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September 27, 2011

VIA FACSIMILE AND U.S. MAIL

Mary Lavelle, City Clerk
Milpitas City Clerk's Office
455 East Calaveras Boulevard
Milpitas, CA 95035
Fax: (408) 586-3030

James Lindsay, Director
City of Milpitas Planning
& Neighborhood Services
455 East Calaveras Boulevard
Milpitas, CA 95035
Fax: (408) 586-3305

Re: Request for a Public Comment Period Extension and Continuance of the September 28 Planning Commission Hearing for the Harmony Development and Trade Zone Boulevard Rezone Project

Dear Ms. Lavelle and Mr. Lindsay:

On behalf of the International Brotherhood of Electrical Workers Local 332, Plumbers and Steamfitters Local 393 and Sheet Metal Workers Local 104, we respectfully request an extension of the time to comment on the Mitigated Negative Declaration ("MND") for the Harmony Development and Trade Zone Boulevard Rezone Project ("Project") proposed by D.R. Horton ("Applicant") and continuance of the Planning Commission hearing scheduled for September 28, 2011.

The California Environmental Quality Act ("CEQA") requires lead agencies to mail notice of intent to adopt a mitigated negative declaration to all organizations

who requested such notice in writing.[1] On behalf of the International Brotherhood of Electrical Workers Local 332, Plumbers and Steamfitters Local 393 and Sheet Metal Workers Local 104, this Firm submitted a request to the Planning & Neighborhood Services Director and City Clerk for any and all notices of preparation of a negative declaration.[2] The City failed to provide this Firm with notice of the Project's MND. Therefore, the City has violated CEQA and must extend the public comment period deadline and continue the Planning Commission hearing.

In addition, CEQA requires that all documents referenced in a negative declaration must be available for review during the entire public review period.[3] The MND prepared for the Project relies on reports prepared by TetraTech, such as a Phase II Limited Subsurface Investigation and a Materials Survey, as well as a Noise and Vibration Study prepared by Charles M. Salter Associates, Inc. These materials have not been made publically available during the Project comment period. Without these materials the public cannot meaningfully review the MND's analysis, conclusions and mitigation measures. This violates Public Resources Code section 21092, subdivision (b)(1) and Title 14 of the California Code of Regulations section 15072, subdivision (g)(4).

In light of the City's failure to comply with CEQA by providing this Firm with notice of the MND and making all documents relied on in the MND publically available, we hereby request an extension of the comment period and continuance of the Planning Commission hearing scheduled for September 28, 2011. Not only is an extension of the public comment period required under CEQA, but it is necessary to ensure meaningful public review. We believe the comment period should be extended to a reasonable period following our receipt of all documents identified in our public records request, whichever is earlier.

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[1] Pub. Resources Code, § 21092.2; 14 Cal. Code Regs. (hereafter CEQA Guidelines), § 15072, subd. (b).

[2] Letter from Janet Laurain, Environmental Paralegal, to James Lindsay, Planning & Neighborhood Services Director and Mary Lavelle, City Clerk, Jan. 18, 2011 (Attachment A).

[3] Pub. Resources Code, § 21092, subd. (b)(1); CEQA Guidelines, § 15072, subd. (g)(4).

Please feel free to call me at (916) 444-6201 or email me at rpurchia@adamsbroadwell.com with any questions regarding this request. Thank you for your kind attention to this matter.

Sincerely,

Robyn C. Purchia

RCP:cnh
Attachment

cc: Tiffany Brown (via email)

ATTACHMENT A

ATTACHMENT F.

FILE COPY

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January 18, 2011

VIA U.S. MAIL

Mr. James Lindsay
Planning & Neighborhood Services Director, Milipitas
455 East Calaveras Boulevard
Milpitas, California 95035

Ms. Mary Lavelle
City Clerk, City of Milipitas
455 East Calaveras Boulevard
Milpitas, California 95035

Re: Annual Request for Mailed Notice of CEQA Actions and Public Hearings

Dear Mr. Lindsay and Ms. Lavelle:

On behalf of the Plumbers & Steamfitters Union Local 393, Sheet Metal Workers Local 104, and International Brotherhood of Electrical Workers Local 332, we renew our request that the Milipitas provide us notice, by U.S. Mail or email, of any and all actions or hearings related to development projects or activities proposed to be permitted in the Milipitas. This request includes:

1. Notice of any public hearing in connection with projects as required by California Planning and Zoning Law (Gov. Code §§ 65000 *et seq.*); and
2. Any and all notices prepared pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 *et seq.*), including:
   - Notices of determination that an Environmental Impact Report ("EIR") is required for a project;
   - Notices of any scoping meeting;
   - Notices of preparation of an EIR or a Negative Declaration ("ND") for a project;
   - Notices of determination that a subsequent project is within the scope of a project covered by a master Environmental Impact Report;

- Notices of availability of an EIR;
- Notices of intent to adopt an ND or Mitigated Negative Declaration;
- Notices of approval and/or determination that an EIR has been certified; and
- Notices of determination that a project is exempt from CEQA.

