Study and prepare an EIR for this Project.

IV. THE DSEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

Even if a SEIR were appropriate (which it is not), the analysis in the DSEIR is inadequate because it fails to accurately describe the full scope of the Project. Pursuant to Sections 15162 and 15163 of the CEQA Guidelines, upon a determination that project modifications, changes in the circumstances under which a project will be undertaken, or new information would result in new significant impacts not identified in the original EIR, or cause a substantial increase in the severity of significant impacts identified in the EIR, then the lead agency has the discretion to prepare a SEIR.[64]

J-11

Although a SEIR "need contain only the information necessary to make the previous EIR adequate for the project as revised,"[65] courts have recognized that both SEIRs and EIRs "are subject to the same general procedural and substantive

[61] *Id.* at 8-2.
[62] *Citizens of Goleta Valley*, 52 Cal. 3d at 564 ("The core of an EIR is the mitigation and alternatives sections.")
[63] DSEIR at 8-6—8-9; Pub. Res. Code, § 21002.
[64] 14 C.C.R. §§ 15162; 15163.
[65] 14 C.C.R. § 15163(b); *See also Friends of Coll. of San Mateo Gardens*, 1 Cal. 5th at 949 ("'The purpose behind the requirement of a subsequent or supplemental EIR ... is to explore environmental impacts not considered in the original environmental document....'")
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J-10 (cont.) SEIR included Energy, Population and Housing, Recreation, and Wildfire.

Because alternatives are meant to address significant environmental impacts of a proposed project, the alternatives analysis focused on reducing the significant noise and transportation impacts identified with the proposed project. Alternatives need not address impacts not considered significant. The alternatives presented in Section 8 of the EIR reasonably focused on the No Project and a Reduced Project alternative meant to minimize potential impacts associated with traffic noise and residential VMT. No other alternatives are required to be assessed.

J-11 The Project Description presented in Chapter 2.0 of the SEIR is comprehensive, accurate, stable, finite, and developed at the appropriate level of detail to support the residential tentative map application and other discretionary actions proposed. The description of the proposed uses is consistent with the application materials accepted by the City and as presented throughout the supporting technical reports and the analyses presented in the SEIR. Please see response J-4 for further discussion.

As described in J-4, the residential uses are at the tentative map stage, no more formal lotting or building configuration information is available or known. Neither is information regarding potential homebuilders critical to analyzing potential impacts. Further, the project's projected population as presented in the Economic Analysis is not presented in the Project Description because the information in the Economic Analysis was not prepared to support any of the technical analyses within the EIR. Although population projections can be used in the analysis of certain issue areas in the SEIR, including public services and utilities, transportation, or greenhouse gas emissions, different agencies, departments, and models may use different factors and criteria when estimating population. For example, in the Economic Analysis, the residential population estimates are based on an assumed average household size for occupied units but also considers the number of

requirements."[66] For this DSEIR, as with an EIR, the inquiry is whether the DSEIR "'includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'... A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.'"[67] Insufficient analysis or outright omissions regarding the magnitude of the environmental impact are not substantial evidence questions; instead, "the inquiry is predominantly legal and, '[a]s such, it is generally subject to independent review.'"[68]

J-11 cont.

A. The DSEIR Violates CEQA by Piecemealing its Review of the Project's Residential Uses

A project under CEQA means the "whole of an action which has the potential for resulting in either a direct physical change in the environment, or reasonably foreseeable indirect physical change in the environment."[69] CEQA prohibits segmenting the review of the significant environmental impacts of a project.[70] CEQA mandates "that 'environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.'"[71] Public agencies must construe the project broadly to capture the whole of the action and its environmental impacts.[72]

Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences.[73] As the Court of Appeals stated, "[t]he CEQA

[66] *Friends of Coll. of San Mateo Gardens*, 1 Cal. 5th at 952.
[67] *Golden Door Properties, LLC v. Cty. of San Diego* (2020) 50 Cal. App. 5th 467, 505; *See also Save our Peninsula Comm. v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 118 ("'The error [in failing to include relevant information in the EIR] is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'")
[68] *Id.*
[69] 14 C.C.R. § 15378(a).
[70] *Laurel Heights Improvement Assn.*, 47 Cal. 3d at 396; *See also* Pub. Res. Code § 21002.1(d).
[71] *Id.*; *See also City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.
[72] 14 C.C.R. § 15378.
[73] *See Citizens Assn. for Sensible Development of Bishop Area*, 172 Cal. App. 3d at 165–168.

J-11 (cont.) visitors to the hotel based on average room occupancy and other factors. Conversely, population projections used to generate the future residential water demands were based upon the 2020–2045 population forecasts from the San Diego Association of Governments (SANDAG) Series 13 Growth Forecast. It would not be appropriate to use population estimated prepared for an economic analysis when other standard population generation factors are more regularly used by agencies and models depending upon the technical issue area. The number of residential dwelling units, commercial square footage, and resort components provided an accurate level of information for different agencies and models to determine impacts without identifying specific population inputs.

Finally, the project's construction and phasing timeline were provided by the Applicant and their engineering team during development of the technical reports and SEIR. The Applicant and the engineering team are the subject matter experts qualified to provide assumptions for when and how long construction will occur. Although the SEIR acknowledged that market demand may affect the ultimate construction completion date, assumptions in the SEIR Project Description, technical analyses, and modeling assumed all 700 units would be constructed over a 26 month period and completed by August 2023. As described in Appendix J of the SEIR, the timeframe and August 2023 end date are conservative assumptions assuming the maximum number of allowable units will be provided within a compressed timeframe. As models typically assume improved technological conditions in each subsequent year, this timeframe and construction end date provide a conservative estimate for modeling and impact analysis purposes.

process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish."[74]

J-11 cont.

Here, the Project proposes a mixed-use development consisting of commercial, resort, residential, and open space uses.[75] Approximately thirty-six acres of the Project site would be for residential uses and an equivalent acreage would be dedicated to commercial uses.[76] The proposed residential uses are a substantial component of the Project and necessary to achieve the Project Objectives.[77] Nevertheless, the DSEIR omitted a host of information about the reasonably foreseeable proposed residential uses in the Project Description, opting to instead defer the disclosure of these details to an unspecified future date at the time of development plans (e.g., "[g]ross developable acreage and dwelling unit distribution would be determined in conjunction with detailed residential Project development plans through the site plan review process.").[78] The DSEIR's reliance on future review of development plans for residential uses amounts to improper piecemealing in violation of CEQA's requirements. Consideration must be given to the whole of the action in the DSEIR, including the Project's residential uses.

Residential uses change the nature of the Project and scope of the potentially significant environmental effects. The addition of multi-family dwelling units also triggers different land use obligations on the part of the Applicant, which require separate mitigation under CEQA and local land use codes. Yet, by improperly deferring the analysis of residential uses to future individual review of development plans, the DSEIR fails to adequately analyze the direct, indirect, and cumulative impacts of the entire Project as CEQA requires.[79]

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[74] *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268; *See also Whtiman v. Board of Supervisors* (1979) 88 Cal.App.3d 402 (EIR for an exploratory oil well that failed to analyze the impacts associated with an proposed pipeline was inadequate and violated CEQA).
[75] DSEIR at S-2.
[76] *Id.* at 2-8; S-2.
[77] *See Id.* at S-2, which identifies the following Project Objective: "Address the City's housing supply needs by providing approximately 700 additional housing units within the City, and allow for a broader range of housing through provision of multi-family units, to support City provision of housing supporting a variety of life stages/market rates."
[78] *Id.* at 2-8.
[79] *See generally, Bozung,* 13 Cal.3d at 283-84; *City of Santee,* 214 Cal.App.3d at 1452; *Citizens Assn. for Sensible Development of Bishop Area,* 172 Cal.App.3d at 165.

For the foregoing reasons, the DSEIR fails to fully disclose, analyze, and mitigate the Project's potentially significant impacts, and lacks an adequate discussion of alternatives with regards to residential uses.[80] The City must prepare an EIR to fully disclose, analyze, and mitigate the impacts of the current Project, which includes residential uses.

B. The DSEIR Fails to Provide an Accurate and Complete Project Description

J-11 cont.

