DETAILED RESPONSES TO SELECTED COMMENTS
Prepared with the City's CEQA consultant for the project, David J. Powers & Associates

THE CITY'S CEQA ANALYSIS FAILED TO IDENTIFY SENSITIVE RECEPTORS THAT COULD BE IMPACTED BY RELEASES OF HAZARDOUS WASTE FROM THE PROJECT SITE.

Comment 1: In the DSAP the City identifies one specific sensitive receptor, the Sunol Community School, as being present in the Diridon Station Area. The Sunol Community School, now known as the Edge School, is located less than 50 meters from the western boundary of the Dupont project site. Given the requirements for identifying significance for emissions of hazardous wastes it is clear that the project will have a potential significant impact on the community that has not been adequately analyzed or mitigated in the DEIR.

The proponent must evaluate the potential impacts from hazardous wastes generated at the existing site, including lead, asbestos on the Edge School in a revised EIR. As noted previously, the generation of dusts containing toxic materials from the project site (e.g., lead in paints used on site, or asbestos bearing materials) can easily migrate to the nearby residences and to the school. Exposure to lead is a serious concern for decreases in intelligence scores for young children and for increased blood pressure in adults. Exposure through impacted soils via incidental ingestion or dermal absorption and through the inhalation of fine dust (particulate matter) impacted with the chemicals is the primary route of exposure for community members and sensitive receptors near the project site. Given the likely volume of soils to be disturbed on site and the volume of waste materials that will be generated during the demolition of existing buildings on site, it is imperative that the public be given an opportunity to understand and assess the extent of any contamination prior to beginning the project, as required under CEQA.

Response 1: As noted throughout the Addendum, the analysis only addresses the proposed General Plan Amendment. When an actual project is proposed, a more detailed, site-specific, assessment will be required. Nevertheless, the Addendum did address potential future impacts to the extent practical and within the limits of CEQA which does not allow for speculative analysis and requires the degree of specificity of the analysis to be commensurate with the underlying activity (CEQA Guidelines Section 15145 and 15146, respectively).

Section 4.8.3.2 of the Addendum (page 41) notes that the primary buildings on the project site are of recent construction and would not[1] contain asbestos or lead-based paint but that the site does have small accessory structure that may pre-date the banning of these materials. Consistent with the findings of the Diridon Station Area Plan Final EIR, any future development on-site would be required to comply with applicable City policies pertaining to asbestos and lead-paint abatement. Furthermore, OSHA requirements for abatement of asbestos and lead-based paint are mandatory by law and would be implement during any future redevelopment of the site.

The Diridon Station Plan Area Final EIR and subsequent Addendum for the Dupont General Plan Amendment addressed the potential for hazardous materials impacts resulting from asbestos and

[1] Please note that there is an inadvertent typo in the Initial Study. The document states "The primary buildings on the project site are of recent construction and would contain asbestos or lead-based paint." It should read "would not", which is clearly indicated when taken in the full context of the paragraph.

lead-based paint. This comment does not raise any issues that would that result in a new impact or mitigation measures and, as a result, a Supplemental EIR is not required.

THE CITY'S CEQA FAILS TO ANALYSIS ANY OF THE POTENTIAL AIR QUALITY AND HEALTH RISK IMPACTS FROM CONSTRUCTION ACTIVITIES AT THE PROJECT SITE

Comment 2: The City has failed to adequately analyze and mitigate the considerable impact on nearby residences and businesses from construction air emissions. On page 75 of the DSAP FEIR the City states that in addition to completing a Phase I Environmental Assessment and Tree Survey for the project, residential projects will also include Noise Reports, Human Health Risk Assessments, and Air Quality Modeling to assess TAC exposure. Without further analysis of potential development on the site, including how the construction will be implemented, what mitigation measures may be appropriate, and how emissions from the Site will move through the surrounding community, the determination that future projects under the DSAP would not exceed the current average daily emissions thresholds for construction and operations is specious at best.

