From: Shree Dharasker
To: Hill, Shannon
Cc: Michael Martin
Subject: RE: NOA & Comment Period for the Icon-Echo Mixed-Use Project Supplemental EIR
Date: Tuesday, July 26, 2022 5:56:08 PM

[External Email]

Dear Ms. Hill;

Comment A.1

The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Environmental Impact Report (EIR) for the ICON-ECHO Mixed Use Project in San Jose, received on June 22, 2022, and has the following comment:

The Water Supply Assessment (WSA) and EIR conclude that the project is consistent with Downtown Strategy which determined that there are adequate water supplies to support development through 2040. The Downtown Strategy makes certain assumptions regarding the expansion of water conservation efforts throughout Santa Clara County to ensure there are adequate water supplies. To ensure that water conservation goals are met in the future, the City needs to require all available water conservation and demand management measures for the project. Potential opportunities to minimize water and associated energy use include requiring water conservation measures from the Model Water Efficient New Development Ordinance, which include:

- Hot water recirculation systems
- Require installation of separate submeters to each unit to encourage efficient water use - studies have shown that adding submeters can reduce water use 15 to 30 percent
- Encourage non-potable reuse of water like recycled water, graywater and rainwater/stormwater through installation of dual plumbing for irrigation, toilet flushing, cooling towers, and other non-potable water uses
- Require dedicated landscape meters where applicable

Comment A.2

- Weather- or soil-based irrigation controllers.

In addition, Valley Water comments on the Notice of Preparation (NOP), submitted on November 4, 2021 should be addressed in the final EIR. Please provide Valley Water copies of future environmental documents when available.

Thank you,

Shree Dharasker
Associate Engineer Civil
Community Projects Review Unit
(408)630-3037

From: Hill, Shannon <Shannon.Hill@sanjoseca.gov>
Sent: Friday, June 17, 2022 11:53 AM
To: Hill, Shannon <Shannon.Hill@sanjoseca.gov>
Cc: plan.review <plan.review@vta.org>; 'Roads@CountyRoads.org' <Roads@CountyRoads.org>; 'jbroadbent@baaqmd.gov' <jbroadbent@baaqmd.gov>; 'wallyc@abag.ca.gov' <wallyc@abag.ca.gov>; 'kristin.garrison@wildlife.ca.gov' <kristin.garrison@wildlife.ca.gov>; 'sfbaynwrc@fws.gov' <sfbaynwrc@fws.gov>; 'mediaoffice@energy.state.ca.us' <mediaoffice@energy.state.ca.us>; 'cepacomm@calepa.ca.gov' <cepacomm@calepa.ca.gov>; 'ombcomm@arb.ca.gov' <ombcomm@arb.ca.gov>; 'hhilken@baaqmd.gov' <hhilken@baaqmd.gov>; 'dorothy.e.talbo@rda.sccgov.org' <dorothy.e.talbo@rda.sccgov.org>; 'ebugarin@bayareametro.gov' <ebugarin@bayareametro.gov>; 'LDIGR-D4@dot.ca.gov' <LDIGR-D4@dot.ca.gov>; 'philip.crimmins@dot.ca.gov' <philip.crimmins@dot.ca.gov>; Colleen Haggerty <CHaggerty@valleywater.org>; CPRU-Dropbox <CPRU@valleywater.org>; 'ben.aghegnehu@rda.sccgov.org' <ben.aghegnehu@rda.sccgov.org>; 'pgeplanreview@pge.com' <pgeplanreview@pge.com>; Jake Walsh <jake.walsh@sjwater.com>; Tuttle, Bill <bill.tuttle@sjwater.com>; Nate LeBlanc <nleblanc@sjdowntown.com>
Subject: NOA & Comment Period for the Icon-Echo Mixed-Use Project Supplemental EIR

NOTICE OF AVAILABILITY OF
A DRAFT ENVIRONMENTAL IMPACT REPORT (EIR)
AND PUBLIC COMMENT PERIOD FOR THE
ICON-ECHO MIXED-USE PROJECT
(State Clearing House [SCH] No. 2021090554)

The Icon-Echo Mixed-Use Project is proposed on an approximately 2.1-acre project site [Assessor Parcel Numbers (APNs) 467-20-079, -081, -060 and a portion of -080] currently developed with a gas station, church, surface parking lot, and three commercial buildings in Downtown San José. As proposed, the project would demolish the existing parking lot and buildings on-site (totaling approximately 22,527 square feet) and construct two towers (an office tower and a residential tower) connected via a podium on floors one to four and would include up to ten commercial condominiums. One level of below-grade parking is proposed across the project site. The Northern Tower (residential tower) would be located on the northern portion of the site at St. John Street and North Fourth Street and would have up to 415 residential units. The Northern Tower would be 27-stories tall with a maximum height of 268 feet. The Southern Tower (commercial tower) would be located on the southern portion of the site at East Santa Clara Street and North Fourth Street and would provide up to 525,000 square feet of commercial/office space. The Southern Tower would be 21-stories with a maximum height of 268 feet. The proposed project site has a general plan land use designation of Downtown and is located within the Downtown Primary Commercial (DC) zoning district. The project site is

also within the Downtown Employment Priority Area overlay.

Location: Northwest corner of East Santa Clara Street and North Fourth Street in Downtown San José. The project site is bound by East St. John Street to the north, North Fourth Street to the east, East Santa Clara Street to the south and commercial buildings and a senior apartments to the west.

APNs: 467-20-079, 467-20-081, 427-20-060 and a portion of 467-20-080

Council District: 3

File Nos.: SP21-031, ER21-134, T21-033, and HP21-007

The proposed project will have potentially significant environmental effects with regard to air quality, biological resources, cultural resources, hazards and hazardous materials, land use and planning, noise and vibration, and tribal cultural resources. The California Environmental Quality Act (CEQA) requires this notice to disclose whether or not the project is proposed on any hazardous waste and substances sites included on the Cortese List developed in compliance with Section 65962.5 of the Government Code. While a portion of the project site is listed as a leaking underground storage tank (LUST) cleanup site, the status of the case is "closed" on the Cortese List, which indicates the necessary cleanup of the site has been completed.

The Draft EIR and documents referenced in the Draft EIR are available for review online at the City of San José's "Active EIRs" website at www.sanjoseca.gov/activeeirs and are also available at the following locations:

Department of Planning, Building,
and Code Enforcement
200 East Santa Clara St., 3rd Floor
San José, CA 95113
(408) 535-3555

Dr. MLK Jr. Main Library
150 E. San Fernando St.,
San José, CA 95112
(408) 277-4822

The public review period for this Draft EIR begins on **Friday, June 17, 2022 and ends on Monday, August 1, 2022.** Written comments must be received at the Planning Department by **5:00 p.m. on Monday, August 1, 2022**, in order to be addressed as part of the formal EIR review process. Comments and questions should be referred to Shannon Hill, Environmental Project Manager in the Department of Planning, Building and Code Enforcement at 408-535-7872, or via e-mail at shannon.hill@sanjoseca.gov or by regular mail at the mailing address listed for the Department of Planning, Building, and Code Enforcement above (send to the attention of Shannon Hill). For the official record, **please reference File Nos. SP21-031/ER21-134.**

Following the close of the public review period, the Director of Planning, Building, and Code Enforcement will prepare a Final Environmental Impact Report that will include responses to comments received during the review period. At least ten days prior to the public hearing on the EIR, the City's responses to comments received during the public review period will be available for review and will be sent to those who have commented in writing on the EIR during the public review period.

Shannon Hill
Planner, Environmental Review
Planning, Building & Code Enforcement
City of San José | 200 East Santa Clara Street
Shannon.Hill@sanjoseca.gov | (408) 535-7872

August 1, 2022

Shannon Hill
Environmental Project Manager
City of San Jose
200 E Santa Clara St. T3
San Jose, CA 95113

RE: San Jose Icon-Echo Towers Mixed Use Project Draft Supplemental Environmental Impact Report (Draft SEIR)

Dear Shannon Hill,

Comment B.1

Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Supplemental Environmental Impact Report (Draft SEIR) for the Icon-Echo Towers Mixed Use Project (Project). The Project is located in the City of San José (City), located along the westside of N. 4th Street between E. St. John Street and E. Santa Clara Street and would demolish existing uses and construct a 27-story mixed-use building consisting of 8,500 square feet of ground-floor retail use, 525,000 square feet of office use in the southern tower and 415 residential units in the northern tower. Parking for the Project would be provided in one level of below-ground parking and four floors of above-grade parking, totaling 1,146 parking spaces.

According to the Draft SEIR, the Project's maximally exposed individual is located on the second floor of the residence to the south of the project site opposite E. Santa Clara Street. In addition, two schools are located northeast of the site. Little Einstein Montessori Preschool, serving children ages 2 to 5 is located approximately 406 feet from the Project site and Horace Mann Preschool and Elementary School, serving children ages 2 to 10 is located 756 feet from the Project site.

Air District staff commends the City for their inclusion of increased housing density, and transportation demand management (TDM) incentives to minimize regional vehicle miles traveled and associated emissions from the Project. In addition, the use of green building practices to meet San Jose Reach Standards, as well as LEED Silver Certification, is highly commended.

Comment B.2

Construction-Related Impacts

As noted in the Draft SEIR, the Project's construction emissions, along with the construction of 11 other approved and nearby developments (within 1,000 feet of the Project site), would exceed the Air District's Cumulative Source Threshold for fine particulate matter ($PM_{2.5}$) concentrations despite implementing mitigation

measures. This poses significant concerns due to the Project's proximity to sensitive receptors, and due to these health risk impacts, the Air District recommends that additional mitigation measures be included beyond Mitigation Measure (MM) AQ-1 and AQ-2 to further mitigate construction-related impacts. The City should take precautions to ensure mitigation measures protect nearby receptors by:

- Requiring a rigorous Mitigation Monitoring and Reporting Plan that is actively enforced by the City to ensure all air quality mitigation measures are achieved as required.
- Requiring that all air quality mitigation measures proposed below are included as conditions of project approval.

Comment B.3

The City should require a site-specific dust control plan that includes measures that go beyond the Air District's Basic and Enhanced Air Quality Construction Measures, including:

- Require the installation of advanced air filtration or the provision of portable air filtration units in nearby residences, at Little Einstein Montessori Preschool and at Horace Mann Preschool and Elementary School before construction begins.
- Limit the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities.
- Hydroseed or apply non-toxic soil stabilizers to construction areas, including previously graded areas, that are inactive for at least 10 calendar days.
- Prohibit grading and other dust-generating activities on days with an Air Quality Index forecast of greater than 100 for particulates in the project area.
- Minimizing the amount of excavated material or waste materials stored at the site.
- Plant vegetative ground cover (e.g., fast-germinating native grass seed) in disturbed areas as soon as possible and water appropriately until vegetation is established.
- Increase frequency of wet power vacuuming street sweeping during periods of high ambient temperature, high wind events and / or low relative humidity.
- Record keeping documenting the frequency of watering on exposed surfaces, at minimum, the daily moisture content percentage as recorded by verified lab samples or moisture probe, and daily logs verifying at minimum, the use of daily wet power vacuuming street sweepers. Records should be kept on site and made available to the City and Air District staff.