The Project Description "'is an indispensable element of a valid EIR.'"[81] California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."[82] "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input."[83] Whether the Project Description complies with CEQA's requirements is a question of whether the agency has abused its discretion and the court's standard of review is de novo.[84]

CEQA requires that a project be described with enough particularity that its impacts can be assessed.[85] The Project Description must include the location and boundaries of the proposed project on a detailed map, a list of the project objectives, "[a] general description of the project's technical, economic, and environmental characteristics," and a brief discussion about the intended use of the EIR.[86] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining

[80] E.g., Pub. Resources Code, §21002, 210021.1(a); CEQA Guidelines, §§ 151363, 15121, 15140, 15151 (An EIR is informational document whose purpose is to disclose and mitigate impacts, analyze a reasonable range of alternatives, and select as the project any alternative which can achieve project objectives, but is more protective of the environment, consistent with CEQA's substantive mandate); CEQA Guidelines, § 15378 (project description must include all project components).
[81] *Washoe Meadows Community v. Dept. of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287.
[82] *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo,* 71 Cal.App.3d at 193.
[83] *County of Inyo,* 71 Cal.App.3d at 193, 198.
[84] *See Stopthemillenniumhollywood.com,* 39 Cal. App. 5th at 15; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 513; *Washoe Meadows Community,* 17 Cal.App.5th at 286-287.
[85] 14 CCR § 15124; *See Laurel Heights Improvement Assn.,* 47 Cal.3d at 192-193.
[86] 14 C.C.R. § 15124(a)-(d).
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meaningful public review.[87] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[88]

The Project Description in the DSEIR is deficient for two reasons. First, critical details about the proposed residential uses for the Project are improperly omitted. Second, the Project timelines for construction activities and operations are unclear and baseless. The failure to comply with CEQA's informational requirements amounts to a prejudicial abuse of discretion and demands recirculation of the DSEIR.

J-11 cont.

The DSEIR's incomplete Project Description with regards to residential uses is a fatal flaw affecting the legitimacy of the DSEIR's already limited environmental impacts analysis and corresponding mitigation measures. In *Stopthemillenniumhollywood.com v. City of Los Angeles*, the court invalidated the EIR upon determining that the EIR failed to set forth "any concrete project proposal, instead choosing concepts and 'impact envelopes' rather than an accurate, stable, and finite project," and that this omission of relevant information was prejudicial.[89] There, the court concluded that the EIR's project description was neither stable nor finite given the failure "to describe the siting, size, mass, or appearance of any building proposed to be built at the project site," instead present[ing] different conceptual scenarios that Millennium or future developers may follow for the development of this site."[90] The court also distinguished the decision in *South of Market Community Action Network v. City and County of San Francisco* in which the court held that the project description contained the requisite information, including "site plans, illustrative massing, building elevations, cross-sections and representative floor plans for both" office space or residential uses.[91] In fact, plaintiffs in *South of Market* did not identify any information missing from the project description.[92] Unlike in *South of Market* and akin to *Stopthemillenniumhollywood.com*, the DSEIR's Project Description omits a host of information about the proposed residential uses.

Like the deficient EIR in *Stopthemillenniumhollywood.com,* the DSEIR fails to include any maps or site plans with details about the proposed residential uses.

[87] *Id.*; *See also Laurel Heights Improvement Assn.*, 47 Cal.3d at 192-193.
[88] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.
[89] *Stopthemillenniumhollywood.com,* 39 Cal. App. 5th at 20.
[90] *Id.* at 18.
[91] *S. of Mkt. Cmty. Action Network v. City & Cty. of San Francisco* (2019) 33 Cal. App. 5th 321, 332.
[92] *Id.*

J-11 cont.

Residential areas are not clearly identified on Figure 2-3, "Draft Mixed Use Development Plan," and the square footage "Project Total" in Figure 2-3 calculates the square footage for only the resort, conference facilities, and approximately eleven (11) commercial buildings.[93] Moreover, none of the Appendices include maps or site plans for residential uses, which seriously undermines the resulting impacts analysis. In fact, some of the Appendices included maps that fail to show residential uses as part of this Project.[94]

[93] DSEIR at Figure 2-3.
[94] DSEIR, Appendix E at Figure 2-3. Appendix C for Traffic Noise Impact Analysis mentioned using "preliminary conceptual site plans" of residences along southern boundary of project to estimate noise, but this information was not included in the DSEIR or Appendix C. DSEIR 4.3-10; *See also* DSEIR, Appendix C at 11.

Figure 2-3
Site Plan
OCEAN KAMP

J-11 cont.

The City also repeatedly asked for more information about the Project's residential uses with no success. In response to the City of Oceanside Engineering Division's request for greater detail about the proposed residential development and streets on the conceptual plans, the Project Design Consultants explained in a letter dated March 13, 2020 that "[t]he proposed residential development has not been defined at this time, for that reason, the Ocean KAMP Tentative Map is showing the intended residential lots, streets, and backbone utilities that are to service those lots as has been discussed with City Officials."[95] Additionally, the City previously commented: "Very little information has been provided for the proposed residential

[95] Letter from Greg Shields, Project Design Consultants, to Sergio Madera, City of Oceanside Engineering Division, at 1 (March 13, 2020)("Exhibit D").

component of the project. The residential component represents a significant proportion of the project and more detail should be provided. Please update the mixed-use development plan document to designate the different residential planning areas (R- 1 - R-6), provide a land use summary to include a dwelling unit cap per planning area, identify potential residential building types, identify development regulations per planning area, and provide design guidelines for the residential component."[96] The Applicant deferred many of these basic disclosures, stating that "[r]esidential community design guidelines will be provided in a subsequent submittal as part of the residential development plan."[97] However, in the DSEIR, residential uses are estimated to cover approximately the same acreage as the Project's commercial uses. As a major component of this Project, the DSEIR must therefore show what types of residences would be built, the number of each, where the residences would be sited, and how they would look.

J-11 cont.

In addition to the failure to include maps and site plans for the Project's residential uses, the DSEIR omits a host of basic information about the proposed residential uses in the Project Description, including, but not limited to the following.

- The DSEIR fails to disclose the total square footage for the residential dwelling units.
- The DSEIR estimates that around 400 residential units will be constructed during Phase I of construction activities, but provides no additional detail (e.g., siting, type of residence, square footage, height).[98] The timeline for construction activities is therefore unsubstantiated by the information set forth in the DSEIR.
- The DSEIR omits required information about the building configurations for the Project's residential uses. The Project Description generally discusses a mix of units but explained that "[s]pecific site layout and product types would be identified as part of the residential development plans proposed for each residential planning area."[99] Moreover, the DSEIR sets forth a large, theoretical range of units for apartments and senior housing, e.g., ten to 250 apartment units, and generally stated that the floorplans for the

[96] *Ocean KAMP Mixed-Use Plan Resubmittal – Responses to City ARC Review Letter* at 1 (December 20, 2019)(" Exhibit E").
[97] *Id.*
[98] DSEIR at 2-19.
[99] DSEIR at 2-7—2-9 ("Building types *may include* attached or detached townhomes/row homes, apartments, condominiums, and/or senior housing." (emphasis added)).
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condominiums would range "in size and price."[100] The failure to present a concrete Project proposal severely hinders informed public participation and decision-making.

- In addition to the residential units themselves, each unit would include covered parking in the form of a garage.[101] However, the DSEIR omits important details about this development, including the number of proposed garages and total square footage, which are necessary details to inform the impacts analysis for transportation and traffic, water quality, biological resources, noise, etc.
- The Ocean KAMP Fiscal and Economic Impact Analysis estimates that the Project would serve a residential population of approximately 1,995 persons.[102] The DSEIR fails to include this information or incorporate it in to the impact analysis.
- The DSEIR briefly mentions that the proposed residential units "are expected to be constructed by several home builders with different ownership," but did not specify which home builders or any additional detail.[103]

J-11 cont.

The host of information about the residential uses omitted from the Project Description obscures the Project's purpose and scope. The failure to disclose this information in the DSEIR prejudicially impairs the public's ability to participate in this CEQA process and therefore amounts to a prejudicial abuse of discretion.