Response 2 : Regarding the requirement on page 75 of the Diridon Station Plan Area Final EIR to complete human health risk assessments and air quality modeling to assess toxic air contamination (TAC) exposure, the Final EIR states that "At the time future actions are proposed, the City will review the future actions for consistency with the assumptions in this PEIR (including conformance with General Plan policies and measures included in the project). Supplemental analyses may be required as part of the subsequent environmental review process to evaluate impacts that are unique to a specific project site or design and could not be analyzed in sufficient detail in this EIR and to identify additional mitigation measures, if necessary. It is anticipated that most future projects under the DSAP will be required to complete a Phase I Environmental Site Assessment and Tree Survey, at a minimum. Projects with a residential component will need to complete additional studies, including at least the following site-specific studies (and possibly others):

- Noise Reports (Impact NV-1)
- Human Health Risk Assessments
- Air Quality Modeling to assess TAC exposure (Impact AQ-4)"

The commenter raises two issues, 1) TAC exposure to off-site receptors during construction and 2) TAC exposure to off-site receptors during operation. The calculation of TAC emissions generated by construction of a project are based on project-specific information regarding the size of the project, length of construction, grading and excavation requirements, and the type and duration of construction equipment to be used on-site. The Addendum addresses a General Plan Amendment. There is no specific development project proposed at this time. As such, there are no project level details available to provide a comprehensive TAC analysis or to develop adequate mitigation, if required. The risk assessment noted in the Diridon Station Plan Area Final EIR is required for actual development projects. Furthermore, the Addendum states on page 20 that "Consistent with the

DSAP FEIR, future redevelopment of the project site under the proposed GPA would be required to complete site-specific modeling and incorporate mitigation as appropriate."

The regulatory requirements for analysis of operational TACs is restricted to facilities that are a source of air releases of hazardous materials as defined by the Office of Environmental Health Hazard Assessment (OEHHA), Air Resources Board (ARB), and the Bay Area Air Quality Management District (BAAQMD).[2, 3] If subsequently rezoned from the existing LI-Light Industrial Zoning District to a Zoning District that allowed residential uses after approval of the General Plan amendment, then the proposed General Plan Amendment would potentially allow residential land uses on-site. The proposed General Plan Amendment would not allow any land uses that would be a source of stationary TAC emissions during operation.
This comment does not raise any issues that would that result in a new impact or mitigation measures and, as a result, a Supplemental EIR is not required.

Comment 3: The City appears to be using the BAAQMD construction criteria pollutant screening level for mid-rise apartments, which is 240 units, as the justification for not doing an analysis of the construction impacts. The proposed General Plan Addendum would allow a minimum of 170 and a maximum of 850 units on-site. As noted previously, the 2014 Plan stated that up to 1,175 units in the same location. At the very least, it is clear from the previously proposed 205 Dupont project that the site will likely have a build-out of 458 units. From the City's analysis above one could reasonably conclude that they would be willing to allow a project 2 to 3.5 times larger without any further air quality analysis, violating the spirit of the BAAQMD guidance and failing to meet their requirement under CEQA to accurately describe the project and its impacts.

Given the potential emissions from construction activities on site, the City must provide an estimate of construction emissions and a health risk assessment to assess the potential health risks posed to sensitive receptors in the surrounding community and among future residents.

Response 3: Page 20 of the Addendum states, "The BAAQMD construction criteria pollutant screening level for mid-rise apartments is 240 units. The proposed GPA would allow a minimum of 170 and a maximum of 850 units on-site. While the ultimate size of a future development proposal on the project site is unknown, it is reasonable to assume that development would occur at the higher end of the allowable development range. In the event a future project would exceed the average daily emission threshold or otherwise result in a significant impact based on the BAAQMD Guidelines and City requirements in place at the time a specific development is proposed, subsequent environmental review would be required." Clearly, any future development under the proposed General Plan Amendment that exceed 240 units would be required to complete subsequent project-specific analysis of construction criteria pollutants. The calculation of criteria pollutant emissions generated by construction of a project are based on project-specific information regarding the size of

[2] OEHHA Website. *Risk Assessment Guidelines: Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.* https://oehha.ca.gov/air/air-toxics-hot-spots

the project, length of construction, grading and excavation requirements, and the type and duration of construction equipment to be used on-site. The Addendum addresses a General Plan Amendment. There is no specific development-level project proposed at this time. As such, there are no project level details available to provide a comprehensive criteria pollutant analysis or to develop adequate mitigation, if required. This comment does not raise any issues that would that result in a new impact or mitigation measures and, as a result, a Supplemental EIR is not required.