Comment B.4

The City should require additional controls to mitigate construction-related exhaust emissions:

- Off-road construction equipment should be zero-emission, where available; the City should require commitments to zero-emission equipment in applicable bid documents, purchase orders, and contracts; successful contractors should demonstrate the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities. At minimum off-road diesel construction equipment should meet Tier 4 emissions standards.

- Medium and Heavy-Duty diesel on-road vehicles should be equipped with engine model year 2010 or newer, or powered by zero or near zero-emissions technology, as certified by the California Air Resources Board, whenever feasible.
- Provide electrical hook ups to the power grid, rather than using diesel-fueled generators, for electric construction tools, such as saws, drills, and compressors, and using electric tools whenever feasible.

Comment B.5

Air District Rules and Regulations

Additionally, the Project may be subject to additional Air District Rules and Regulations omitted by the Draft SEIR. These Rules and Regulations are as follows:

Air District Rule and Regulation	Description
Regulation 2, Permits, Rule 5: New Source Review of Toxic Air Contaminants	The purpose of this rule is to provide for the review of new and modified sources of toxic air contaminant (TAC) emissions in order to evaluate potential public exposure and health risk, to mitigate potentially significant health risks resulting from these exposures, and to provide net health risk benefits by improving the level of control when existing sources are modified or replaced.
Regulation 8, Organic Compounds, Rule 47: Air Stripping and Soil Vapor Extraction Operations	The purpose of this Rule is to limit emissions of organic compounds from contaminated groundwater and soil. The provisions of this Rule shall apply to new and modified air stripping and soil vapor extraction equipment used for the treatment of groundwater or soil contaminated with organic compounds.
Regulation 11, Hazardous Pollutants, Rule 2: Asbestos Demolition, Renovation and Manufacturing	The purpose of this Rule is to control emissions of asbestos to the atmosphere during demolition, renovation, milling and manufacturing and establish appropriate waste disposal procedures.

Comment B.6

Certain aspects of the project may require a permit from the Air District. Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Mark Tang, Principal Environmental Planner, at mtang@baaqmd.gov.

Sincerely,

Greg Nudd
Deputy Air Pollution Control Officer

Cc: BAAQMD Director Margaret Abe-Koga
BAAQMD Director Otto Lee
BAAQMD Director Sergio Lopez
BAAQMD Director Rob Rennie

Santa Clara Valley Transportation Authority

August 1, 2022

City of San José Department of Planning, Building, and Code Enforcement
200 E. Santa Clara St., 3rd Floor
San José, CA 95113

Attn: Shannon Hill
By Email: mailto:shannon.hill@sanjoseca.gov

Dear Shannon,

Comment C.1

VTA appreciates the opportunity to comment on Draft Supplemental Environmental Impact Report (Draft SEIR) for the Icon-Echo Mixed-Use project. VTA has reviewed the document and has the following comments:

Land Use

VTA applauds the mix of uses and high density in a transit-rich downtown. VTA appreciates innovative projects like this one and looks forward to working with the City on this and other similar projects.

Comment C.2

Transit Impacts

VTA recommends the city work with us prior to and during construction to minimize any impacts to transit as Santa Clara Street is a primary transit route and serves many of our bus lines, as noted in the Local Transportation Analysis (LTA) appendix.

Comment C.3

Bicycle Parking

The LTA should be updated to include the missing pages. The LTA currently stops mid-sentence on Page 30 discussing bicycle parking and amenities. VTA applauds the ample supply of bicycle parking and the design to and from the rooms. VTA requests the complete LTA be shared with us when available.

Comment C.4

VTA's BART Silicon Valley (BSV) Phase II Extension Project

In 2018, FTA and VTA released the Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report (SEIS/SEIR) for VTA's BART Silicon Valley Phase II Extension Project (BSV Phase II Project). VTA's Board of Directors certified the SEIR and approved the BSV Phase II Project in April 2018, and FTA issued the Record of Decision in June 2018. The SEIS/SEIR identified the tunnel, to be constructed as part of the BSV Phase II Project, would be adjacent to this proposed development (See Page 38, https://www.vta.org/sites/default/files/documents/VolumeIII_Appendix%2520B_Project%2520Plans%2520and%2520Profiles_feb20_2018.pdf). Tunnel easements, in which temporary or permanent structures would not be allowed, are required for the BSV Phase II Project.

VTA is currently in the process of advancing the design for the BSV Phase II Project with the tunnel and

trackwork contractor, and procurement documents for the stations are under development. Utility relocations and site preparations are expected to begin in 2023, while heavy construction in this area is expected to follow in 2024.

The Draft SEIR mentions on Page 121 that the City of San José's General Plan states that "Noise studies are required for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, mitigation will be implemented so that recurring maximum instantaneous noise levels do not exceed 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms." VTA's BSV Phase II Project has received state and federal environmental clearance and is advancing its design into construction beginning in 2023. Please ensure appropriate mitigation is incorporated into the Icon-Echo Mixed-Use Project to address the General Plan requirement stated above.

Comment C.5

Appendix-A Initial Study mentions on Page 47 Table 4.7-1 four active faults near the project site. However, the Silver Creek fault near the project site needs to be added to this list and considered when scoping, designing, and evaluating the Icon-Echo Project.

Comment C.6

The Draft SEIR for the Icon-Echo Mixed-Use Project (June 2022, City of San Jose File Numbers SP21-031, T21-033, & ER21-134, and State Clearinghouse Number 2021090554) does not include foundation/excavation or non-preliminary off-site utilities drawings; therefore, VTA cannot comment on those.

Comment C.7

Because of the proximity between this proposed development and the BSV Phase II Project and the possibility of concurrent construction, VTA requests the development's design (including but not limited to the building's foundation system, shoring and support of excavation plans, geotechnical reports, structural drawings, and non-preliminary off-site utilities plans), as well as construction activities (including but not limited to haul routes, construction sequence, schedule, logistics, etc.) be shared/discussed with VTA. VTA's review of these documents as they advance and become available will be critical, including to ensure that the structures within the tunnel easement are not compromised, potentially causing damage and or other safety concerns. Additionally, as projects may be built concurrently, construction activities such as haul routes, times, logistics, etc. should be further discussed as design and construction progress. VTA looks forward to coordination between VTA, the City of San José, and the developer from the initial planning and design phases through construction.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830 or lola.torney@vta.org.

Sincerely,

Lola Torney
Transportation Planner III

SJ2001

From: KKLLC Admin
To: Hill, Shannon
Subject: ICON-ECHO MIXED-USE PROJECT (State Clearing House [SCH] No. 2021090554)
Date: Friday, July 1, 2022 10:07:40 AM

[External Email]

Comment D.1

miSmin Tuuhis [Good Day]
Kan rakat Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter
As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a potentially eligible cultural site, I am interested in consulting and voicing our concerns. With some instances like this, usually we recommend that a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities. The presence of a Native monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Konsulting, LLC has numerous Native Monitors available for projects such as this, if applicable, we recommend a Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Comment D.2

Kanyon Konsulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognise the history of the territory we are impacting. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after - barely acknowledging the Cultural Representatives of the territory they steward and are responsible for. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences, bringing in considerations about the Indigenous peoples and environment of this territory that you work, have settled upon and benefit from.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the Indigenous communities whom we acknowledge as the first stewards and land managers of these territories.
Potential Approaches to Indigenous Cultural Awareness/History:
↠Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque, page on the website, mural, display, or an Educational/Cultural Center

with information about the history/ecology/resources of the land)
⤖Commitment to consultation with the Native Peoples of the territory in regards to presenting and messaging about the Indigenous history/community of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc, Cultural display of cultural resources/botanical knowledge or Culture sharing of Traditional Ecological Knowledge - Indigenous Science and Technology)
⤖Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.
Tumsan-ak kannis [Thank You]
Kanyon Sayers-Roods
Consultant / Tribal Monitor [ICMBCO]
Kanyon Konsulting, LLC

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
amarshall@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

August 1, 2022

Via Email
Chris Burton, Director
Planning, Building and Code Enforcement Department
City of San José
200 E. Santa Clara St. Tower 3rd Floor
San José, CA 95113
Email: Chris.burton@sanjoseca.gov

Shannon Hill, Planner
Planning, Building and Code Enforcement Department
City of San José
Email: shannon.hill@sanjoseca.gov

Re: Comments on the Draft Supplemental Environmental Impact Report (File Nos. SP21-031/ER21-134).

Dear Mr. Burton and Ms. Hill:

Comment E.1

We are writing on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") to provide comments on the Draft Supplemental Environmental Impact Report ("DSEIR") prepared by the City of José ("City") for the Icon-Echo Mixed-Use Project (File Nos. SP21-031/ER21-134, T21-033; SCH 2021090554) ("Project") proposed by Urban Catalyst ("Applicant").

The Project proposes to construct a 21-story office/retail tower and a 27-story, 415-unit residential tower connected by a podium on floors 1-4. The Project calls for approximately 525,000 square feet of commercial space and 8,500 square feet of retail space. One level of below-grade parking is included with a total of 1,151 parking spaces. The following addresses are associated with the project site: 128 East St. John Street, 95 North Fourth Street, and 77 North Fourth Street (Accessor's Parcel Number 467-20-060), 147 East Santa Clara Street (Accessor's Parcel Number 467-20-079), 49 North Fourth Street (Accessor's Parcel Number 467-20-081), and 60 North Third Street (Accessor's Parcel Number 467-20-080).

Several discretionary approvals will be required to implement the Project: Special Use Permit; Demolition, Grading, and Building Permit(s); Vesting Tentative Map; Historic Preservation Permit; Department of Public Works Clearances; and Public Street Improvement Permit.[1]

We reviewed the DSEIR and its technical appendices with the assistance of air quality and health risk experts Matt Hagemann, P.G, C.Hg. and Paul E. Rosenfeld, PhD from Soil / Water / Air Protection Enterprise ("SWAPE").[2] The City must separately respond to these technical comments.

Based upon our review of the DSEIR and supporting documentation, we conclude that the DSEIR fails to comply with the requirements of CEQA. As explained more fully below, the DSEIR fails to provide a clear project description and accurate environmental baseline upon which to measure the Project's reasonably foreseeable impacts. The DSEIR also fails to accurately analyze, disclose, and mitigate the Project's air quality, greenhouse gas ("GHG"), hazards, noise, transportation, and growth-inducing impacts. As a result of its shortcomings, the DSEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. The City cannot approve the Project until the errors and omissions in the DSEIR are remedied, and a revised DSEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental impacts.

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of San José and Santa Clara County.

[1] DSEIR, pg. 15.
[2] Mr. Hagemann's and Dr. Rosenfeld's July 27, 2022 letter re: "Comments on the Icon/Echo Mixed Use Project" ("SWAPE Comments") contains their technical comments and curricula vitae and are attached hereto as **Exhibit A**.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the 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 on site.