Additionally, the DSEIR fails to articulate a definite and unambiguous Project timeline. With regards to construction activities, the DSEIR's estimated construction deadline of August of 2023 is unsubstantiated. The DSEIR states that Project construction would be completed in August of 2023 but admits that Phase II of the construction activities "would consist of additional residential neighborhoods to be constructed *according to market demand* following completion of the resort."[104] The construction of an undefined number of additional residential units during Phase II is thus not tied to a clear construction timeline but is instead dependent on flexible "market demand." Additionally, the August 2023 target deadline for completing the Project's construction activities is also inconsistent with statements in Appendix J for the Project's Air Quality and Greenhouse Gas Technical Report, which assessed construction emissions based on the timeline that assumed the

[100] *Id.* at 2-9.
[101] *Id.* at 17.
[102] *Ocean KAMP Fiscal and Economic Impact Analysis* (December 19, 2019).
[103] DSEIR at 2-18.
[104] *Id.* at 2-19 (emphasis added).

resort "and *a portion of the project residential component* would be completed in August 2023."[105] If only an undisclosed portion of residential units would be constructed by August 2023—rather than all units—then the construction deadline of August of 2023 is inaccurate and an adequate project-level EIR is required. Finally, the timeline set forth in the DSEIR does not specify when recreational and open space areas would be constructed and available for use. Based on the foregoing, the August of 2023 deadline is unsupported and highly suspect.

J-11 cont.

Regarding Project operations, the DSEIR fails to identify when the Project operations, occupancy, and use would begin. The DSEIR also buries the estimated Project lifespan in the GHG impacts analysis. This information must be included in the Project Description as well.

For the foregoing reasons, the nature and scope of this Project as described in the Project Description, is fundamentally inadequate. These errors constitute a prejudicial abuse of discretion and the DSEIR must be revised and recirculated.

V. THE DSEIR FAILS TO ESTABLISH A PROPER BASELINE FOR NOISE AND TRANSPORTATION EFFECTS, THEREBY THWARTING AN ADEQUATE IMPACT ANALYSIS

J-12

The existing environmental setting is the starting point from which the lead agency must measure whether a proposed project may cause a significant environmental impact.[106] CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.[107] Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate, meaningful evaluation of environmental impacts. The courts have clearly stated that, "[b]efore the impacts of a project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."[108]

[105] DSEIR, Appendix J at 13.
[106] *See, e.g., Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 316.
[107] 14 C.C.R. §15125(a); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.
[108] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

J-12 The comment provides general arguments and opinions regarding CEQA's environmental baseline concept. The comment does not specifically address the content or adequacy of the SEIR and any specific comments are addressed in the responses that follow. No further response is required.

1. The DSEIR Contains Inadequate Baseline Data to Inform the Analysis Regarding Impacts from Increased Noise Levels

To establish ambient noise levels at the Project site, the DSEIR relies on a mere two on-site noise measurements (spanning less than 20 minutes each) conducted on a single day: February 28, 2020.[109] Both measurements were recorded within close proximity at the southern edge of the Project site; no other sound levels were taken to inform the DSEIR's noise impacts analysis and no long-term measurement was taken.[110] The DSEIR's methodology to establish the Project's baseline noise levels is thus severely deficient. By way of comparison, the environmental setting for noise in the Pavilion FEIR was based on three devices at three separate locations "within the project site to ascertain existing levels and any variation across the project area," and two additional devices within the existing habitat areas.[111] Moreover, measurement of ambient noise conditions over a period of several days is preferred because a noise environment that is dominated by transport uses, as the Project vicinity is, can change hour to hour and day to day.

J-13

Additional noise level measurements to establish an accurate baseline are necessary to ensure a meaningful evaluation of the Project's noise impacts. For example, the DSEIR acknowledged "single-family residences east and northwest of the Project site" as existing "Noise Sensitive Land Uses" ("NSLUs"), yet no noise level measurements were taken from these sensitive receptor locations to inform the baseline.[112] Moreover, sensitive wildlife habitat along San Luis Rey River should have been identified as an NSLU in the DSEIR and noise level measurements should have been taken near these sensitive uses. These omissions in the DSEIR are particularly egregious given that the Pavilion FEIR concluded that the project's construction noise could impact nearby sensitive habitat and nesting birds.[113]

[109] DSEIR at 4.3-3. It must also be noted that the DSEIR lacks any discussion or analysis of the fact that the measurements were taken on February 28, 2020, during the COVID-19 global pandemic. The reduction in traffic volume corresponds with a reduction in traffic noise, which is not addressed or adjusted for in the DSEIR's analysis.
[110] *Id.*
[111] City of Oceanside, *Appendices to Draft Environmental Impact Report for the Pavilion at Oceanside; H. Noise Report; Acoustical Site Assessment* at 8 (February 29, 2008 (revised)).
[112] DSEIR at 4.3-2.
[113] *Id.* at 4.3-1.
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J-13 The comment questioning the methodology used in the SEIR fails to properly consider that the certified Pavilion EIR adequately evaluated noise impacts. The time period to challenge the Pavilion EIR has long passed. In evaluating the project revisions, the City commissioned a noise analysis to determine whether the Pavilion EIR analysis adequately discloses the impacts of the revised project. As disclosed in the SEIR, the City determined that minor modifications were necessary to address traffic noise impacts based on (1) updated existing and existing-plus-project traffic volumes and (2) the project's introduction of residential units that would have the potential to be exposed to noise from traffic primarily along SR 76 and Mission Avenue. As indicated on page 4.3-1 of the Draft SEIR, "[t]he revised project plans include the addition of residential uses near the existing roadways, which requires further analysis as discussed below." Two noise measurements[6] were thus taken at the southern boundary of the project site where residences are now proposed along Mission Avenue. These measurements, and associated traffic counts, were conducted to supplement the analysis of traffic noise exposure to proposed project residences. The residences at this location would be exposed to the highest noise levels of the project's proposed residences and were therefore the focus of the analysis.

Additional noise measurements, including measurements at the noise-sensitive single-family residences east and northwest of the project site and at the sensitive biological habitat along the San Luis Rey River, were not necessary as part of the Draft SEIR. The Draft SEIR relied on the analysis conducted in the Pavilion FEIR for potential noise impacts to off-site residences and biological habitat, as changes under the proposed project have not warranted additional analysis in the Draft SEIR. To supplement the analysis of impacts to off-site residences and biological habitat, ambient noise measurements were conducted for the Pavilion FEIR at the single-family residences east and northwest of the project site and at the sensitive biological habitat along the San Luis Rey River. The impact analysis and conclusions from the Pavilion FEIR related to the off-site residences and biological habitat would not change if new

[6] In response to the comment included in footnote 109 of this comment letter, these measurements are not considered to have been noticeably affected by the COVID-19 global pandemic. The State of California did not declare a state of emergency until March 4, 2020 and widespread "lockdowns" did not occur until early to mid-March.

J-13 cont.

For example, the loudest hourly sound level within the habitat area was found to potentially be as high as 75.7 dBA, which is above the wildlife habitat noise limit of 60 dBA, thus necessitating mitigation.[114] Here, however, in failing to take ambient baseline noise measurements from sensitive wildlife areas, the DSEIR's baseline noise measurements do not establish ambient noise levels for these areas. As a result, the DSEIR fails to accurately assess the increase in ambient noise levels at those receptors during construction and operations.

Finally, the baseline noise levels recorded on the Project site on February 28, 2020, were 72.5 dBA LEQ and 71.9 dBA LEQ, respectively.[115] These sound levels are significantly higher than the noise measurements documented on February 6, 2007 for the previous project; in 2007, the hourly average sound levels (or "Leq-h") recorded over the monitoring period ranged from 50.5 to 59.9 dBA.[116] The substantial increase in noise levels is likely due to changed traffic conditions since 2008.[117] Now, as compared to over ten years ago at the time of the Pavilion FEIR, the existing noise levels around the Project site are much higher such that even the slightest increase in noise levels from the Project would result in a significant impact.

2. The Baseline Against Which to Determine Traffic/Transportation Impacts is Improper

J-14

The baseline identified in a CEQA document must not "include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline."[118] Here, the DSEIR concludes that the Project would reduce Regional VMT by 917,756 and would therefore result in a less than significant transportation impact for the Project's retail/commercial uses.[119] However, as supported by the attached expert comments in Exhibit B, "this finding is implausible unless the 2020 Baseline without Project run of the Model included the encoding for a much greater use on the Project site, such as assuming development of the previously proposed The Pavilion at Oceanside Project or the

[114] *Id.*
[115] *Id.* at 4.3-3.
[116] City of Oceanside, *Appendices to Draft Environmental Impact Report for the Pavilion at Oceanside; H. Noise Report; Acoustical Site Assessment* at 18 (February 29, 2008 (revised)).
[117] DSEIR at 4.3-1.
[118] 14 C.C.R. § 15125(1)(3).
[119] DSEIR at 4.5-11.