THE CITY'S CEQA ANALYSIS LACKS ANY ANALYSIS OF THE POTENTIAL AIR QUALITY AND HEALTH RISK IMPACTS ON EXISTING AND CURRENTLY DEVELOPING PROJECTS.

Comment 4: According to the Addendum7 to the DSAP FEIR, the estimated maximum build-out of the DSAP would include construction of approximately 8.54 million square feet of building space. The City justifies their analysis by assuming that over a 30-year period, this would equate to construction of approximately 284,000 square feet of building space per year. The DSAP FEIR concluded that future projects under the DSAP would not exceed the current average daily emissions thresholds during construction with implementation of the identified BMPs. The DSAP FEIR air quality analysis only evaluated the operational emissions and failed to include an analysis of the construction impacts on the community. The analysis estimates the reactive organic gases (ROGs), oxides of nitrogen (NOx), and particulate matter as PM10 and PM2.5 No analysis is provided of TACs or of diesel particulate emissions which will drive health impacts for receptors in the Diridon Station Area. This failure alone warrants the re-issuance of an EIR for this project to determine what the impacts will be as required under CEQA.

In addition, the pollution impacts from changing traffic patterns to and from the project site are not adequately evaluated and may have significant impacts on the existing and currently developing community. Prior to the development of the City's DSAP, the project area did not have a significant residential population. Given the rapid increase in residential properties in the area immediately north, south, and west of the project site, the City must develop a clear description of the project and analysis to ensure that the construction and operational emissions do not impact the redeveloped surrounding community.

Given the potential emissions from increased traffic, and the existence of project-level information, such as the maximum build-out of the site, or at the very least the previously proposed project for the site, the City is required under CEQA to provide a health risk assessments based upon the operational emission of the project on sensitive receptors in the surrounding community and among future residents.

Response 4: Please refer to Responses 2 and 3.

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[3] BAAQMD Website. *Recommended Methods for Screening and Modeling Local Risks and Hazards.* http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/risk-modeling-approach-may-2012.pdf?la=en

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THE FAILURE TO CONSIDER THE POTENTIALLY SIGNIFICANT IMPACTS FROM RESIDUAL INDUSTRIAL CHEMICALS, ASBESTOS, AND LEAD THAT MAY HAVE BEEN USED AT THE SITE

Comment 5: The Proponents of the Project have failed to adequately analyze and mitigate the considerable impact on nearby residences and businesses from the entrainment of industrial chemicals in impacted soils, as well as lead impacted or asbestos impacted dust that will be generated during construction activities. The Addendum gives contradictory descriptions of the potential for asbestos-containing materials (ACMs) and lead-based paint to exist at the site. "Given the age of development in the DSAP area, existing structures may have asbestos-containing materials and/or lead-based paint. The primary buildings on the project site are of recent construction and *would contain asbestos or lead-based paint* (emphasis added). The site could, however, have small accessor structures that pre-date the banning of these materials. Construction activities could also uncover buried structures, wells, burn areas, debris, or contaminated soil, based on the industrial/commercial history of the project area. If encountered, these materials may require special handling and disposal to avoid impacts to construction workers, the public, and the environment." [8] Given the age of the buildings to be demolished and the nature of the project site it is clear that a high potential for industrial chemicals to be present in soils on site as well.

The disturbance of ACM and lead-based paint impacted soils is a significant given the proximity of new and existing residential properties to the Site. Entrainment of the impacted dust generated during demolition and construction activities could have long lasting impacts on the community. Lead is listed by the State of California, under Proposition 65, as a carcinogen and cause for developmental health effects. Exposure to lead is a serious concern for decreases in intelligence scores for young children and for increased blood pressure in adults. Exposure through impacted soils via incidental ingestion or dermal absorption and through the inhalation of fine dust (particulate matter) impacted with the chemicals is the primary route of exposure for workers, community members and sensitive receptors near the project site. Given the volume of soils likely to be graded on site and the volume of soils to be excavated in the construction of any underground parking lots it is imperative that the public be given an opportunity to understand and assess the extent of any soil contamination prior to beginning the project, as required under CEQA. This site has not been adequately evaluated with regard to potential hazards and the City cannot rely on the previous 2014 DSAP FEIR because it defers evaluation and mitigation to other laws and agencies.