This request is filed pursuant to Public Resources Code Section 21092.2 and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

In addition, we request a copy, via U.S. Mail or email, of all Milipitas Planning Commission and City Council meeting and/or hearing agendas, as required by Government Code Section 54954.1.

We are of course willing to pay any fees reasonably related to the costs of providing these services.

Please send the notices to:

Janet Laurain
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
jlaurain@adamsbroadwell.com

Please call me at 650-589-1660 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Janet Laurain
Environmental Paralegal

JML:vs

1401-221v

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BY ELECTRONIC MAIL AND OVERNIGHT MAIL

September 27, 2011

Tiffany Brown, Junior Planner
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035
408-586-3283
tbrown@ci.milpitas.ca.gov

RE: Mitigated Negative Declaration for Harmony Development & Trade Zone Blvd. Rezone. McCandless and Montague Expressway (APN's: 86-41-020, 201, and 022)

Dear Ms. Brown:

I am writing on behalf of Carpenters Local Union Number 405 and its many members living in and around the City of Milpitas, and lifelong Milpitas resident Mike May ("Commenters") concerning the Mitigated Negative Declaration ("MND") for Harmony Development & Trade Zone Blvd. Rezone. McCandless and Montague Expressway (APN's: 86-41-020, 201, and 022) ("Project"). In particular, we ask the City of Milpitas ("City") to prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have significant unmitigated impacts, including:

1. Air pollution;
2. Traffic;
3. Greenhouse Gases;
4. Public services and schools

An EIR is required to analyze these and other impacts and to propose feasible mitigation measures to reduce the impacts to the extent feasible.

PROJECT DESCRIPTION

The Project includes the development of 276 single family attached homes and condominiums on approximately 12.3 acres. The Development site is wholly located on the northwest of the McCandless and Montague Expressway Intersection (APN's: 86-41-020, 201, and 022). The proposed Development is within the McCandless/Centre Pointe sub-district of the Transit Area Specific Plan ("TASP") and is located at the intersection of Montague Expressway and McCandless Drive. The property is surrounded on four sides by developed parcels and/or creeks. East of the site includes numerous vacant industrial and office buildings (which is the new location of the park within the Specific Plan). To the north of the project are the East Penitencia Creek and other existing industrial buildings on residentially zoned properties. To the South of the project is Montague Expressway, a six lane east/west arterial and the boundary of Milpitas to the City of San Jose. To the west of the property is the Lower Penitencia Creek, a rail line and the existing paragon residential community.

The City has proposed to adopt a mitigated negative declaration for the Project. As discussed below, an EIR is required because the Project has significant unmitigated environmental impacts.

STANDING

Local 405's members and Mr. May live, work and recreate in the immediate vicinity of the Project site. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental group. Hundreds of Local 405 members live and work in areas that will be affected by traffic, air pollution, and toxic chemical pollution generated by the Project. As construction workers, some of these members may be exposed to toxic chemicals in the soil and groundwater at the Project site during excavation and soil moving required for Project construction. Mike May lives in the City and will be directly affected by the Project's environmental impacts. All of the Commenters are interested in participating in a full and open CEQA process to ensure that all of the Project's impacts are mitigated to the full extent feasible.

LEGAL STANDARD.

As the California Supreme Court very recently held, "If no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Environment v. South Coast Air Quality Management Dist. (ConocoPhillips)* (2010) 48 Cal. 4th 310, 319-320 ("*CBE v. SCAQMD*"), citing, *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d at pp. 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491, 504–505) "The 'foremost principle' in interpreting CEQA is that the Legislature

intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." *Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. The EIR process "protects not only the environment but also informed self-government." *Pocket Protectors*, 124 Cal.App.4th 927.

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." Pub. Res. Code § 21080(d) (emphasis added); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (CEQA Guidelines § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. Pub. Res. Code §§ 21100, 21064. Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." *Citizens of Lake Murray v. San Diego*, 129 Cal.App.3d 436, 440 (1989). CEQA contains a "***preference for resolving doubts in favor of environmental review***." *Pocket Protectors*, 124 Cal.App.4th at 927 (emphasis in original).