J-13 (cont.) ambient noise measurements were conducted, as the analysis compared project-generated noise levels to property line limits set forth in the City of Oceanside Noise Ordinance for impacts to off-site residences and a 60-dBA limit provided by SANDAG for impacts to the biological habitat, which are set limits not dependent on ambient noise levels.

The primary difference in ambient noise levels recorded on February 28, 2020 compared to ambient noise levels recorded on February 6, 2007 is the location of the measurements. The 2020 measurements were recorded immediately adjacent to Mission Avenue near SR 76, where high levels of traffic along both roadways results in elevated noise levels. This is compared to the 2007 measurements that included two measurements in the northern portion of the site distanced from heavily trafficked roads and one measurement in the southern portion of the site but set back from SR 76 and Mission Avenue. While traffic levels have indeed increased along Mission Avenue and SR 76 since 2007, noise levels in and around the northern portions of the project site have not changed substantially due to the minimal change in development in and around these areas, resulting in a minimal change in traffic generation and thus a minimal change in noise levels. In addition, contrary to what is stated in this comment, higher ambient noise levels around the project site would make project-generated increases in noise less perceptible than would be the case if ambient noise levels around the project site were lower.

J-14 In order to calculate the project induced change to regional VMT associated with the project's retail/commercial component, LLG coordinated with SANDAG to input the project into the SANDAG Series 13 Year 2020 Travel Demand Model. Two models were obtained: a total gross regionwide VMT report for baseline (without project) conditions, and a total gross regionwide VMT report including the proposed project. The "without project" model includes about 33 acres of "community shopping center" land uses on the project site. Since the site is currently vacant these land uses are likely associated with the previously contemplated and approved, but never developed Pavilion retail project.

Pavilion at Oceanside Reduced Project Draft Subarea Plan Alternative."[120] Inclusion of the previously approved, but never constructed, Pavilion project in the baseline impermissibly discounts the Project's actual VMT against VMT for a project that was never even built. CEQA does not permit such a baseline.[121]

The facts and decision in *Woodward Park* are instructive here. There, the court held that the EIR erroneously used a "hypothetical allowable condition" as the baseline, i.e., 694,000–square–foot office park and retail development that was never built but was the maximum-size development allowable on the project site under existing plan and zoning designations.[122] The proposed project proposed to build a smaller, 477,000–square–foot office park and shopping center on a vacant lot, but the EIR for the most part compared the proposed project's impacts on traffic congestion and air pollution with the larger, hypothetical development rather than with the vacant lot or the "existing physical situation."[123] The court determined that this caused the EIR to understate the proposed project's true impacts on traffic congestion and air pollution.[124] The court observed that the public will "naturally assume" an EIR will "compare what will happen if the project is built with what will happen if the site is left alone," rather than compare the project's impacts with a hypothetical project or condition.[125] Accordingly, the court found the use of the larger hypothetical development as the baseline to be misleading.[126]

J-14 cont.

The same reasoning must be applied here. The DSEIR relies on a theoretical baseline based on conditions that have not occurred, even if previously permitted. By overstating the baseline, the DSEIR consequently understates the Project's transportation impacts. To address these deficiencies, the DSEIR must be revised and recirculated.

[120] Expert comments by Daniel Smith at 2 (September 27, 2021)("Exhibit B")(hereinafter "Smith").
[121] *See Hollywoodians Encouraging Rental Opportunities (HERO) v. City of Los Angeles et al.* (2019) 37 Cal.App.5th 768 (baseline for CEQA review was vacant building which was no longer part of rental market, rather than building's prior status as occupied apartment building).
[122] *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal. App. 4th 683, 697-698, *as modified on denial of reh'g* (May 11, 2007).
[123] *Id.* at 692, 697-698, 707-708.
[124] *Id.* at 708-709.
[125] *Id.* at 707.
[126] *Id.* at 691.

J-14 (cont.) The "with project" model includes a 300-room hotel, 126,000 SF of retail/commercial uses, and 700 residential dwelling units on the site.

The City's Traffic Impact Analysis Guidelines do not provide specific guidance regarding the appropriate baseline to be considered when assessing a retail/commercial land use's effect on the regional VMT. ITE's *Guidelines for Transportation Impact Studies in the San Diego Region* (May 2019), which was also consulted for guidance, recommend that "regional-serving retail projects be presumed to have significant VMT impacts if they increase VMT above the level that would occur for conditions *without the project*." Since the approved Pavilion project could be developed at any time, it's inclusion in the baseline condition is considered appropriate based on coordination with City staff.

An EIR addressing development of the project site with the previously proposed Pavilion project was certified by the City of Oceanside in 2008, making it more than a "hypothetical allowable condition" as posited by the commenter. The Pavilion project could be developed at any time, making its inclusion in the "without project" model appropriate. The *Woodward Park* case study noted in the comment is not an apt comparison. The erroneously considered baseline in this case included the "maximum-size development allowable on the project site under existing plan and zoning designations", which is a markedly different assumption than considering the development of a specific project with an approved EIR and tiering from that prior EIR.

VI. THE DSEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE THE PROJECT'S NEW AND MORE SEVERE IMPACTS THAN THOSE ANALYZED IN THE PAVILION FEIR

A Supplemental EIR, like an EIR, must fully disclose all potentially significant impacts of a Project, and implement all feasible mitigation to reduce those impacts to less than significant levels.[127] In particular, a Supplemental EIR is inadequate, and a new or subsequent EIR is required where substantial changes from the prior project 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, where there is new information demonstrating that the Project will have new and more severe effects than analyzed in the Pavilion FEIR, or where new mitigation measures are available to further lessen significant effects that were not available or rejected when the original EIR was prepared.[128] In each case, the lead agency's significance determination regarding each impact area must be supported by accurate scientific and factual data.[129] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[130]

J-15

The failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[131] 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 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.[132] In reviewing challenges to an agency's approval of an EIR based on whether the agency utilized the appropriate processes, the court will "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforcing all legislatively mandated CEQA requirements.'"[133] Even when the substantial evidence standard is applicable, reviewing courts will not "'uncritically rely on every study or analysis presented by a project proponent in

[127] *Friends of Coll. of San Mateo Gardens,* 1 Cal. 5th at 696.
[128] Pub. Resources Code § 21166; 14 CCR § 15162(a).
[129] 14 CCR § 15064(b).
[130] *Kings Cty. Farm Bur.,* 221 Cal.App.3d at 732.
[131] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[132] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[133] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

J-15 The comment provides the author's opinions and arguments regarding CEQA and the requirements for supplemental EIRs. The comment does not specifically address the content or adequacy of the SEIR. As demonstrated by the SEIR and the project documents, the SEIR complies with CEQA's requirements. No further response is required.

J-15 cont.

support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[134]

A. The DSEIR Fails to Disclose New and Potentially More Severe Noise Impacts from Airport-Related Noise and Noise Levels for Residential Interior and Exterior Uses are Not Mitigated to Less than Significant Levels

This Project, unlike the former project evaluated in the Pavilion FEIR, involves new residences not only along major travel routes like Mission Avenue and State Route 76 but also within close proximity to the Oceanside Municipal Airport, which is approximately 0.5 mile west of the Project site.[135] The DSEIR recognizes that "the introduction of residential land uses [add] noise attenuation considerations," but nevertheless focused solely on traffic-related noise, failing to analyze or mitigate this new and more severe noise impacts on residential sensitive receptors.[136]

J-16

Airport-related noise impacts should have been analyzed in the DSEIR as well with respect to future on-site residential land uses. The failure to analyze airport-related noise impacts could result in a potentially undisclosed significant noise impact for which no mitigation measures have been provided. The airport-related noise analysis in the Pavilion FEIR is also not instructive as to this Project because the prior project did not include a residential component or any residential mixed-use component. For example, buyer notification requirements, such as notifications required under the Business and Professions Code, were not considered for the former project because it solely involved commercial retail leases, as explained in responses to comments on the Pavilion FEIR.[137] The complete failure to analyze airport-related noise impacts in the DSEIR is a major deficiency and may lead to an undisclosed significant noise impact.