In addition, Silicon Valley Residents 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 businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which the DSEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.[3] CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.[4] The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from "extensive research and information gathering," including consultation with state and federal agencies, local officials, and the interested public.[5] To be adequate, the EIR should evidence the lead agency's good faith effort at full disclosure.[6] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[7] "Thus, the EIR protects not only the environment but also informed self-government."[8]

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[3] CEQA Guidelines, § 15002, subd. (a)(1).
[4] *See* Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
[5] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* ("*Berkeley Jets*") (2001) 91 Cal.App.4th 1344, 1367.; *Schaeffer Land Trust v. San José City Council* (1989) 215 Cal.App.3d 612, 620.
[6] CEQA Guidelines, § 15151; *see also Laurel Heights Improvement Assn. v. Regents of University of California* ("*Laurel Heights I")* (1988) 47 Cal.3d 376, 406.
[7] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[8] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.[9] The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced."[10] If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible," and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081.[11]

As these comments will demonstrate, the DSEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It 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] The DSEIR also lacks substantial evidence to support the City's proposed findings that the Project will not result in any significant, unmitigated impacts.

Comment E.2

III. THE PROJECT DESCRIPTION IS INADEQUATE

The DSEIR does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. 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."[13] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[14] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the

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[9] CEQA Guidelines, § 15002, subd. (a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.,* 91 Cal.App.4th at 1354.
[10] CEQA Guidelines, § 15002, subd. (a)(2).
[11] *Id.*, subd. (b)(2)(A)-(B).
[12] *Laurel Heights I, supra,* 47 Cal.3d at pg. 391.
[13] *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("*CBE v. Richmond*") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
[14] 14 CCR § 15124; *see, Laurel Heights I, supra,* 47 Cal.3d 376, 192-193.

project's impacts and undermining meaningful public review.[15] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[16]

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[17] "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."[18] Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."[19] "If a[n]…EIR…does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law."[20]

Comment E.3

A. The Project Does Not Have A Clear Description of On-site Solar Facilities

The Project's Initial Study states that "[a]lthough the proposed project does not include on-site renewable energy resources, the project would be designed and constructed in compliance with the City of San José's Private Sector Green Building Policy (Council Policy 6-32), Green Building Ordinance, Energy and Water Building Performance Ordinance, and Reach Code and includes solar panels and/or solar hot water panels."[21] And the Project's DSEIR states that "[s]olar panels, air cooled chillers, a cooling tower, and air source heat pumps are proposed on the roof of the residential building."[22] But neither of these documents disclose the number or capacity of the proposed solar panels, chillers, a cooling tower, and air source heat pumps. As a result of this unclear project description, the DSEIR does not fulfill its

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[15] *Id.*
[16] *Sundstrom v. County of Mendocino* ("*Sundstrom*") (1988) 202 Cal.App.3d 296, 311.
[17] CEQA Guidelines § 15378.
[18] *Id.*, § 15378(c).
[19] *Laurel Heights I,* 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.
[20] *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.
[21] Initial Study, pg. 42.
[22] DSEIR, pg. 13.

purpose as an informational document. The consequence of this lack of clarity regarding solar facilities is that the Project's consistency with GHG reduction measures is unsubstantiated.

Comment E.4

IV. THE DSEIR FAILS TO ADEQUATELY ESTABLISH THE ENVIRONMENTAL SETTING

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.[23] As numerous courts have held, the impacts of a project must be measured against the "real conditions on the ground."[24] Accordingly, the CEQA Guidelines provide that "[a]n existing conditions baseline shall not include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline."[25]

The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.[26] Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.[27] An agency's failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.

Baseline information on which a lead agency relies must be supported by substantial evidence.[28] The CEQA Guidelines define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion."[29] "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion

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[23] CEQA Guidelines, § 15125, subd. (a).
[24] *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.
[25] CEQA Guidelines, § 15125(a)(3).
[26] *Id.*
[27] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.
[28] *Id.* at 321 (stating "an agency enjoys the discretion to decide […] exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence"); *see Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[29] CEQA Guidelines §15384.

supported by facts ... [U]nsubstantiated opinion or narrative [and] evidence which is clearly inaccurate or erroneous ... is not substantial evidence."[30]

A. The DSEIR's Transportation Impacts Baseline is Incorrect

The DSEIR's Transportation Analysis discloses that the Project would generate 4,753 daily trips.[31] But the DSEIR takes credit for 1,264 trips from existing uses when analyzing the vehicle miles travelled ("VMT") generated by the Project.[32] The DSEIR's Local Transportation Analysis states that these current uses include an 8-pump gas station, a 6,860-sf church, and 13,500 sf of retail space.[33] The below excerpt from the DSEIR's Local Transportation Analysis shows the estimated number of trips from each current use.[34] This information constitutes the environmental baseline.

Proposed Project Trips (After Reductions)			**4,753**			
Existing Land Uses						
ITE LU # 945 - Gas Station with Convenience Market[1]	8 Vehicle Fueling Positions	205.36	1,643	12.47	51%	49%
Passby Reduction[7]		*56%*	*-920*	*62%*		
ITE LU # 560 - Church[1]	6,860 Square Feet	6.95	48	0.33	60%	40%
ITE LU # 820 - Shopping Center[1]	13,500 Square Feet	37.75	510	0.94	62%	38%
Passby Reduction[7]			*-17*			
Total Existing Trips			**1,264**			
Net Project Trips (Proposed - Existing)			**3,489**			

But this baseline is flawed because it does not resemble existing conditions at the time environmental review commenced.

The 8-pump gas station the DSEIR estimates to generate 723 trips daily (1,643 trips minus a 920 trip pass by reduction) is located at 95 North Fourth Street.[35] The DSEIR discloses that this location was formerly a gas station, but does not disclose how long it has been since the building was used as a gas station. But

[30] Pub. Resources Code § 21082.2(c).
[31] Appendix I, pg. 10.
[32] *Id.*
[33] Appendix I, pg. 31.
[34] Appendix I, pg. 11, Table 2.
[35] DSEIR, pg. 62.

an online search reveals the building was available for lease as early as 2014.[36] Further, the building has been used as a tattoo shop for at least four years.[37] CEQA requires that the baseline reflect conditions as they exist at the time environmental review commences, but the DSEIR's baseline has not been accurate for at least four years.[38] To accurately represent existing conditions at 95 North Fourth Street, the DSEIR's transportation analysis may only take credit for trips generated by a tattoo shop. The consequence of this erroneous baseline is an overestimation of the trips generated by existing uses, as a tattoo shop generally generates fewer trips than a gas station. As a result, the DSEIR discloses a lower transportation impact than can be supported by substantial evidence.

Comment E.5

The DSEIR estimates that First Presbyterian Church, located at 49 North Fourth Street generates 48 trips daily. The DSEIR states the building was used as a church until 2019, but now provides services for the disadvantaged.[39] However, the DSEIR's transportation analysis models the trips generated by the building as a church.[40] The DSEIR must analyze existing conditions as they existed when environmental review commenced – September 2021 (the date of the Notice of Preparation) – so it must remodel this building's trips generated.[41]

Comment E.6

The DSEIR estimates that the 13,500 sf of retail space of a one-story commercial building at 77 North Fourth Street generates 510 trips a day.[42] The DSEIR's Local Transportation Analysis treats this building as a "shopping center."[43] This trip generation rate may be erroneous, as it is unclear whether this commercial building was ever used as a shopping center. The DSEIR does not provide information on the building's existing uses or historical uses. But even if the building could be used as a shopping center, the CEQA Guidelines provide that "[a]n existing conditions baseline shall not include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing

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[36] Loopnet.com, Listing for 95 N. 4th Street, created on 8/14/2014, available at https://www.loopnet.com/Listing/18845612/95-N-4th-Street-San-Jose-CA/ (last accessed 7/29/2022, 4:00 PM).
[37] "Inkvested," a tattoo shop at 95 North Fourth Street, San José, received a customer review on Google 4 years ago. The review is available at https://g.co/kgs/HZafc9 (last accessed 7/29/2022, 4:00 PM).
[38] CEQA Guidelines, § 15125, subd. (a).
[39] DSEIR, pg. 61.
[40] Appendix I, pg. 11, Table 2.
[41] City of San José, Notice of Preparation of a Supplemental Environmental Impact Report for the Icon Echo Mixed-Use Project, September 2021.
[42] Appendix I, pg. 11, Table 2; DSEIR, pg. 62.
[43] Appendix I, pg. 11, Table 2.

permits or plans, as the baseline."[44] Since the DSEIR fails to substantiate its assessment of the existing building as a shopping center, its baseline is not supported by substantial evidence. The consequence of this flaw is that it likely overestimates the credit the Project takes for trips generated by existing uses, masking the Project's impacts.

Comment E.7

Because of this unsubstantiated baseline, the DSEIR's significance determinations regarding transportation impacts are not supported by substantial evidence. Further, the DSEIR fails as an informational document by failing to disclose the existing uses of the Project site, and to accurately disclose the full extent of the Project's impacts.

The City might argue that the DSEIR's unsubstantiated baseline is irrelevant because Downtown Strategy 2040 EIR provides project-level clearance for VMT impacts for projects that meet certain screening criteria.[45] But the Project must still comply with local land use regulations. General Plan Policy TR-5.3 states that "'Development projects' effects on the transportation network will be evaluated during the entitlement process and will be required to fund or construct improvements in proportion to their impacts on the transportation system." This policy requires the accurate disclosure of the trips generated by the Project. Moreover, even analysis added for informational purposes, as the Initial Study claims, must be accurate in order for the environmental document to fulfill its purpose as an informational document.[46]

Comment E.8

V. THE DSEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS

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. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.[47] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[48]

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[44] CEQA Guidelines, Section 15125(a)(3).
[45] Initial Study, pg. 104.
[46] Initial Study, pg. 26.
[47] 14 CCR § 15064(b).
[48] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.[49] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[50] In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[51]

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[52]

A. The DSEIR's Assessment of Air Quality and Greenhouse Gas Emissions is Not Supported by Substantial Evidence.

The DSEIR concludes that the Project's construction and operational criteria air pollutant emissions will be less than significant. These conclusions rely on emissions calculated with CalEEMod Version 2020.4.0 modeling software.[53] SWAPE reviewed the DSEIR's CalEEMod analysis and found that several modeling inputs were either unsubstantiated, or inconsistent with information disclosed elsewhere in the DSEIR. As a result, the Project's construction and operational emissions are underestimated, and unsupported by substantial evidence.

First, the DSEIR fails to substantiate the number of Saturday and Sunday operational vehicle trips generated by the Project. CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the operational on-road vehicles.[54] The DSEIR, in its transportation analysis, states that the Project is expected to generate 4,753 daily operational vehicle trips.[55] But SWAPE's review of

[49] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[50] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[51] *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[52] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[53] Appendix B, pg. 13.
[54] SWAPE Comments, pg. 4.
[55] Appendix I, pg. 11.

the CalEEMod output files demonstrates that the operational emissions model includes only 2,157.83 Saturday and 1,317.69 Sunday operational vehicle trips.[56] As a result, SWAPE concludes that the Saturday and Sunday vehicle trips are underestimated by 2,595.17 and 3,435.31 trips, respectively.[57] By underestimating operational daily trip rates, the DSEIR fails to analyze and disclose the full extent of the Project's impacts on air quality and climate change.