A negative declaration is improper, and an EIR is required, whenever substantial evidence in the record supports a "fair argument" that significant impacts may occur. Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. CEQA Guidelines § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon v. Stanislaus* (1995) 33 Cal.App.4th 144, 150-151 (1995); *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602. The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274. The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a ***preference for resolving doubts in favor of environmental review***." *Pocket Protectors*, 124 Cal.App. 4th at 928 (emphasis in original).

As a matter of law, "substantial evidence includes . . . expert opinion." Pub.Res.Code § 21080(e)(1); CEQA Guidelines § 15064(f)(5). CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App. 4th at 935. "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code § 21068; see also Guidelines 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 83. In the recent *Pocket Protectors* case, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. *Id*. In the context of reviewing a Negative Declaration, "neither the lead agency nor a court may 'weigh' conflicting substantial evidence to determine whether an EIR must be prepared in the first instance." *Id*. Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the *Pocket Protectors* court explained, "It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." *Id*.

DISCUSSION

A. AN EIR IS REQUIRED BECAUSE THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS.

1. The Project will have Significant Air Quality Impacts.

The mitigated negative declaration (MND) for the Project appears to rely on the wrong CEQA significance thresholds. The MND relies on the Bay Area Air Quality Management District ("BAAQMD") thresholds adopted in 1999, however, BAAQMD adopted much more stringent thresholds last year, which are ignored by the MND. Under the new BAAQMD thresholds, the Project has significant air quality impacts.

The new BAAQMD CEQA thresholds provide that a mid-rise apartment project of 240 dwelling units (du) or more will have significant construction air emission of reactive organic gases (ROGs). (BAAQMD CEQA Guildelines, Table 3.1) A Project with more than 87 du will have significant greenhouse gas (GHG) emissions. (Id.) Thus, the Project's 273 du's far exceed the BAAQMD CEQA significance thresholds, therefore the Project will have significant adverse air quality impacts that must be analyzed in an EIR. When a Project exceeds duly adopted CEQA significance thresholds, it will be determined to have significant impacts that must be analyzed in an EIR. (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125)

The MND erroneously states that the BAAQMD CEQA significance threshold is 80 pounds per day for ROG and NOx. This was the 1999 BAAQMD standard. The new threshold is 54 pounds per day. (BAAQMD CEQA Guidelines p. 2-2) The City must rely on the new, duly adopted CEQA Guildelines, not on outdated science. (*Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777)

Furthermore, the TASP EIR admitted that the specific plan project would have significant unmitigated air quality impacts. The TASP EIR says:

> REGIONAL AIR QUALITY
>
> Implementation of the proposed Plan would further contribute to the exceedance of regional air pollutant emissions for State and federal ambient air quality standards. As the Bay Area is currently designated "non-attainment" for State and national ozone standards and for the State PM10 and PM2.5 standards, development of projects per the provisions of the Plan could further contribute to non-attainment of air quality standards. Additionally, build-out of the proposed Plan could place sensitive land uses near local intersections or roadways associated with air pollutant emissions that exceed State or federal ambient air quality standards. Similarly, existing sensitive land uses near local roadways that experience increased levels of traffic resulting from build-out of the proposed

> Plan could be exposed to air pollutant emissions that exceed State and/or federal ambient air quality standards. While General Plan policies and Transit Plan polices would reduce air quality impacts, regional air quality standards could still be exceeded, ***and thus this impact is still considered significant and unavoidable.*** [bold added for emphasis]

(TASP DEIR, Page 5-2)

The MND ignores the EIR's finding of "Significant & Unavoidable". The MND states in the "Conclusion" Section:

> The development under the entire Transit Area Specific Plan could increase population and vehicle miles traveled in the area at a rate greater than that assumed in the regional air quality planning and therefore conflict with the implementation of the Bay Area Ozone Strategy, [sic] the proposed project would not result in significant long-term regional or local air quality impacts. Short-term air quality impacts associated with construction would be reduced to less than significant levels wit [sic] the implementation of standard construction measures and mitigation measures. [**Less Than Significant Impact with Mitigation**] [page 15, emphasis in original]

The MND is thus directly contradictory with the TASP EIR. Since the TASP EIR admitted that the specific plan would have significant unmitigated air quality impacts, the negative declaration cannot now conveniently reach a contradictory conclusion. As the Court of Appeal stated in the case *Stanislaus Audobon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, in rejecting a county's argument that a revised initial study prepared by the county which contradicted the findings of the first initial study had not "relegated the first initial study to oblivion." Id. at 154. The court stated, "We analogize such an untenable position to the unringing of a bell. The first initial study is part of the record. The fact that a revised initial study was later prepared does not make the first initial study any less a record entry nor does it diminish its significance, particularly when the revised study does not conclude that the project would not be growth inducing but instead simply proceeds on the assumption that evaluation of future housing can be deferred until such housing is proposed." (Id. at 154) The City cannot conclude that a project may have significant impacts and then, when such admission is no longer convenient, simply change its conclusion to better suit its needs. The conclusions from the original Initial Study themselves create a "fair argument" that the Project may have significant impacts, despite other evidence to the contrary, including the revised Initial Study. See, Id.; *Gentry v. Murietta* (1995) 36 Cal.app.4th 1359 (petitioner may rely on statements made in initial study to establish fair argument, even in the face of contradictory evidence).