In addition to undisclosed, potentially significant noise impacts, the DSEIR fails to mitigate on-site traffic noise exposure to less than significant levels. Interior and exterior noise levels for residences located along the southern boundary of the Project site were anticipated to exceed the 65-CNEL limit for exterior noise levels

[134] *Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1355.
[135] DSEIR, Appendix C at 4.
[136] DSEIR at 4.3-1; 4.2-7.
[137] Pavilion FEIR at B-16.
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J-16 The SEIR did not specifically consider noise impacts to residences from Oceanside Municipal Airport because the site is not within a mapped Noise Exposure Range, as depicted on Exhibit III-1, Compatibility Policy Map: Noise, of the Oceanside Municipal Airport Land Use Compatibility Plan. As such, the project site would be subject to aircraft noise less than 60 CNEL. This would be below the 65-CNEL exterior noise limit at the site. In addition, as disclosed in the SEIR, vehicular traffic noise levels would have the potential to exceed 65 CNEL and would therefore be the dominant noise source at the site. As such, the analysis in the SEIR considers potential impacts to on-site residential uses from vehicular traffic noise and requires mitigation to ensure compatible noise levels. The project would therefore not expose people residing or working in the project area to excessive noise levels from aircraft.

The Draft SEIR concluded that the project would have the potential to expose residences along Mission Avenue and SR 76 to noise in excess of the applicable 65-CNEL exterior threshold and 45-CNEL interior noise threshold. Mitigation measures were prescribed in the Draft SEIR that would ensure both exterior and interior noise levels are reduced to below the applicable noise limits, thus not adversely affecting the health of future residents/occupants. Contrary to what is stated in this comment, these impacts were identified in the Draft SEIR and would be mitigated per mitigation prescribed in the Draft SEIR.

Mitigation is not considered deferred when a specific performance standard is set for evaluating the efficacy of the measures to be implemented in the future. Draft SEIR mitigation measure NOI-1 requires additional building plan-specific exterior noise analysis for residential exterior use areas expected to be exposed to a noise level of 65 CNEL or greater and states "[n]oise levels at private residential exterior use areas shall be reduced to 65 CNEL or below." This would be achieved through provision of noise barriers. Draft SEIR mitigation measure NOI-2 requires a building plan-specific exterior-to-interior noise analysis for residential

J-16 cont.

and 45-CNEL limit for interior noise levels under future traffic conditions in the DSEIR.[138] The DSEIR thus concludes that the Project's impacts associated with exposure to interior and exterior noise levels would be significant.[139] Recommendation 5 in the Noise Element of the City's General Plan states that "[a]pproval of any project in the City where the health of future residents or occupants may be adversely affected by noise associated with the site should be taken to reduce or abate the noise effects or should be denied approval and recommended for an alternate site (example – a new rest home or hospital should not be constructed in areas subjected to noise levels 65 dBA or higher)."[140] As applied here, the Project's significant noise impacts exceed thresholds of significance and would therefore likely adversely affect the health of future residents and occupants such that adequate measures to reduce or abate these noise impacts would be necessary, especially to comply with Recommendation 5. This is a new significant noise impact that was not analyzed in the Pavilion FEIR and is not analyzed or mitigated in the DSEIR.[141]

The DSEIR reasons that the noise impacts could be reduced to less than significant levels with Mitigation Measures ("MM") NOI-1 and MM NOI-2.[142] These mitigation measures, however, improperly defer additional noise analysis and applicable noise attenuation measures to after building plan information becomes available.[143] The DSEIR explains that additional analysis will be conducted, but only along the southern boundary of the Project site.[144]

A new or subsequent EIR is also required to describe additional feasible measures that could minimize significant adverse impacts.[145] An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project's significant effects and may be accomplished in more than one specified way.[146] "Generally, '[i]t

[138] DSEIR at 4.3-9—4.3-10.
[139] *Id.* at 4.3-9—4.3-10.
[140] *Id.* at 4.3-5.
[141] *Comtys. for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 (when impact exceeds CEQA significance threshold, agency must disclose in the EIR that the impact is significant); *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960; *CBE v. SCAQMD*, 48 Cal.4th at 327 (impact is significant because exceeds "established significance threshold").
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] 14 C.C.R. § 15126.4(a)(1).
[146] *Id.* at (a)(1)(B).

J-16 (cont.) interior use areas expected to be exposed to a noise level of 45 CNEL or greater and states "[i]nterior noise levels for the project's proposed residences shall be demonstrated to not exceed 45 CNEL." This would be achieved through the provision of noise-reducing architectural materials. Performance standards are set in these measures and these measures are therefore not deferred mitigation. Further, this comment indicates that future mitigation measures shall be "formulated and operational before the project activity that they regulate begins." As stated in both Draft SEIR NOI-1 and NOI-2, City review and approval of the proposed exterior use area noise compliance evaluation and exterior-to-interior noise analysis, as well as applicable noise attenuation measures, shall be completed prior to issuance of building permit. Thus, by definition, any required measures will be formulated and operational well in advance of when the future residents will occupy the buildings that are the subject of those building permit applications.

is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved."[147] "'[A]n exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.'"[148] However, "[i]mpermissible deferral of mitigation measures occurs when [the agency] puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described...."[149]

J-16 cont.

The measures proposed to mitigate the Project's admittedly significant on-site traffic noise impacts improperly defer the required analysis and mitigation to an unspecified date when specific building plan information is made available. The omission of necessary information about the Project's proposed residential uses, e.g., location, size, and design, undermines the analysis in the DSEIR and has rendered the DSEIR's conclusion that noise impacts can be mitigated to less than significant levels entirely unsubstantiated. Due to the deferred analysis and mitigation for this Project, it cannot be determined whether the proposed mitigation measures will adequately mitigate the impacts from on-site traffic noise exposure.

A new or subsequent EIR must be prepared to set forth the requisite information about the Project's residential uses, including location, design, and size, to inform the proposed mitigation measures and the analysis regarding any associated environmental impacts. As currently proposed, noise impacts remain significant and unmitigated.

J-17

B. The Project Would Result in a New and More Severe Transportation Impact that Remains Unmitigated in the DSEIR

"The core of an EIR is the mitigation and alternatives sections."[150] CEQA requires the adoption of feasible mitigation measures that would substantially

[147] *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal. App. 5th 665, 686–87, *reh'g denied* (Apr. 10, 2020), *review denied* (June 24, 2020).
[148] *Id.*
[149] *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280-281.
[150] *Citizens of Goleta Valley,* 52 Cal.3d at 564.

J-17 Comment includes the author's arguments and opinions about what constitutes a legally adequate mitigation measure in a general manner and there is no comment specific to the project's CEQA analysis that requires a response.

J1-7 cont.

lessen or avoid otherwise significant adverse environmental impacts.[151] Legally adequate mitigation measures include: "(a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action."[152] Unrealistic mitigation measures, similar to unrealistic project alternatives, do not contribute to a useful CEQA analysis."[153]

a. The DSEIR Fails to Analyze Potential Conflicts with the Circulation Element of the City's General Plan

The DSEIR incorrectly concludes that the Project would be consistent with the City's General Plan Circulation Element.[154]

J-18

Policy 3.20 of the City's General Plan Circulation Element requires necessary off-site improvements "[i]f the location and traffic generation of a proposed development will result in congestion on major streets or failure to meet the LOS D threshold...."[155] In relation to Policy 3.20, the General Plan also states that "[a]ny proposed development project that affects a street segment that already operates, or is projected to operate worse than LOS D, regardless of peak hour analysis, the developer shall propose, prepare and provide mitigation measure(s) for the City to review."[156] The impacts analysis in the DSEIR, however, fails to disclose and discuss the findings in the Local Transportation Study in Appendix D, which identifies nine intersections and two road segments where the Project and cumulative traffic would "contribute to operational deficiencies...."[157] "Readers of an EIR should not be required to 'ferret out an unreferenced discussion in [related material]....' The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. '[I]nformation 'scattered here and there in EIR appendices,' or a report 'buried in an

[151] Pub. Res. Code § 21002.
[152] 14 C.C.R. § 15370(a)-(d).
[153] *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 17 Cal. App. 5th 413, 433.
[154] DSEIR 4.5-8—4.5-9.
[155] *Id.* at 4.5-5.
[156] *Id.*
[157] DSEIR, Appendix D at i.