Comment E.9

Second, SWAPE's review of the CalEEMod output files demonstrates that the DSEIR's modeling includes several changes to the default wastewater treatment system percentages.[58] The DSEIR's model assumes that the Project's wastewater would be treated 100% aerobically.[59] The City's justification for this assumption is: "WWTP 100% aerobic no septic tanks or lagoons in downtown San José."[60] However, this justification is incorrect. The DSEIR states that "[w]astewater treatment in San José is provided by the San José-Santa Clara Regional Wastewater Facility."[61] SWAPE's review of the San José-Santa Clara Regional Wastewater Facilities treatment process reveals the use of anaerobic bacteria in the digesters phase of treatment.[62] Thus, the assumption that the Project's wastewater would be treated 100% aerobically is incorrect. SWAPE explains that because each type of wastewater treatment system is associated with different GHG emission factors, the DSEIR's flawed model may underestimate the Project's GHG emissions and should not be relied upon to determine Project significance.

As a result of these errors, the DSEIR's conclusions are not supported by substantial evidence. The DSEIR also fails as an informational document. An updated EIR must be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on air quality and climate change.

[56] Appendix B, pg. 106.
[57] SWAPE Comments, pg. 4.
[58] *Id.*
[59] Appendix B, pg. 103.
[60] Appendix B, pg. 81.
[61] DSEIR, pg. 115
[62] SWAPE Comments, pg. 4-5.

Comment E.10

B. The DSEIR's Discussion of the Project's Greenhouse Gas Impacts is Not Supported by Substantial Evidence.

Under the CEQA Guidelines, a lead agency must analyze a project's impacts on GHG emissions.[63] The Guidelines provide that "[i]n determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable."[64] In 2020, the City adopted a Greenhouse Gas Reduction Strategy ("GHGRS") that outlines the actions the City will undertake to achieve its proportional share of State greenhouse gas emission reductions for the interim target year 2030. Appendix H states that "a project's incremental contribution to a cumulative GHG emissions effect may be determined not to be cumulatively considerable if it complies with the requirements of the GHGRS."[65] The GHGRS requires (1) all projects to demonstrate consistency with the Envision San José 2040 General Plan's relevant policies for Land Use & Design, Transportation, Green Building, and Water Conservation, (2) demonstrate consistency with the GHGRS reduction strategies listed in Table B of the GHGRS or document why the strategies are not applicable or are infeasible, and (3) provide an explanation of additional or alternative proposed GHG mitigation measures.[66] Here, the DSEIR has not demonstrated that the Project complies with the GHGRS. As a result, the DSEIR's less-than-significant impact conclusion should not be relied upon.

Comment E.11

i. The DSEIR Fails to Demonstrate Consistency with the Envision San José 2040 General Plan

The DSEIR does not demonstrate consistency with Envision San José 2040 General Plan Goal MS-2.2, which states: "Encourage maximized use of on-site generation of renewable energy for all new and existing buildings." The DSEIR's Compliance Checklist states:

[63] 14 C.C.R §15064.4
[64] 14 CCR § 15064.4 (b)(3).
[65] Appendix H, pg. 1.
[66] Appendix H, pg. 2-3.

> "Rooftop areas on this project are used for mechanical equipment, outdoor open space for tenants and stormwater catchment. Solar hot water or solar electrical generation will be applied in areas not covered by these uses"[67]

This response is insufficient because by simply stating that solar panels would occupy open rooftop space, the Project commits to the bare minimum requirements.[68] The response also fails to include any of the analysis implicitly required by MS-2.2: the DSEIR does not state how many solar panels are proposed to be installed, nor does it analyze how many solar panels are necessary to maximize on-site generation of renewable energy. The DSEIR also fails to commit to maximizing on-site generation of energy, merely stating that some solar facilities will be installed in available rooftop areas, without disclosing how much area, if any, will be available for such uses. As such, the Compliance Checklist fails to demonstrate how the Project would encourage maximized use of on-site renewable energy for all new and existing buildings.

Further, the inclusion of rooftop solar is not included as a mitigation measure or a binding condition of approval, making its inclusion speculative and unenforceable. Environmental documents, including SEIRs, must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments."[69] Inconsistency with the Envision San José 2040 General Plan would constitute a significant GHG impact, according to the terms of the GHGRS.[70] Since the Project does not require rooftop solar, the DSEIR fails to demonstrate consistency with MS-2.2.

Comment E.12

The DSEIR does not demonstrate consistency with MS-2.3, which states: "Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption." The DSEIR's Compliance Checklist responds: "Building will have flat roofs to accommodate appropriate solar orientation."[71] This response is insufficient because it does not demonstrate consideration of building placement, landscaping, design and construction techniques to minimize energy consumption. The DSEIR's response must revised to include analysis of how the Project's building placement, landscaping, design and construction techniques can minimize energy

[67] Appendix H, pg. 5.
[68] SWAPE Comments, pg. 5.
[69] CEQA Guidelines, § 15126.4, subd. (a)(2).
[70] Appendix H, pg. 2.
[71] Appendix H, pg. 5.

consumption. SWAPE explains that as a result of these errors, the DSEIR fails to demonstrate consistency with MS-2.3.[72]

Comment E.13

The DSEIR does not demonstrate consistency with MS-2.11, which states:

> Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).

In response, the DSEIR's Compliance Checklist states that the Project would comply with the Green Building Ordinance and aim to achieve LEED Silver certification.[73] This response is insufficient because it fails to analyze what green building practices could feasibly be used for the Project. SWAPE explains that the DSEIR fails to analyze a Project design that includes building envelopes and systems to maximize energy performance, the maximization of cross ventilation and interior daylight, and the orientation of buildings, per the directives of MS-2.11.[74] Furthermore, SWAPE explains that the DSEIR fails to provide any evidence of concrete actions designed to target reduced energy use. Thus, the DSEIR fails to demonstrate consistency with MS-2.11.

Comment E.14

The DSEIR does not demonstrate consistency with MS-16.2, which states: "Promote neighborhood-based distributed clean/renewable energy generation to improve local energy security and to reduce the amount of energy wasted in transmitting electricity over long distances." Here, the Project's Compliance Checklist states the project "will include solar electrical and/or solar hot water generation (REACH and Title 24 compliance will dictate which are needed)."[75] Further, the DSEIR indicates that the Project "will be served by SJCE's default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future."[76] Similarly to the DSEIR's inconsistency

[72] SWAPE Comments, pg. 6-7.
[73] DSEIR, pg. 146; Appendix H, pg. 5.
[74] SWAPE Comments, pg. 6-7.
[75] Appendix H, pg. 6
[76] DSEIR, pg. 146.

with MS-2.2, the Project is inconsistent with MS-16.2 because the Project does not include solar generation as a mitigation measure or binding condition of approval.

Comment E.15

The DSEIR does not demonstrate consistency with CD-2.1, which states: "Promote the Circulation Goals and Policies in the Envision San José 2040 General Plan. Create streets that promote pedestrian and bicycle transportation by following applicable goals and policies in the Circulation section of the Envision San José 2040 General Plan." CD-2.1 identifies specific measures Projects are to consider, such as wider sidewalks, elements that increase driver awareness, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, Transportation Demand Management strategies, de-coupled parking, or on-street parking that buffers pedestrians from vehicles. The DSEIR's Compliance Checklist only partially complies with CD-2.1 by including a bike network, street trees and added shade elements, as well as reduced parking.[77] By failing to analyze the feasibility of all the measures identified in CD-2.1, the Project fails to demonstrate consistency with this measure.[78] For example, the DSEIR should explain why a Transportation Demand Management program, which is encouraged by CD-2.1, is not feasible for the Project. Otherwise, the DSEIR fails to conduct the requisite analysis to be consistent with this General Plan provision.

Comment E.16

The DSEIR does not demonstrate consistency with TR-7.1, which states: "Require large employers to develop TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies, transit incentives and other measures." Here, the DSEIR's Compliance Checklist states: "The project will not have a TDM plan to further reduce parking. Our shared parking arrangement will reduce overall parking demand. Office tenants may implement their own TDM plan as part of office TIs."[79] The DSEIR's Compliance Checklist acknowledges that TR-7.1 is applicable to the Project, yet fails to include a TDM program, in contradiction of TR-7.1's stated requirement to implement a TDM program. The DSEIR also fails to explain why providing a TDM program is infeasible for the Project. Thus, the Project conflicts with this General Plan provision.

[77] Appendix H, pg. 6.
[78] SWAPE Comments, pg. 8.
[79] Appendix H, pg. 8.

Comment E.17

The DSEIR does not demonstrate consistency with MS-3.1, which states: "Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial and developer-installed residential development unless for recreation needs or other area functions." In response, the Compliance Checklist states: "Project will include proper soils management techniques to reduce evapotranspiration. Planting will include native, adaptive and drought tolerant planting to reduce watering needs. Irrigation designs will be low flow and drip wherever feasible. Stormwater flow-through planters will make use of precipitation, when available, to reduce dependence on irrigation. Irrigation timers will ensure proper timing for all landscape watering."[80] This response is flawed because these measures are not included as binding measures. As stated above, environmental documents, including SEIRs, must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments."[81] Inconsistency with the Envision San José 2040 General Plan would constitute a significant GHG impact, according to the terms of the GHGRS.[82] SWAPE explains that since the measures proposed to comply with MS-3.1 are nonbinding, they are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.[83]

Comment E.18

The DSEIR does not demonstrate consistency with MS-19.4, which states: "Require the use of recycled water wherever feasible and cost-effective to serve existing and new development." The DSEIR's Compliance Checklist states: "The Project is currently exploring technology and systems needed to reuse potable water onsite. Cost effectiveness and final commitments to these technologies will not be flushed out until Building Permit phase."[84] The DSEIR's response is insufficient because it defers improperly defers analysis of this measure to a future date. The CEQA Guidelines provide that "[w]hile specific details of a mitigation measure may be developed after project approval, an agency may only do so when it is impracticable or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard." Here, the DSEIR does not commit itself to mitigation, adopt performance

[80] Appendix H, pg. 9
[81] CEQA Guidelines, § 15126.4, subd. (a)(2).
[82] Appendix H, pg. 2.
[83] SWAPE Comments, pg. 9.
[84] Appendix H, pg. 9.

standards, or identify potential measures. Thus, the Compliance Checklist does not demonstrate the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.[85]

Comment E.19

The DSEIR does not demonstrate consistency with MS-21.3, which states: "Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest." The DSEIR's Compliance Checklist states: "We will have diverse landscaping to match the climate, using native and adaptive plants."[86] SWAPE's comments explain that this response is insufficient because it fails to analyze the issues specified in MS-21.3, and does not provide evidence of concrete actions or measures proposed to satisfy this measure.[87] Thus, the Project does not demonstrate consistency with the GHGRS.