Response 5: Please refer to Response 1 and the Initial Study/Addendum text edit attached.

FAILURE TO IDENTIFY ALL RELEVANT HAZARDOUS WASTE SITES WITHIN ONE MILE OF THE PROJECT SITE

Comment 6: It is vital to the CEQA process that accurate information be to describe the current conditions of the community in which the proposed project is to be sited. In the Addendum the City minimizes the potential for hazardous waste sites.

In Appendix F of the 2014 DSAP FEIR, the City identifies 178 hazardous waste sites within 1-mile of the DSAP area. The source of the data is the Geotracker website, maintained by the State Water Quality Control Board (SWRQCB). The DSAP FEIR (Appendix F) goes on to identify 41 hazardous waste sites within the Diridon Station area, seven of which were identified as open. The open sites included the Diridon Cal Train Station, AC Label Company/Berryman Products, Dariano & Sons, San Jose Foundary, San Jose Glass Company, the Marian Johnson Property, and the Perrucci properties.

Our review of the Geotracker website indicates a 187 different cases of hazardous waste sites within onemile of the Dupont project site. Twenty-six of the 187 sites identified have open cases or have active remedial activities. Seventy of the 187 sites were identified as being within the confines of the Diridon Station Area. The chemicals of concern at the active sites include chlorinated solvents (perchloroethylene, trichloroethylene, 1,2-dichloroethylene, etc…), petroleum hydrocarbons from USTs releases (gasoline, diesel, waste oils), or polychlorinated biphenyls (PCBs). The closest active site is less than 900 feet away from the project site boundary. Immediately across the street from the project site is a former chrome plating operation that is listed as inactive but needs evaluation. These recognized environmental concerns (RECs) warrant a substantial analysis by the City in a revised EIR to ensure that workers, current residents, future residents, and sensitive receptors (e.g., Edge School) are not adversely impacted by the identified wastes.

Response 6: Proximity of a site is not the only factor when determining the potential impact from off-site hazardous materials releases. Pages 39-40 of the Addendum address the potential for off-site facilities to have impacted the project site. There are no recorded sites immediately adjacent to the project site, therefore, any off-site contamination would have to migrate to the site from contaminated groundwater. To assess the potential impact of off-site releases the analysis must consider distance, location relative to groundwater flow, and status.

While the commenter uses a one-mile radius to determine possible off-site issues, the likelihood that off-site contaminates would travel that far via groundwater and still have sufficient contaminant levels to be above established thresholds is unlikely. Contaminants in groundwater dissipate over time and distance. As discussed in the Addendum, multiple leaking underground storage tank (LUST) cases were identified within 1,000 feet of the project site. Groundwater flows in a northeast direction and, as a result, all cases north and east of the project site are downgradient and would have no impact on the project site. The commenter lists seven open cases in the Diridon Plan Area, six of which are identified in Table 4.6-1 of the Diridon Station Plan Area Final EIR.

Of the seven sites noted by the commenter, five of the sites are north of the project site (including the Diridon Caltrain Station, AC Label Company/Berryman Products, San Jose Foundry, the Marian Johnson Property, and the Perrucci properties). Dariano & Sons is southeast of the project site and San Jose Glass Company is due east of the project site. Due to the location of these sites relative to the project site and the direction of groundwater flow, none would have the potential to impact the project site. The Addendum did identify four sites upgradient from the project site, of which four are closed and one is open and in the process of completing remediation.

The Addendum further states that "To reduce and/or avoid impacts of future development under the DSAP, the DSAP FEIR identified standard measures to address soil and groundwater contamination. Specific requirements for future development projects within the DSAP area would, however, be determined during the subsequent environmental review that would be required when a specific development project is submitted." Therefore, at the time a specific development is proposed for the project site, additional environmental review would be required and would include a detailed assessment of potential sources of contamination and any mitigation measures, if required. This comment does not raise any issues that would that result in a new impact or mitigation measures and, as a result, a Supplemental EIR is not required.