J-18 The project is responsible for only a small percentage of the total volume entering the intersections along SR-76 ranging from 3% to 15%. In addition, of the six intersections along SR-76, all six are already operating below City/Caltrans thresholds under existing conditions. Projects are not responsible to fix existing deficiencies. For these two reasons it would be inappropriate for the project to bear the entire cost of the improvements.

Lastly, LOS/delay has been removed as being the basis for determining significant impacts in CEQA per Senate Bill 743 (SB 743). The commenter is therefore incorrect to state that the intersections would experience "significant and unavoidable" CEQA impacts based on LOS/delay. Because LOS/delay has been removed as being the basis for determining significant impacts in CEQA per Senate Bill 743 (SB 743) and the project has performed the LOS analysis consistent with the requirements of Policy 3.20 and the City's current Traffic Impact Analysis Guidelines, no significant conflict based on policies addressing poor LOS was found to occur. Comments regarding Mr. Smith's report are address later in these responses.

appendix,' is not a substitute for 'a good faith reasoned analysis...."'[158] Here, the DSEIR improperly omits an adequate discussion of the relevant findings in the Local Transportation Study in Appendix D.

Moreover, Table 13-1 in the Local Transportation Study recommends improvements "to reduce the Project's effect on the locations [] to less than substantial."[159] However, the improvements for six of these intersections (i.e., would be made by making fair share payments to State Highway 76 intersections under Caltrans jurisdiction and the Project is responsible for the full cost of the improvements for the remaining three intersections.[160] As discussed in Mr. Smith's expert comments, "[n]either the City nor the applicant can guarantee if or when Caltrans will carry out the improvements or allow them to be constructed."[161] Additionally, according to Mr. Smith, the intersections of SR 76 with Foussat Road, Douglas Drive, and Rancho Del Oro Drive would still fail to comply with General Plan standards even with the proposed improvements.[162] For these reasons, Mr. Smith concludes that these six State Highway intersections would result in significant and unavoidable impacts.

J-18 cont.

b. The DSEIR Fails to Disclose and Analyze New and More Severe Cumulative Impacts

As detailed in the comments attached hereto by Mr. Smith, the DSEIR fails to conduct a long-term analysis of cumulative traffic impacts to determine conformance with the City's General Plan Circulation Element.[163] Instead, the DSEIR improperly limits the analysis of the Project's current Level of Service ("LOS") impacts to Year 2020.[164] Mr. Smith acknowledges that Appendix D claimed that the Project was analyzed to Year 2035 in SANDAG Model Series 12, but concludes this assertion was false.[165] This is because the SANDAG Model Series 12 results were not even available when the Pavilion FEIR was prepared in 2008.[166]

J-19

[158] *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 941.
[159] *Id.* at ii.
[160] Smith at 7.
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*

J-19 The local transportation study (Appendix D of the SEIR) contains a near-term cumulative analysis but not a long-term cumulative analysis. Section 11.0 of the local transportation study clearly describes why another long-term cumulative analysis is not needed for the project in light of the analysis within the certified Pavilion EIR.

An EIR addressing development of the project site was certified by the City of Oceanside in 2008. The Pavilion at Oceanside project described in the EIR consisted of a 950,000-square foot (SF) shopping center with a variety of retail uses. The previously approved project was calculated to generate 32,175 ADT, with 1,254 AM peak hour trips and 2,872 PM peak hour trips.

The currently proposed Ocean Kamp project is calculated to generate 13,135 fewer ADT (approximately 41% less) than the site's previously approved Pavilion project. Therefore, an analysis of Long-Term conditions for a project site that has already been approved for more trips than are currently proposed is not warranted.

Furthermore, Mr. Smith explains that the reference to the Series 12 Model run because the 2035 transportation network in the Series 12 SANDAG Model is unsupported because it assumes completion of improvements to State Route 76 from I-5 to Melrose Drive.[167] However, this project is no longer included in the Regional Transportation Plan and may never be completed.[168] As such, "reference to the Series 12 Model runs is irrelevant and misleading."[169]

J-19 cont.

Finally, the distribution of Project traffic in the Local Transportation Study in Appendix D relies upon the trip distribution assumed in the 2008 Pavilion FEIR.[170] Mr. Smith explains that the problem with reliance on the former project's Traffic Impact Analysis is that the former project did not include residential or resort components, which the current Project does.[171] These components would have very different trip patterns as compared to commercial uses only.[172] As summarized by Mr. Smith, "[t]his, and the issue of why the DSEIR would rely on an obsolete trip distribution substantially irrelevant to some of the Project's currently proposed land uses, and one that is inconsistent from the SANDAG Series 13 Model relied upon in the DSEIR's VMT analysis, demonstrates potentially new significant impacts from this Project that were inadequately analyzed in the DSEIR."[173]

c. <u>The Project's New and More Severe Transportation Impacts are Not Likely to be Mitigated to Less than Significant Levels By the DSEIR</u>

J-20

The Project's VMT per capita for residential uses exceeds the significance threshold of 14.96 VMT per resident and is therefore disclosed as a significant impact in the DSEIR.[174] To mitigate this significant impact, the DSEIR proposes to implement the design guidelines formulated by the California Air Pollution Control Officers Association ("CAPCOA").[175] Based on the theoretical requirements of MM TRA-1, the DSEIR concludes that residential VMT per capita would be reduced by 11.7 percent, which exceeds the Project's 6.68 percent VMT impact and is sufficient

[167] *Id.* at 8.
[168] DSEIR, Appendix D at 48.
[169] Smith at 8.
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] DSEIR at 4.5-10.
[175] *Id.* at 4.5-12.

J-20 The City's Traffic Impact Analysis Guidelines recommends the SANDAG Mobility Management Guidebook, 2019, and the California Air Pollution Control Officers Association's (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures, August 2010 may be utilized to determine applicable mitigation measures and to calculate the associated percent reduction in VMT.

The CAPCOA measure LUT-9: Improve Design of Development, was identified as a measure that would reduce the project's residential VMT as calculated using the SANDAG Series 13 Year 2020 Travel Demand Model, thereby mitigating the project's significant transportation impact. This measure was selected since the project's features, specifically the mixed-use nature which will enhance connectivity and walkability, meet the measure's description and applicability criteria. A brief description of CAPCOA measure LUT-9 is provided below.

J-20 cont.

to reduce the Project's residential VMT impact to less than significant levels.[176] For the reasons set forth in detail herein and in the attached expert report by Mr. Daniel T. Smith, P.E., substantial evidence does not demonstrate that MM TRA-1 is capable of mitigating the VMT impacts to less than significant.[177]

Mr. Smith concludes that the reduction in average VMT per capita resident resulting from MM TRA-1 is likely substantially less than the purported 11.7 percent reduction assumed in the DSEIR.[178] Mr. Smith criticizes the legitimacy of the assertion in the DSEIR that the density of intersections per square mile in a mere 0.143 square miles could alter the average VMT of residents traveling between that area and all of the SANDAG region.[179] Although Mr. Smith acknowledges that the mode of transportation within the Project site may be altered by the subject metric, the DSEIR fails to demonstrate how MM TRA-1 would reduce the average VMT per capita resident by 11.7 percent.[180]

MM TRA-1 is the only mitigation measure set forth in the DSEIR to address the significant transportation impacts. However, as discussed in Mr. Smith's comments, the DSEIR also sets forth a host of non-enforceable "trip reduction strategies as Project features and conditions of approval, with implementation required at 50 percent occupancy."[181] According to Mr. Smith, the effectiveness of these features and conditions "are both unquantified and dubious."[182]

The DSEIR fails to show how the vague and unenforceable trip reduction strategies would reduce the Project's significant transportation impacts to less than significant levels. The proposed crosswalk across Benet Road at Airport Road is not required and more importantly, would be irrelevant to the Project since Airport Road does not even directly connect to the Project site.[183] More direct connections to the San Luis Rey River Trail exist from the Project site via Foussat Road or Ocean Point Road.[184] Finally, Mr. Smith questions the feasibility of implementing this trip

[176] *Id.*
[177] *See* Smith at 2-6.
[178] *Id.* at 3.
[179] *Id.*
[180] *Id.*
[181] DSEIR at 4.5-12.
[182] Smith at 4.
[183] *Id.*
[184] *Id.*

J-20 (cont.)