Comment E.20

ii. The DSEIR Fails to Demonstrate Consistency with GHGRS Reduction Strategies

Table B of the GHGRS identifies GHG reduction strategies and recommended consistency options.[88] Projects need to demonstrate consistency with the GHGRS reduction strategies listed in Table B or document why the strategies are not applicable or are infeasible.[89]

The Project fails to demonstrate consistency with strategies intended to promote "Zero Net Carbon Residential Development."[90] In addition to achieving/exceeding the City's Reach Code, the Project must either (1) exclude natural gas infrastructure, (2) install on-site renewable energy systems or participate in a community solar program to offset 100% of the project's estimated energy demand, or (3) participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity). Otherwise, the DSEIR is required to explain why such measures are not feasible. SWAPE explains that the DSEIR's response is

[85] SWAPE Comments, pg. 9.
[86] Appendix H, pg. 9.
[87] SWAPE Comments, pg. 10.
[88] Appendix H, pg. 2.
[89] *Id.*
[90] Appendix H, pg. 11.

insufficient for four reasons.[91] First, the Compliance Checklist indicates that gas infrastructure is only limited, not completely excluded on the Project site. Second, the Compliance Checklist indicates that the Project has not yet been approved for a Reach Code exemption allowing construction of gas infrastructure. Third, while the Project purportedly includes solar panels, the DSEIR fails to require on-site renewable energy generation to offset 100% of the Project's estimated energy demand. Fourth, the Compliance Checklist indicates that the Project would participate only in the SJCE GreenSource level, rather than the TotalGreen level. Thus, the Project's purported enrollment in the SJCE GreenSource program does not satisfy this measure. As a result, SWAPE is unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.21

The Project fails to demonstrate consistency with strategies intended to promote "Renewable Energy Development."[92] These include (1) installing solar panels, solar hot water, or other clean energy power generation sources on development sites, (2) participating in community solar programs to support development of renewable energy in the community, or (3) participating in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project. Here, the Compliance Checklist states: "The project will install solar panels and/or solar hot water panels as part of our achievement of the REACH code and Title 24."[93] But as discussed above, the Project fails to identify binding measures requiring installation of solar facilities on the Project site.[94]

Comment E.22

The Project fails to demonstrate consistency with strategies intended to promote "Zero Waste Goal."[95] These include: "(1) Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or (2) Exceed the City's construction & demolition waste diversion requirement."[96] The DSEIR's Compliance Checklist states: "Will use onsite sorting of materials to exceed the City's construction demo and waste diversion requirement."[97] This response is insufficient because the Project does not commit to onsite sorting via binding mitigation measures or conditions of approval. Further, although the GHGRS

[91] SWAPE Comments, pg. 10.
[92] Appendix H, pg. 11.
[93] Appendix H, pg. 11.
[94] SWAPE Comments, pg. 10-11.
[95] Appendix H, pg. 12.
[96] *Id.*
[97] Appendix H, pg. 11.

requires Applicant-proposed measures like onsite sorting to "[d]emonstrate the effectiveness of the proposed measure to reduce the project's GHG emissions" and "[i]nclude a description of how your measure will reduce emissions and provide supporting quantification documentation/assumptions," the DSEIR's Compliance Checklist fails to provide that information.

Overall, the Project has not demonstrated consistency with the GHGRS, and the less-than-significant GHG impact conclusion is not supported by substantial evidence.

Comment E.23

C. The City Fails to Fully Analyze and Mitigate Significant Health Risks from Soil Contamination

The DSEIR states that the Project site contains at least 11 recognized environmental conditions ("RECs") at the Project site, as a result of the operations of a gas station, drycleaner, lumber business, and automobile repair and service. Courts have held that a CEQA document must analyze the impacts from human exposure to toxic substances,[98] and that disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR.[99] The DSEIR concludes that the Project's impacts from exposure to hazardous materials are less than significant with mitigation.[100] But this mitigation is inadequate because the DSEIR improperly defers mitigation, and is inconsistent with provisions in the Downtown Strategy 2040 EIR.

To begin with, the Downtown Strategy 2040 EIR states that "[i]f a Phase I site assessment were to indicate that a release of hazardous materials could have affected the site, additional soil and/or groundwater investigations would be completed to assess the presence and extent of contamination at the site."[101] Here, the DSEIR's Phase I ESA identifies significant sources of soil and groundwater contamination. But the DSEIR fails to adopt binding mitigation requiring a Phase II ESA, which would include the soil and/or groundwater investigations required by the Downtown Strategy 2040 EIR. The DSEIR discusses the preparation of a Phase II ESA in Mitigation Measure ("MM") HAZ-1.2, which requires the project applicant

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[98] *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("*Berkeley Jets*") (2001) 91 Cal.App.4th 1344, 1369–1371.
[99] *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th at 388-90; 14 CCR § 15126.2(a).
[100] DSEIR, pg. x.
[101] Downtown Strategy 2040 FEIR, pg. 160-161.

to enroll in the SCCDEH Site Cleanup Program and determine if additional Phase II soil, soil vapor and groundwater investigations and remediation are required.[102] But HAZ-1.2 does not actually require a Phase II – it merely requires the Applicant to consider whether one is required. Thus, the DSEIR fails to actually require a Phase II ESA be conducted, which conflicts with the terms of the Downtown Strategy 2040 EIR. This constitutes a significant and unmitigated impact under CEQA.

Comment E.24

MM HAZ-1.2 is also flawed because it constitutes improperly deferred mitigation. As stated by the CEQA Guidelines, "[w]hile specific details of a mitigation measure may be developed after project approval, an agency may only do so when it is impracticable or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard."[103] Here, the DSEIR defers the analysis included in a Phase II ESA until after project approval without satisfying the requisite conditions. MM HAZ-1.2 does not commit to mitigation, as explained above, or adopt specific performance standards. Thus, it improperly defers mitigation. The consequence of this deferred mitigation is that detection and disclosure of contamination beyond the 11 RECs will occur after project approval, beyond the public eye.

Comment E.25

MM HAZ-1.4 also constitutes improperly deferred mitigation. MM HAZ-1.4 requires removal of below-grade hydraulic lifts existing on the site, and analysis of soil around the lifts. This constitutes impermissibly deferred mitigation because it fails to specifically require mitigation of any soil contamination that is found – the CEQA Guidelines only permit deferred mitigation when the agency commits itself to the mitigation.[104]

The DSEIR also fails to include applicable mitigation measures identified in the Downtown Strategy 2040 EIR. The Downtown Strategy 2040 EIR outlines specific "Measures Included in the Project to Reduce and Avoid Impacts related to Contamination."[105] The EIR explains that although adherence to existing regulations would generally reduce hazards associated with contaminated soil and groundwater, "future projects under the proposed Downtown Strategy 2040 may be

[102] DSEIR, pg. xi.
[103] CEQA Guidelines, § 15126.4(a)(1)(B).
[104] CEQA Guidelines, § 15126.4(a)(1)(B).
[105] Downtown Strategy 2040 Integrated EIR, pg. 160.

required to complete one or more of the following measures, depending on the extent and magnitude of contamination and regulatory agency requirements."[106] These measures include preparation of a Phase II Environmental Site Assessment, Remedial Action Workplan, Soil Management Plan, Health and Safety Plan, and other analyses. But these analyses are not required by the DSEIR's three mitigation measures, nor does the DSEIR analyze whether they are applicable to the Project. As a result, the DSEIR fails to mitigate the Project's significant soil contamination impacts in accordance with the Downtown Strategy 2040 EIR. The DSEIR's conclusion that the Project's significant impacts are mitigated to a less-than-significant level is unsupported.

Comment E.26

D. The DSEIR Fails to Fully Mitigate the Project's Noise Impacts

In Impact NOI-2, the DSEIR states that construction noise would exceed ambient levels by five dBA for a period of more than one year within 500 feet of residential uses or 200 feet of commercial or office uses, which exceeds the City thresholds.[107] But MM NOI-2.1 merely calls for a "noise logistics plan" to be prepared after project approval. This approach conflicts with the requirements of the CEQA Guidelines, which prohibit deferring formulation of mitigation measures unless the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard."[108] Here, MM NOI-2.1 states that the proposed noise logistics plan must contain certain noise-reducing features, but lacks any commitment to reduce impacts by a certain level. And the construction noise mitigation plan is not held to any performance metrics. Although "the noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits,"[109] courts have held that mitigation that does no more than allow approval by a local department without setting enforceable standards is inadequate.[110] Thus, the DSEIR fails to adequately mitigate the Project's significant construction noise impacts.

In addition to deferring formulation of mitigation measures, NOI-2.1 conflicts with the Envision San José 2040 General Plan. Policy EC-1.7 states: "Require

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[106] *Id.*
[107] Envision San José 2040 General Plan, Policy EC-1.7.
[108] CEQA Guidelines, § 15126.4(a)(1)(B).
[109] DSEIR, pg. xiii.
[110] *Endangered Habitats League, Inc. v. County of Orange,* (2005) 131 Cal.App.4th 777, 794.

construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code." Here, although NOI-2.1 does require "state-of-the-art" mufflers on construction equipment, the overall noise logistics plan does not clearly require best available technology and techniques. Thus, the Project conflicts with the General Plan.

Comment E.27

E. The DSEIR Fails to Adequately Analyze Potentially Significant Growth-Inducing Impacts

The CEQA Guidelines require that an EIR identify the likelihood that a proposed project could "foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment."[111] Here, the Project calls for 525,000 square feet ("sf") of office space, and the Downtown Strategy 2040 assumes a total of 14,200,000 sf of planned office space. The DSEIR claims that the increase in office space is "part of the planned growth in the Downtown Strategy 2040," but fails to conduct the analysis requisite to substantiate this claim.[112] Similarly, the Project's Initial Study states "[t]he increase in the resident population (1,324 new residents) and employee population (3,048 employees) would be within the overall development capacity assumed in the Downtown Strategy 2040.[113] But the IS also fails to substantiate this claim. In order to demonstrate that the Project's proposed increase in office space is within planned capacity, the DSEIR must analyze how much office space has already been constructed or is planned to be constructed (while reviewing cumulative projects in the Downtown Strategy 2040 project area), and then determine whether the Project's contribution to that increase in office space would exceed capacity. Since the DSEIR fails to provide this analysis, it lacks substantial evidence to claim growth-inducing impacts would be less than significant.

Comment E.28

VI. CONCLUSION

The DSEIR is inadequate and must be withdrawn. We urge the City to prepare and circulate a revised DSEIR which accurately describes the project description and the existing environmental setting, discloses all of the Project's potentially significant impacts, and requires all feasible mitigation measures to

[111] CEQA Guidelines, § 15126.2[d].
[112] DSEIR, pg. 145.
[113] Initial Study, pg. 83.

reduce the Project's significant environmental and public health impacts. We thank you for the opportunity to provide these comments on the DSEIR.

Sincerely,

Aidan P. Marshall

Attachment
APM:acp

5693-004acp

EXHIBIT A

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

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

Paul E. Rosenfeld, PhD
(310) 795-2335
prosenfeld@swape.com

July 27, 2022

Richard Franco
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the Icon-Echo Mixed-Use Project (SCH No. 2021090554)

Dear Mr. Franco,

Comment E.29

We have reviewed the June 2022 Draft Supplemental Environmental Impact Report ("DSEIR") for the Icon-Echo Mixed-Use Project ("Project") located in the City of San Jose ("City"). The Project proposes to demolish 22,527-square-feet ("SF") of existing structures and construct two towers, including 415 residential units, 516,500-SF of office space, and 8,500-SF of retail space, as well as 992 parking spaces on the 2.1-acre site.

Our review concludes that the DSEIR fails to adequately evaluate the hazards, hazardous materials, air quality, and greenhouse gas impacts. As a result, emissions associated with construction and operation of the proposed Project are underestimated and inadequately addressed. A revised EIR should be prepared to adequately assess and mitigate the potential hazards, hazardous materials, air quality, and greenhouse gas impacts that the project may have on the environment.

Comment E.30

Hazards and Hazardous Materials

Inadequate Disclosure and Analysis of Impacts

The DSEIR states that the Project site was used for a former gas station, drycleaner, and lumber business. This site is currently used as a gas station and automobile repair and service. A 2020 Phase I Environmental Site Assessment ("ESA"), provided as Appendix E to the DSEIR, found 11 recognized environmental conditions ("RECs") at the Project site, including:

- Oil water separator and the associated auto repair and painting activities;
- Gas station and an auto repair shop, along with a dry cleaner (potential vapor migration)
- Laundry business (potential vapor migration);

- Laundry and baby diaper cleaning service (potential vapor migration);
- Three fuel underground storage tanks (USTs) and one waste oil UST at current gas station;
- Detections in a previous Phase II ESA of soil vapor and groundwater samples above residential Environmental Screening Levels (ESLs) for total petroleum hydrocarbons as gasoline (TPH-g), 1,2-dichloroethane (1,2-DCA), chlorobenzene and benzene;
- Release of hydraulic fluid which could have contained PCBs;
- Former automobile dealership and service businesses;
- Gasoline UST;
- Dry cleaning business; and
- Lumber mill.

To evaluate these conditions, the DSEIR incorporates mitigation to be implemented only after Project approval. Specifically, Mitigation Measure ("MM") HAZ-1.1 calls for evaluation of the RECs prior to grading, MM HAZ-1.2 calls for voluntary enrollment in the County Site Cleanup Program prior to grading, and MM HAZ-1.4 provides for the removal of hydraulic lifts and the oil water separator prior to grading.

This mitigation is inadequate because forestalling completion of these measures until after Project approval defers disclosure of conditions which may be significant and warrant additional, specific mitigation measures. A revised EIR needs to be prepared to include the results of a Phase II ESA to be completed before project approval. On the basis of the Phase II ESA, the revised EIR should include mitigation measures that may be required to address the contamination. These measures may include excavation and offsite disposal of contaminated soil, installation of a soil vapor extraction system and installation of a groundwater extraction and treatment system. The impacts of implementing any necessary mitigation that requires use of heavy machinery and trucks should be evaluated in the EIR, including estimates of emissions of criteria air pollutants and health impacts of the emissions of air toxins, including diesel particulate matter.

Comment E.31

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DSEIR's air quality analysis relies on emissions calculated with the California Emissions Estimator Model ("CalEEMod") Version 2020.4.0 (p. 29).[1] CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters are utilized in calculating the Project's air pollutant emissions and make known which default values are changed as well as provide justification for the values selected.

[1] "CalEEMod User's Guide Version 2020.4.0." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide.

When reviewing the Project's CalEEMod output files, provided in the Air Quality Assessment and Air Quality Cumulative Memorandum ("AQ Assessment") as Appendix B to the DSEIR, we found that a couple model inputs were not consistent with information disclosed in the DSEIR. As a result, the Project's construction and operational emissions are underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

Comment E.32

Unsubstantiated Number of Saturday and Sunday Operational Vehicle Trips

According to the Local Transportation Analysis ("LTA"), provided as Appendix I to the DSEIR, the proposed Project is expected to generate 4,753 daily operational vehicle trips (see excerpt below) (p. 11, Table 2).

Table 2
Project Trip Generation Estimates

Land Use	% of Vehicle Mode Share	% Reduction	Size	Daily Rate	Daily Trip	AM Peak Hour Pk-Hr Rate	AM Split In	AM Split Out	AM Trip In	AM Trip Out	AM Trip Total	PM Peak Hour Pk-Hr Rate	PM Split In	PM Split Out	PM Trip In	PM Trip Out	PM Trip Total
Proposed Land Uses																	
ITE LU # 222 - Multifamily Housing (High-Rise)[1]			415 Dwelling Units	4.45	1,847	0.31	24%	76%	31	98	129	0.36	61%	39%	91	58	149
- Residential & Office Mixed-Use Reduction[2]		3%			*-55*				*-1*	*-3*	*-4*				*-3*	*-2*	*-5*
- Residential & Retail Mixed-Use Reduction[3]		15%			*-48*				*0*	*-1*	*-1*				*-3*	*-2*	*-5*
- Location-Based Reduction[5]	78%	22%			*-384*				*-7*	*-21*	*-28*				*-19*	*-12*	*-31*
- VMT Reduction[5]		5.87%			*-80*				*-1*	*-4*	*-5*				*-4*	*-2*	*-6*
Residential Sub-Total					**1,280**				**22**	**69**	**91**				**62**	**40**	**102**
ITE LU # 710 - General Office Building[1]			525,000 Square Feet	9.74	5,114	1.16	86%	14%	524	85	609	1.15	16%	84%	97	507	604
- Residential & Office Mixed-Use Reduction[2]		3%			*-55*				*-3*	*-1*	*-4*				*-2*	*-3*	*-5*
- Office & Retail Mixed-Use Reduction[4]		3%			*-161*				*-2*	*-3*	*-5*				*-9*	*-8*	*-17*
- Location-Based Reduction[5]	69%	31%			*-1,518*				*-161*	*-25*	*-186*				*-27*	*-154*	*-181*
Office Sub-Total					**3,380**				**358**	**56**	**414**				**59**	**342**	**401**
ITE LU # 820 - Shopping Center[1]			8,500 Square Feet	37.75	321	0.94	62%	38%	5	3	8	3.81	48%	52%	15	17	32
- Residential & Retail Mixed-Use Reduction[3]		15%			*-48*				*-1*	*0*	*-1*				*-2*	*-3*	*-5*
- Office & Retail Mixed-Use Reduction[4]		3%			*-161*				*-3*	*-2*	*-5*				*-8*	*-9*	*-17*
- Location-Based Reduction[5]	83%	17%			*-19*				*0*	*0*	*0*				*-1*	*-1*	*-2*
Retail Sub-Total					**93**				**1**	**1**	**2**				**4**	**4**	**8**
Baseline Project Trips (Before Reductions)					7,282				560	186	746				203	582	785
Proposed Project Trips (After Reductions)					4,753				381	126	507				125	386	511

As such, the Project's model should have included trip rates that reflect the estimated number of average daily vehicle trips. However, review of the CalEEMod output files demonstrates that the "Icon-Echo MU Towers, San Jose - Operational Emissions" model includes only 2,157.83 Saturday and 1,317.69 Sunday operational vehicle trips (see excerpt below) (Appendix B, pp. 106).

	Average Daily Trip Rate		
Land Use	Weekday	Saturday	Sunday
Apartments High Rise	1,278.20	1,303.10	1033.35
Enclosed Parking with Elevator	0.00	0.00	0.00
General Office Building	3,381.00	766.50	241.50
Strip Mall	92.99	88.23	42.84
Total	4,752.19	2,157.83	1,317.69

As demonstrated above, the Saturday and Sunday vehicle trips are underestimated by 2,595.17- and 3,435.31-trips, respectively.[2, 3] As such, the trip rates inputted into the model are underestimated and inconsistent with the information provided by the LTA.

These inconsistencies present an issue, as CalEEMod uses the operational vehicle trip rates to calculate the emissions associated with the operational on-road vehicles.[4] Thus, by including underestimated operational daily vehicle trips, the model underestimates the Project's mobile-source operational emissions and should not be relied upon to determine Project significance.

Comment E.33

Unsubstantiated Changes to Wastewater Treatment System Percentages

Review of the CalEEMod output files demonstrates that the "Icon-Echo MU Towers, San Jose - Operational Emissions" model includes several changes to the default wastewater treatment system percentages (see excerpt below) (Appendix B, pp. 103).

Table Name	Column Name	Default Value	New Value
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AerobicPercent	87.46	100.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	AnaerobicandFacultativeLagoonsPercent	2.21	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWater	SepticTankPercent	10.33	0.00
tblWoodstoves	WoodstoveWoodMass	582.40	0.00

As you can see in the excerpt above, the model assumes that the Project's wastewater would be treated 100% aerobically. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[5] According to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is:

> "WWTP 100% aerobic no septic tanks or lagoons in downtown San Jose" (Appendix B, pp. 81).

However, these changes remain unsupported. The IS, provided as Appendix A to the DSEIR, indicates that "[w]astewater treatment in San José is provided by the San José-Santa Clara Regional Wastewater Facility" (p. 115). Review of the San José-Santa Clara Regional Wastewater Facilities treatment process

[2] Calculated: 4,753 proposed daily trips – 2,157.83 modeled Saturday trips = 2,595.17 underestimated Saturday trips.
[3] Calculated: 4,753 proposed daily trips – 1,317.69 modeled Sunday trips = 3,453.31 underestimated Sunday trips.
[4] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 36.
[5] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 1, 14.

reveals the use of anaerobic bacteria in the digesters phase of treatment.[6] As such, the assumption that the Project's wastewater would be treated 100% aerobically is incorrect.

These unsubstantiated changes present an issue, as each type of wastewater treatment system is associated with different GHG emission factors, which are used by CalEEMod to calculate the Project's total GHG emissions.[7] Thus, by including unsubstantiated changes to the default wastewater treatment system percentages, the model may underestimate the Project's GHG emissions and should not be relied upon to determine Project significance.

Comment E.34

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The IS, provided as Appendix A to the DSEIR, relies upon the Project's consistency with the City's 2030 Greenhouse Gas Reduction Strategy ("GHGRS") in order to conclude that the Project would result in a less-than-significant greenhouse gas ("GHG") impact (p. 59-60). However, review of *Table A: General Plan Consistency* and *Table B: 2030 Greenhouse Gas Reduction Strategy Compliance* within the Compliance Checklist, provided as Appendix H to the DSEIR, reveal that the Project is inconsistent with numerous measures, including but not limited to those listed below:

GHGRS Project Compliance Checklist[8]	
Table A: General Plan Consistency	
Implementation of Green Building Measures	
MS-2.2: Encourage maximized use of on-site generation of renewable energy for all new and existing buildings.	Here, the Compliance Checklist states: "Rooftop areas on this project are used for mechanical equipment, outdoor open space for tenants and stormwater catchment. Solar hot water or solar electrical generation will be applied in areas not covered by these uses" (Appendix H, p. 5). However, this response is insufficient for two reasons. First, by simply stating that solar panels would occupy open rooftop space, the Project commits to the bare minimum requirements. As such, the Compliance Checklist fails to demonstrate how the Project would encourage *maximized* use of on-site renewable energy for all new and existing buildings. Second, the inclusion of rooftop solar is not included as a mitigation measure or a binding condition of approval, making its inclusion speculative and unenforceable. This

[6] "Treatment Process." San Jose-Santa Clara Regional Wastewater Facility, *available at:* https://www.sanjoseca.gov/your-government/environment/water-utilities/regional-wastewater-facility/treatment-process

[7] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 45.