LUT-9 Improve Design of Development: Includes improved design elements to enhance walkability and connectivity. Improved street network characteristics within a neighborhood include street accessibility, usually measured in terms of average block size, proportion of four-way intersections, or number of intersections per square mile. Design is also measured in terms of sidewalk coverage, building setbacks, street widths, pedestrian crossings, presence of street trees, and a host of other physical variables that differentiate pedestrian-oriented environments from auto-oriented environments. This measure is applicable for residential projects in an urban or suburban area.

Per the CAPCOA guidelines, the VMT reductions for measure LUT-9 are calculated based on a comparison of a project's proposed intersection density versus the standard suburban intersection density in North America, which is 36 intersection per square mile. This standard density is used as a baseline to mirror the density reflected in the ITE Trip Generation Manual, which is generally one of SANDAG's baseline methodologies for determining VMT.

The project site is located on approximately 92-acres, which equates to approximately 0.14 square miles. The conservative estimate of ten intersections within the project site equals 71 intersections per square mile. Based on this information, the corresponding VMT reduction was calculated using the CAPCOA methodology for LUT-9.

The project's residential VMT reduction associated with LUT-9 is calculated to be 11.7%, as detailed in the July 14, 2021 Vehicle Miles Traveled study that was prepared for the project. This mitigation exceeds the project's 6.68% VMT impact and is therefore considered sufficient to reduce the project's residential VMT impact to less than significant. The VMT report shows the CAPCOA VMT calculations and relevant excerpts from the CAPCOA report.

As an alternative VMT reduction methodology, consistent with the CAPCOA reduction methodology LUT-9, the SANDAG "Higher Density"

reduction strategy given the limited spacing of the intersection at Benet Road with Airport Road.[185]

Reductions in VMT resulting from proposed ride sharing opportunities are also not supported by substantial evidence in the DSEIR. As Mr. Smith notes, the DSEIR omits any evidence "to demonstrate that ridesharing information provided through an organization of a relatively small number of neighbors would add any meaningful number of actual ride-shares to the numbers formed through pooling resources available at the employment end of people's commutes."[186]

J-20 cont.

Finally, the DSEIR suggests offering information about on-site transit opportunities as a trip reduction strategy without providing any analysis about how this information would reduce VMT.[187] As written, this proposed strategy is vague and ambiguous, and the added value is highly suspect, as explained in Mr. Smith's expert comments.[188] Moreover, while the former project included a transit center within the project area, this Project does. This is a substantial change in the Project that likely affects the transportation impacts.[189]

For the foregoing reasons, the DSEIR fails to provide substantial evidence to demonstrate a quantitative reduction in VMT, and therefore fails to mitigate the Project's significant VMT to less than significant levels.

C. The DSEIR Fails to Adequately Disclose and Mitigate the Project's New and More Severe Construction and Operational Air Quality Impacts

J-21

Under CEQA, a project has significant impacts if it "[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation."[190] Here, the DSEIR sets forth a cursory analysis of the Project's air quality impacts upon determining that any impacts would be consistent with the impacts previously analyzed in the Pavilion FEIR. For the reasons set forth herein and supported by attached expert comments by SWAPE, the DSEIR severely underestimates the Project's construction and operational air emissions, thereby

[185] *Id.*
[186] *Id.*
[187] DSEIR at 4.5-13.
[188] Smith at 5.
[189] DSEIR at 2-5.
[190] CEQA Appendix G.

J-20 (cont.) Development measure could have been selected to quantify a reduction in the project's residential VMT. Per the Mobility Management Guidebook, "projects developed at a higher density and located proximate to alternative transportation services demonstrate reduced drive-alone rates compared to lower-density developments. Higher-density development contributes to the viability of a wider range of businesses, ultimately resulting in more destinations for residents and employees to walk to". This measure, while not selected to justify a reduction in the project's residential VMT, would also have been applicable to the project since the project's features, specifically the mixed-use nature which will enhance connectivity and walkability, meet the measure's description and applicability criteria.

It's unclear how the commenter arrived at the conclusions that "*it is baseless to assert that the density of intersections per square mile in a relatively tiny area of about 14 hundredths of a square mile would alter the average VMT of residents traveling between that area and all of the SANDAG region that totals roughly 4,000 square miles"* or that *"the likely impact of mitigation measure TRA-1 is likely (sic) far less than the 11.7 percent reduction in average VMT per capita resident."* The calculated reduction in VMT applies only to residents of the project, the majority of whom won't be traveling "all of the SANDAG region that totals roughly 4,000 square miles" with any regularity. Residential VMT is primarily comprised of trips made by residents to and from work, school, and retail/commercial uses. A reduction of 11.7% of the project's residential VMT is reasonable in a higher density development where retail/commercial services, and in some cases employment opportunities, are located within a walkable distance, as compared to the standard suburban intersection density.

The project's implementation of strategies such as on-site transit information, car-pool matching, and the provision of bike racks, is intended to further reduce the number/distance of automobile trips generated by residents of the project. Those additional measures were not quantified and are not necessary to mitigate the project's potentially significant residential VMT impact to a less than significant level.

failing to accurately determine the significance of the impacts on air quality and public health.

a. The DSEIR's Air Quality Analysis Relies on Unsubstantiated Input Parameters and an Updated Analysis Indicates a Potentially Significant Air Quality Impact

The DSEIR relies on unsubstantiated input parameters to estimate the Project's air emissions. Upon an in-depth review of the DSEIR, our experts found that several of the values inputted into the DSEIR's CalEEMod emissions modeling were not consistent with information disclosed elsewhere in the DSEIR.[191] As a result, the DSEIR underestimated the Project's construction and operational emissions, which are, in fact, significant.

J-21 cont.

The DSEIR relies on emissions calculated with CalEEMod.2016.3.2.[192] The provides recommended default values, but if specific project information is available, the default values can be swapped for project-specific values as long as such changes are justified by substantial evidence.[193] A project's construction and operational emissions are then calculated based on the values inputted into the model.[194]

Here, our experts found that several model inputs were not consistent with information disclosed in the DSEIR.[195] First, the DSEIR underestimates the land use size for "Hotel" and omitted land use values for the Project's commercial and conference space components.[196] As discussed by SWAPE, "the proposed hotel space was underestimated by 50,500-SF," which "presents an issue, as the land use size feature is used throughout CalEEMod to determine default variable and emission factors that go into the model's calculations."[197] For example, the square footage of a Project-specific land use may be inputted to calculate the number of walls to be painted, which correlates to VOC emissions generated by architectural coatings.[198] Given the underestimated floor surface area for "Hotel" in the DSEIR's Air Quality

[191] *See* Expert comments by SWAPE (September 29, 2021)(" Exhibit A")(hereinafter "SWAPE").
[192] DSEIR at 5.1-4.
[193] SWAPE at 3.
[194] *Id.*
[195] *Id.*
[196] DSEIR, Appendix I at 59, 101.
[197] SWAPE at 4.
[198] *Id.*

J-21 Please refer to Responses J-38 through J-45.

and Greenhouse Gas Technical Report, our experts conclude that "the model underestimates the Project's operational emissions and should not be relied upon to determine Project significance."[199]

Second, several reductions to the default architectural and area coating emission factors are unsubstantiated in the DSEIR's Air Quality and Greenhouse Gas Technical Report.[200] Specifically, the architectural and area coating emission factors were each reduced from the default value of 250- to 50-grams per liter ("g/L").[201] The purported justification for these changes was the "50 g/L VOC limit per San Diego Air Pollution Control District ("SDAPCD") rule 67.0.1, effective 1/01/2022."[202] However, SWAPE determined that these justifications are insufficient and therefore the reductions remain unsubstantiated. SWAPE explains that the DSEIR fails to require the Project to utilize flat or non-flat paint coatings, for which specific VOC content limits were assumed in the Report. Therefore, neither SWAPE nor the public can verify the revised architectural and area coating emission factors used in the DSEIR's analysis.[203] Additionally, SDAPCD Rule 67.01 alone does not substantiate reductions to the default coating values because information is needed regarding what category of coating will be used.[204] SWAPE thus concludes that "by including unsubstantiated reductions to the default architectural and area coating emission factors, the model likely underestimates the Project's construction-related and operational ROG/VOC emissions and should not be relied upon to determine the significance of the impacts on air quality and public health."[205]

J-21 cont.