[8] "GHGRS Project Compliance Checklist." City of San Jose Department of Planning, Building, and Code Enforcement, *available at*: https://www.sanjoseca.gov/Home/ShowDocument?id=63603.

	is incorrect, as according to the AEP *CEQA Portal Topic Paper* on mitigation measures: "While not "mitigation", a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact" (emphasis added).[9] As you can see in the excerpts above, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, as the DSEIR fails to require the Project to incorporate solar, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Comment E.35 **MS-2.3**: Encourage consideration of solar orientation, including building placement, landscaping, design and construction techniques for new construction to minimize energy consumption.	Here, the Compliance Checklist states: "Building will have flat roofs to accommodate appropriate solar orientation" (Appendix H, p. 5). However, this response is insufficient for two reasons. First, by simply stating that the "[b]uilding will have flat roofs," the Project commits to the bare *minimum* requirements. As such, the Compliance Checklist fails to demonstrate how the Project would encourage consideration of building placement, landscaping, design and construction techniques to minimize energy consumption. Furthermore, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Comment E.36 ***MS-2.11****: Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance),*	Here, the Compliance Checklist states: "Buildings will be targeting LEED NC Silver. We will comply with the City REACH code" (Appendix H, p. 5). Furthermore, the DSEIR states:

[9] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, *available at:* https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 6.

through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).	"[T]he proposed project would be designed to achieve LEED Silver certification and constructed in compliance with CALGreen requirements, the City's Reach Code, the City's Council Policy 6-32 (Private Sector Green Building Policy) and Green Building Ordinance, and would also be required to comply with the City's Reach Code and will be served by SJCE's default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future" (p. 146). However, this response is insufficient, as the Compliance Checklist fails to demonstrate how the Project would incorporate green building practices to minimize energy consumption. Specifically, the Compliance Checklist and DSEIR should have discussed and considered a Project design that includes building envelopes and systems to maximize energy performance), the maximization of cross ventilation and interior daylight, and the orientation of buildings. Furthermore, the DSEIR fails to provide any evidence of concrete actions designed to target reduced energy use. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Comment E.37 **MS-16.2**: Promote neighborhood-based distributed clean/renewable energy generation to improve local energy security and to reduce the amount of energy wasted in transmitting electricity over long distances.	Here, the Compliance Checklist states: "The project will include solar electrical and/or solar hot water generation (REACH and Title 24 compliance will dictate which are needed). This allows the project to minimize its dependence on the traditional energy grid, thereby reducing the need for the use of electricity transmitted over long distances." (Appendix H, p. 6). Furthermore, the DSEIR indicates that the Project "will be served by SJCE's default program (GreenSource), which currently provides 60-percent renewable energy, and this percentage will increase in the future" (p. 146). However, this response is insufficient. According to the San Jose Clean Energy ("SJCE") website, customers can upgrade to TotalGreen, which provides 100% renewable energy for only $4 more per month.[10] Thus, by failing to opt in to the TotalGreen program, the Project fails to promote neighborhood-based distributed clean/renewable energy generation to the greatest extent available. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

[10] "TotalGreen." San Jose Clean Energy, *available at:* https://sanjosecleanenergy.org/totalgreen/.

Comment E.38

Pedestrian, Bicycle & Transit Site Design Measures	
CD-2.1: Promote the Circulation Goals and Policies in the Envision San José 2040 General Plan. Create streets that promote pedestrian and bicycle transportation by following applicable goals and policies in the Circulation section of the Envision San José 2040 General Plan. a) Design the street network for its safe shared use by pedestrians, bicyclists, and vehicles. Include elements that increase driver awareness. b) Create a comfortable and safe pedestrian environment by implementing wider sidewalks, shade structures, attractive street furniture, street trees, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, and on-street parking that buffers pedestrians from vehicles. c) Consider support for reduced parking requirements, alternative parking arrangements, and Transportation Demand Management strategies to reduce area dedicated to parking and increase area dedicated to employment, housing, parks, public art, or other amenities. Encourage de-coupled parking to ensure that the value and cost of parking are considered in real estate and business transactions.	Here, the Compliance Checklist states: "Project will expand the bike network along 4th St. We plan to activate the street through enhanced street trees and added shade elements. We will not include mid-block crossings. Reduced parking schemes include shared parking between residential and commercial buildings. The parking garage includes replacement parking for Town Park Towers. The project will not have a TDM plan, but will qualify for a standard 20% reduction in parking" (Appendix H, p. 6). However, this response is insufficient, as the Compliance Checklist fails to mention elements that increase driver awareness, wider sidewalks, attractive street furniture, reduced traffic speeds, pedestrian-oriented lighting, mid-block pedestrian crossings, pedestrian-activated crossing lights, bulb-outs and curb extensions at intersections, Transportation Demand Management strategies, de-coupled parking, or on-street parking that buffers pedestrians from vehicles. Thus, by merely including a bike network, street trees and added shade elements, as well as reduced parking, the Project fails to demonstrate consistency with all aspects of this measure. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.39

CD-3.2: Prioritize pedestrian and bicycle connections to transit, community facilities (including schools), commercial areas, and other areas serving daily needs. Ensure that the design of new facilities can accommodate significant anticipated future increases in bicycle and pedestrian activity.	Here, the Compliance Checklist states: "We will prioritize bicycle connections by continuing the 4th St. bicycle along our complete 4th St. frontage. Project will provide ample short and long term bike parking directly adjacent to 4th St. As well, the project will replace street trees. As well, project will allow for clear wayfinding for pedestrians and cyclists" (Appendix H, p. 7). However, this response is insufficient, as the DSEIR fails to mention or support how the proposed bicycle parking will prioritize connections to transit, community facilities, and other areas service daily needs. Furthermore, the DSEIR fails to mention how the proposed Project will accommodate significant anticipated *future* increases in bicycle and pedestrian activity. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
TR-7.1: Require large employers to develop TDM programs to reduce the vehicle trips and vehicle miles generated by their employees through the use of shuttles, provision for	Here, the Compliance Checklist states: "The project will not have a TDM plan to further reduce parking. Our shared parking arrangement will reduce overall parking demand. Office tenants may

car-sharing, bicycle sharing, carpool, parking strategies, transit incentives and other measures.	implement their own TDM plan as part of office TIs" (Appendix H, p. 8). As demonstrated above, the Compliance Checklist clearly indicates the Project will not have a TDM plan. Furthermore, the Compliance Checklist only refers to reductions to parking and fails to address any reductions to vehicle trips and vehicle miles generated by employees using shuttles, provision for car-sharing, bicycle sharing, carpool, parking strategies, transit incentives and other measures. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Water Conservation and Urban Forestry Measures	
MS-3.1 Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial and developer-installed residential development unless for recreation needs or other area functions.	Here, the Compliance Checklist states: "Project will include proper soils management techniques to reduce evapotranspiration. Planting will include native, adaptive and drought tolerant planting to reduce watering needs. Irrigation designs will be low flow and drip wherever feasible. Stormwater flow-through planters will make use of precipitation, when available, to reduce dependence on irrigation. Irrigation timers will ensure proper timing for all landscape watering." (Appendix H, p. 9). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, the DSEIR fails to require the water-efficient landscaping and irrigation as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
MS-19.4: Require the use of recycled water wherever feasible and cost-effective to serve existing and new development.	Here, the Compliance Checklist states: "The Project is currently exploring technology and systems needed to reuse potable water onsite. Cost effectiveness and final commitments to these technologies will not be flushed out until Building Permit phase" (Appendix H, p. 9). However, this response is insufficient, as the Compliance Checklist only indicates the Project is exploring systems needed to reuse potable water but does not explicitly require them. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.40

Comment E.41

Comment E.42

MS-21.3: Ensure that San José's Community Forest is comprised of species that have low water requirements and are well adapted to its Mediterranean climate. Select and plant diverse species to prevent monocultures that are vulnerable to pest invasions. Furthermore, consider the appropriate placement of tree species and their lifespan to ensure the perpetuation of the Community Forest.	Here, the Compliance Checklist states: "We will have diverse landscaping to match the climate, using native and adaptive plants" (Appendix H, p. 9). However, this response is insufficient. By simply stating that the Project "will have diverse landscaping" the Project commits to the bare *minimum* requirements. As such, the Compliance Checklist fails to demonstrate how the Project would ensure the perpetuation of the Community Forest. Furthermore, the Compliance Checklist fails to provide any evidence of concrete actions or measures proposed to satisfy this measure. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.43

Table B: 2030 Greenhouse Gas Reduction Strategy Compliance	
PART 2: RESIDENTIAL AND NON-RESIDENTIAL PROJECTS	
Zero Net Carbon Residential Development 1. Achieve/exceed the City's Reach Code, and 2. Exclude natural gas infrastructure in new construction, or 3. Install on-site renewable energy systems or participate in a community solar program to offset 100% of the project's estimated energy demand, or 4. Participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project until which time SJCE achieves 100% carbon-free electricity for all accounts. Supports Strategies: GHGRS #1, GHGRS #2, GHGRS #3	Here, the Compliance Checklist states: "Gas infrastructure is limited for future commercial cooking establishment within the future retail space only. Reach code has the following exemption (17.845.045) the project will request before end of the year to comply with this requirement. The project will participate in San Jose Clean Energy's GreenSource/default program for this residential portion of the project" (Appendix H, p. 11). However, this response is insufficient for four reasons. First, the Compliance Checklist indicates that gas infrastructure is only limited, not completely excluded on the Project site. Second, the Compliance Checklist indicates that the Project has not yet been approved for the above-mentioned Reach Code exemption. Third, while the Project purportedly includes solar panels, the DSEIR fails to require on-site renewable energy generation to offset 100% of the Project's estimated energy demand. Fourth, the Compliance Checklist indicates that the Project would participate only in the SJCE GreenSource level, rather than the TotalGreen level.[11] Thus, the Project's purported enrollment in the SJCE GreenSource program does not satisfy this measure. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.44

Renewable Energy Development 1. Install solar panels, solar hot water, or other clean energy power generation sources on development sites, or	Here, the Compliance Checklist states:

[11] "GREENSOURCE." San José Clean Energy, *available at:* https://sanjosecleanenergy.org/greensource/.

2. Participate in community solar programs to support development of renewable energy in the community, or 3. Participate in San José Clean Energy at the Total Green level (i.e., 100% carbon-free electricity) for electricity accounts associated with the project. Supports Strategies: GHGRS #1, GHGRS #3.	"The project will install solar panels and/or solar hot water panels as part of our achievement of the REACH code and Title 24." (Appendix H, p. 11). However, this response is insufficient. As previously discussed, PDFs are not mitigation measures and may be eliminated from the Project's design. Here, the DSEIR fails to require "solar panels and/or solar hot water panels" as formal mitigation. As such, we cannot guarantee that this measure would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.
Zero Waste Goal 1. Provide space for organic waste (e.g., food scraps, yard waste) collection containers, and/or 2. Exceed the City's construction & demolition waste diversion requirement. Supports Strategies: GHGRS #5	Here, the Compliance Checklist states: "Will use onsite sorting of materials to exceed the City's construction demo and waste diversion requirement." (Appendix H, p. 11). However, this response is insufficient. Simply stating that the Project would exceed the City's construction demolition and waste diversion requirement fails to provide substantial evidence that this goal would be implemented, monitored, and enforced on the Project site. As a result, we are unable to verify the Project's consistency with the GHGRS, and the less-than-significant impact conclusion should not be relied upon.

Comment E.45

Comment E.46

As the above table indicates, the DSEIR fails to provide sufficient information and analysis to determine Project consistency with all of the measures required by the GHGRS. As a result, we cannot verify that the Project is consistent with the GHGRS, and the DSEIR's less-than-significant GHG impact conclusion should not be relied upon. We recommend that a revised EIR include further information and analysis demonstrating the Project's consistency with the GHGRS.

Comment E.47

Disclaimer

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

Sincerely,

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

Paul E. Rosenfeld, Ph.D.

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

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

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

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

Education:

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

Professional Certifications:

California Professional Geologist
California Certified Hydrogeologist
Qualified SWPPP Developer and Practitioner

Professional Experience:

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

Positions Matt has held include:

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

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

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

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

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

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

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

Executive Director:

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

Hydrogeology:

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

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

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

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

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

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

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

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

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

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

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

Policy:

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

Activities included the following:

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

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

Geology:

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

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

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

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

Teaching:

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

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

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

Invited Testimony, Reports, Papers and Presentations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Experience:

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

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 oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, industrial, military and agricultural sources, unconventional oil drilling operations, and locomotive and construction engines. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities. Dr. Rosenfeld has also successfully modeled exposure to contaminants distributed by water systems and via vapor intrusion.

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

Professional History:

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

Publications:

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

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

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

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

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

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

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

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

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Presentations:

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

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

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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.

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Teaching Experience:

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

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

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

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

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

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

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

Academic Grants Awarded:

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

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

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

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

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

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

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

Deposition and/or Trial Testimony:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESERVATION ACTION COUNCIL OF SAN JOSE
History Park
1650 Senter Road
San Jose, CA 95112
Phone: 408-998-8105
www.preservation.org

August 1 2022

Shannon Hill
Environmental Project Manager
City of San José Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San José CA 95113-1905

VIA EMAIL (Shannon.Hill@sanjoseca.gov)

RE: ICON-ECHO Mixed Use Project (SP21-031/ER21-134) SEIR PAC*SJ COMMENTS

Dear Ms. Hill,

Comment F.1

The Preservation Action Council of San Jose (PAC*SJ) appreciates the opportunity to provide Comment on the SEIR for the proposed Two-Tower High Rise ICON-ECHO Mixed Use Project located on 3 parcels totaling 2.19 acres at the Southeast Corner of Santa Clara Street and 4th Street. As currently described, the developer proposes to build one 267' mixed use tower with 415 residential-units, and one 282' mixed use Commercial Tower with 525,000 sq. ft. of Office Space and 8,500 sq. ft. of Retail Space.

To make way for this project, the project's applicant (Urban Catalyst), proposes to demolish all existing structures on the site including the following three structures which are contained within one parcel (APN 467-20-060) in the project's northernmost portion which are included within the St. James Square City Landmark District:

128 E. St. John Street: 1922 Single Story Commercial Garage

95 N. 4th Street: 1948 Single Story Commercial Building (potentially a auto service station)

77 N. 4th Street: 1927/1947/1960 Flat Top Commercial Building.

Comment F.2

Given that the St James Square City Landmark District has irregular boarders on its North, South, East and West edges, PAC*SJ requested via its October 28, 2021 SEIR Scoping Comments for this project an explanation as to why the parcels/buildings were specifically and intentionally included within the Historic District. PAC*SJ also requested that the Historic Consultant (Treanor HL) provide a detailed analysis of the parcel and its buildings before the City determines if these up to Century-Old structures are individually eligible for listing on the NRHP, CRHR or as a City Landmark

Comment F.3

Given that these resources are representative of buildings constructed during pre-Great Depression and Post World War II periods and are located both within and between Historic Districts, PAC*SJ noted that their demolition represents a loss of historic context, so their historic value should not be a matter of speculation. TreanorHL did in fact provide within its April 5, 2022 Historic Resources Assessment an evaluation of

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COUNCIL OF SAN JOSE
History Park
1650 Senter Road
San Jose, CA 95112
Phone: 408-998-8105
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historic significance for each of these properties. On page 77 of the Draft SEIR by David Powers, the following is asserted:

"All the buildings and structures on the project site were evaluated for individual potential significance and eligibility for listing in the NRHP, CRHR, and the City's HRI as a Candidate City Landmark under San José Municipal Code Section 13.48.100.H. The buildings were determined to be ineligible for listing in the NRHP and CRHR and ineligible for listing as a Candidate City Landmark. Therefore, the buildings and structures on-site are not considered to be historical resources under CEQA and their demolition will not result in a significant impact."

While PAC*SJ does not necessarily agree or disagree with the Report's assertions regarding eligibility, we do assert that by demolishing these historic buildings to make way for the proposed ICON/ECHO project, damage to San Jose's historic fabric is likely to be substantial. On page 78 of the Draft SEIR, the report begins to assess whether the project may cause a substantial adverse effect on the significance of a historical resource (St. James Square City Landmark District) under CEQA relative to the design of the Northern Tower (ICON). A summary of TreanorHL's evaluation of conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), St. James Square Historic District Design (Guidelines), and the National Register historic integrity was described.

Comment F.4

As noted in PAC*SJ's Scoping Comments letter, the proposed ECHO Residential Tower is located within the St. James Square City Landmark District and is of massive scale relative to the historic buildings within the Historic District, attention to the impact of the project's height and massing is needed. The St. James Square Historic District Design Guidelines (as adopted by City Council on 10/17/89) state that they are "intended for use by architects, other design professionals, historic preservation specialists and property owners to promote sensitive and compatible design of modifications to existing structures and the construction of new buildings" such as the ECHO Residential Tower. This document also describes the area around the Park itself as an "Area of Historic Sensitivity" that calls for new development that is "designed to enhance the character of the designated resource." PAC*SJ requests that the SEIR explains how the project enhances the character of the Historic District and how it meets or exceeds the Historic District's Design Guidelines.

Comment F.5

As for the Report's analysis of the projects success in meeting **the Secretary of the Interior's Standards**, here is a quote from the report:

"…the Northern Tower would not be compatible with the St. James Square City Landmark District in terms of size, scale, proportion, and massing. The historic district consists of two- to 4-story buildings that are rectangular in plan and large in mass. The district contributors within the St. James Square City Landmark District are set back on platforms above the street level from the sidewalk. The Northern Tower would be set back less than four feet at the northeast corner of the podium while upper floors would have no set back. Additionally, the proposed Northern Tower would step down two stories in height at the district-facing northern façade. For these reasons, the Northern Tower is not consistent with Standard 9.

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As for the Reports analysis of the project's success in meeting the **St. James Square Historic District Design Guidelines**, here is a quote from the report:

"The proposed Northern Tower does not conform with the Site Layout/Setbacks, Surface Treatment (fenestration and detailing), Detailing, and Landscaping guidelines."

It is concerning that the City may accept significant impacts without a robust consideration of alternative designs that would minimize the impact of the project to the significance of two of San Jose's most significant Historic Districts.

Comment F.6

As for the South Tower side of the proposed project, PAC*SJ specifically noted in its scoping comments the significance of the Downtown Commercial Historic District to the south of the ECHO tower. The height and massing of the buildings to the south of the proposed commercial tower on East Santa Clara Street are primarily 30' in width and 2-3 stories tall. PAC*SJ requests that the design of the south tower reflects the Historic District's buildings all the way down to street level.

PAC*SJ specifically noted the importance of the Alliance Building at 101-109 East Santa Clara Street, plus the mural on that building's eastern façade of 1968 Olympic Gold Medalist Tommie Smith's Black Power Salute. The building should not be overshadowed, and the cultural significance of the mural should not be hidden from public view. Neither issue appears to be included in the current SEIR Report.

Comment F.7

As noted in PAC*SJ's Scoping Comments, this SEIR should also include a detailed analysis of the direct and indirect impact of the proposed development on other nearby/adjacent historic structures and potential Districts as a whole, along with a detailed analysis of multiple alternatives that eliminate or substantially reduce the impact of this project on San Jose's historic resources. The Report does include a summary of On-Site/Off-Site Impacts that includes a listing of individual properties, but the current Report is lacking in its coverage of the impact to the St. James Square Historic District and barely references the impact to the Downtown Commercial Historic District. Furthermore, it does not adequately address the cumulative impact of this project in the context of all other projects currently underway or envisioned in the immediate vicinity of the ICON/ECHO Project.

Comment F.8

Section 15130(b) of the State CEQA Guidelines defines consideration of the following two elements as necessary to provide an adequate discussion of cumulative impacts: (A) a list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the Agency, or (B) a summary of projections contained in a local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.

Projects that should be taken into account in a revision of the SEIR include but should not be limited to the SuZaCo Mixed-Use Project and the Fountain Alley Project. Both Projects are within the Land Use Control of the City of San Jose. If there are other projects that this City anticipates, those projects should be referenced as well. It is worth noting that VTA also providing scoping comments that suggest the need for

PRESERVATION ACTION
COUNCIL OF SAN JOSE
History Park
1650 Senter Road
San Jose, CA 95112
Phone: 408-998-8105
www.preservation.org

an evaluation of the impact of construction and operation of planned VTA/BART projects on San Jose's historic fabric. As required by CEQA, a list of development and transportation projects should be added to and reconciled with the conclusions of this Project Report.

Comment F.9

Finally, a robust summary of financial and physical mitigation measures applicable to this project should be provided in advance of project consideration should the City decide to approve this project via a statement of overriding consideration to justify the granting of demolition permits. PAC*SJ is particularly interested as to how the historic fabric within and in the vicinity of this proposed project will be preserved and how San Jose will be able to fund the protection of its historic fabric as it simultaneously seeks to meet it Envision 2040 Program Goals on a project-by-project basis. If the City determines that negative impacts are unavoidable, PAC*SJ asks that mitigation funding be provided to the City by the Developer for preservation projects within San Jose.

Sincerely,

J. Michael Sodergren
Vice President & Advocacy Committee Chair
Preservation Action Council of San Jose (PAC*SJ)

mike@preservation.org
mikesodergren@yahoo.com
408-930-2561