Third, our experts identified numerous unsubstantiated changes to the individual construction phase lengths in the model.[206] Specifically, "the grading phase length was decreased by approximately 15%, from the default value of 155 to 132 days; the paving phase length was decreased by approximately 63%, from the default value of 110 to 41 days; the building construction phase was decreased by approximately 75%, from the default value of 1,550 to 393 days; and the architectural coating phase was increased by approximately 20%, from the default

[199] *Id.*
[200] DSEIR, Appendix I at 61, 102.
[201] *Id.*
[202] *Id.* at 60, 102.
[203] SWAPE at 5.
[204] *Id.*
[205] *Id.*
[206] *Id.* at 5-6.

value of 110 to 132 days."[207] However, neither the DSEIR nor the related Appendices support these changes to the construction phase lengths, especially where the DSEIR only provides the construction end date of August 2023.[208] Additionally, by altering the construction timelines, "construction emissions are improperly spread out over a longer period of time for some phases, but not others."[209] As a result, SWAPE concludes that the DSEIR's emissions modeling may have underestimated the Project's construction-related emissions for some phases and is therefore inadequate to assess the significance of the Project's construction emissions.[210]

J-21 cont.

Fourth, the CalEEMod output files show that the model included several changes to the default energy use values, including default energy use values associated with natural gas.[211] Although the Project proposes to "limit[]the use of natural gas to food and beverage buildings, the fitness center, and overhead gas-fired heaters," the DSEIR estimates that the anticipated natural gas energy use is 10,139,461 kilo British thermal units per square feet ("KBTU/SF").[212] Thus, SWAPE explains that it was improper for the model to change the default energy use value for natural gas to zero.[213] As discussed by SWAPE in the attached expert comments, "[t]his presents an issue, as CalEEMod uses the energy use values to calculate the Project's emissions associated with non-hearth natural gas usage. By including unsubstantiated reductions to the natural gas energy use values, the model may underestimate the Project's energy-related operational emissions and should not be relied upon to determine Project significance."[214]

Fifth, the Project model included three mitigation measures for construction: (1) water exposed area, (2) water unpaved roads, and (3) reduce vehicle speed on unpaved roads.[215] The model also included a fifteen miles per hour ("MPH") vehicle speed limit and a twelve percent minimum moisture content for unpaved roads.[216] No justification is provided for these changes to the model defaults in the "User

[207] *Id.* at 6.
[208] *Id.* at 27.
[209] *Id.*
[210] *Id.*
[211] DSEIR, Appendix I at 61, 103.
[212] DSEIR at 5.2-3—5.2-4.
[213] SWAPE at 9.
[214] *Id.*
[215] DSEIR, Appendix I at 61, 103.
[216] *Id.*

J-21 cont.

Entered Comments & Non-Default Data."[217] The DSEIR generally acknowledges that the Project would comply with the SDAPCD Rule 55 and the associated Best Management Practices ("BMPs"), but as SWAPE explains in their comment letter, compliance with Rule 55 and incorporation of specific BMPs for dust control are insufficient justifications to permit including construction-related mitigation measures in the model.[218] Thus, SWAPE concludes that "[b]y including several construction-related mitigation measures without properly committing to their implementation, the model may overestimate the mitigation measures' ability to offset the Project's potentially significant construction-related emissions and should not be relied upon to determine the significance of impacts on air quality."[219]

Sixth, the DSEIR improperly includes renewable energy-related mitigation measures in the model DSEIR without proposing to incorporate these energy-conserving measures into the overall project design.[220] Project design features ("PDFs") are not the same as enforceable mitigation measures and therefore SWAPE concludes that if the "operational measure included in the model is not formally included as a mitigation measure, we cannot guarantee that it would be implemented, monitored, and enforced on the Project site."[221] Accordingly, the model may underestimate the Project's operational emissions and is not reliable to determine the Project's potentially significant impacts to air quality.[222]

Based on the many omissions and inaccuracies described above, it is clear that the DSEIR underestimates the Project's construction and operational emissions and fails to adequately analyze the Project's potentially significant impacts on air quality. The DSEIR therefore subverts the purpose of CEQA to provide sufficient information to allow for informed decision-making and public participation.[223]

As detailed in the attached expert report by SWAPE, an updated CalEEMod model using Project-specific information included in the DSEIR provides a better understanding of the Project's construction-related and operational emissions.[224]

[217] SWAPE at 10.
[218] *Id.*
[219] *Id.* at 10-11.
[220] *Id.* at 11.
[221] *Id.*
[222] *Id.*
[223] *See Lotus v. Dep't of Transportation* (2014) 223 Cal. App. 4th 645, 652.
[224] *Id.* at 12.
5607-004acp

J-21 cont.

The updated models utilized by our experts "included the correct hotel land use size; proportionally increased the individual construction phase lengths to match the proposed construction duration; and excluded the incorrect construction-related and operational mitigation measures."[225] As shown below, the updated analysis demonstrates that "construction-related VOC and NOX emissions, as well as operational PM10 and PM2.5 emissions, estimated by SWAPE, increase by approximately 1,778%, 100%, 1,235%, and 444%, respectively, and exceed the applicable SDAPCD significance thresholds."[226]

Model	Construction		Operational	
	VOC	NO_X	PM_{10}	$PM_{2.5}$
DSEIR	63.6	138.4	81.3	22.6
SWAPE	1,194.1	277.3	1,085.1	122.9
% Increase	1,778%	100%	1,235%	444%
SDAPCD Regional Threshold (lbs/day)	**137**	**250**	**100**	**67**
Threshold Exceeded?	**Yes**	**Yes**	**Yes**	**Yes**

In conclusion, as confirmed by the updated modeling performed by our experts, this Project would result in new and more severe air quality impacts than analyzed in the Pavilion EIR and which are not adequately analyzed in the DSEIR.[227] SWAPE's updated modeling provides support for the requested preparation of a project-level EIR that adequately assesses and mitigates the Project's potentially significant air quality impacts.

b. <u>The Potential Health Risk Impacts were Not Adequately Disclosed, Analyzed, or Mitigated in the DSEIR</u>

J-22

The Air Quality and Greenhouse Gas Emissions Report in Appendix I concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations.[228] However, the DSEIR fails to include a quantified health risk analysis ("HRA") in order to analyze the adverse health impacts that may be caused by exposure to toxic air contaminants ("TACs") from the Project's construction and operational emissions. As a result, the potentially significant

[225] *Id.*
[226] *Id.*
[227] *Id.*
[228] DSEIR, Appendix I at 21.

J-22 Please refer to Responses J-46 and 47

cancer risk posed to nearby residents from TACs are undisclosed and unmitigated. Thus, the DSEIR fails to satisfy CEQA's requirements by omitting a discussion of these public health impacts.

CEQA expressly requires that an EIR to discuss "health and safety problems caused by the physical changes" resulting from the project.[229] Moreover, an EIR must "also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected."[230] When a project results in exposure to toxic contaminants, this analysis requires a "human health risk assessment."[231] The California Office of Environmental Health Hazard Assessment ("OEHHA")[232] guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.[233] Construction of the instant Project will last at least until August 2023, which is well beyond the threshold and triggers a quantified HRA pursuant to the OEHHA Guidance. SDAPCD Rules adopt the OEHHA Guidance in their TAC rules, and the DSEIR referenced the thresholds set forth in those SDAPCD Rules.[234]

J-22 cont.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released

[229] 14 CCR § 15126.2(a).
[230] *Id.*
[231] *Sierra Club,* 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com.,* 91 Cal.App.4th at 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project's emissions and human health impacts).
[232] OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. *See* OEHHA organization description, available at http://oehha.ca.gov/about/program.html.
[233] *See* OEHHA, *Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments* at 8-18 (February 2015), available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html.
[234] The DSEIR adopts SDAPCD's Excess Cancer Risk thresholds of "1 in 1 million" for development projects, and "10 in 1 million" for projects utilizing Toxics Best Available Control Technology ("T-BACT"). *See* DSEIR at 5.1-4, Table 5.1-1. T-BACT is defined as "the most effective emission limitation or emission control device or control technique which: (i) has been achieved in practice for that source or category of source; or (ii) is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment and implementation of pollution prevention measures, found by the Air Pollution Control Officer to be technologically feasible for that source or category of source, or for a specific source. If there is an applicable MACT standard, the Air Pollution Control Officer shall evaluate it for equivalency with T-BACT." *See* SDAPCD Rule 1200(c)(24).