The courts have held that where a specific plan EIR has admitted significant unmitigated environmental impacts, then later phases of the project require

supplemental environmental impact reports to determine if any feasible mitigation measures can be imposed to reduce the impact. In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later phases of the project to ensure that those unmitigated impacts are "mitigated or avoided." (*Id*. citing CEQA Guidelines §15152(f)) The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since they were not "mitigated or avoided." (*Id*.) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or avoided." (*Id*.) Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, "The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support." (*Id*. at 124-125)

Since the TASP EIR admitted significant, unmitigated impacts on air quality, traffic (DEIR E-7) and other issues, a second tier EIR is required to determine if mitigation measures can now be imposed to reduce or eliminate those impacts. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

2. The Project will have Significant Impacts Related to Toxic Air Contaminants.

The BAAQMD commented on the TASP EIR, stating:

> "The DEIR should have identified existing sources of TAC [toxic air contaminants] (i.e., major roadways, existing industrial operations, train operations) within the Plan area and their proximity to existing and future sensitive populations. An analysis should have been prepared to determine if future sensitive populations will be adversely impacted (above District significance thresholds) from T AC and to identify policies that could be included in the Plan to mitigate these potentially significant impacts. The only mitigation proposed to address TAC is Policy 5.23 (DEIR, p. 3.6-27), which requires project sponsors to inform future and/or existing sensitive receptors of potential health impacts associated with TAC. This Policy does not provide any mitigation to reduce this potentially significant impact.

Roggenkamp, Jean. Deputy Air Pollution Control Officer, Bay Area Air Quality Management District. Letter to Mr. Scott Gregory, Contract Planner to the City of

Milpitas. December 20, 2007. Published in the Transit Area Specific Plan FEIR as Comment Letter #3.

In response the City revised the EIR as follows:

Impact 3.6-6 Implementation of the proposed Plan would expose sensitive receptors to toxic air contaminants. (Less than Significant)

In addition to criteria pollutant emissions, a variety of pollutant or toxic air emissions (TACs), such as diesel exhaust, industrial operations, train operations, and those from dry cleaning facilities, could also be released from various construction and operations associated with the proposed Plan. TACs are considered under a different regulatory process (California Health and Safety Code section 39650 et seq.) than pollutants subject to State Ambient Air Quality Standards as discussed above. Health effects associated with TACs may occur at extremely low levels. It is often difficult to identify safe levels of exposure, which produce no adverse health effects. The California Air Resources Board has declared that diesel particulate matter from diesel engine exhaust is a TAC, and the California Office of Environmental Health Hazard Assessment has determined that chronic exposure to particulate matter can cause carcinogenic and non-carcinogenic health effects. These health risks from TACs result from concentration and duration of exposure. While short-term construction related emissions which would affect a given area for a period of days or weeks, as discussed in Impact 3.6-3 above, vehicle diesel exhaust, rail operation, and facility operations would persist in the Planning Area,. the greatest level of exposure would be

[TASP DEIR, page 2-21]

In addition, all new development under the proposed Plan would be subject to further CEQA review to evaluate project-level impacts of odors and toxics specific to their site, time and project description and to avoid potential conflicts in land uses. Analysis of potential impacts conducted would include both the following situations:

1) sources of odorous/toxic emissions locating near existing sensitive receptors, and
2) receptors locating near existing odor/toxics sources.

In traffic-related studies, additional health risk attributable to proximity to major roadways was seen within 1,000 feet and was strongest within 300 feet. California freeway studies show about 70 percent drop off in particulate pollution levels at 500 feet. A new policy will be added in Section 5.4 of the Plan, and cited in the section describing Impact 3.6-6 in the Draft EIR, which requires future

project level TAC analysis and possible upgraded ventilation systems. With full compliance with BAAQMD's construction BMPs, the new policy which requires future project level TAC analysis and possible upgraded ventilation systems, and Policy 5.23, which requires new residential developers to inform future residents of TAC related health effects and the potential for exposure, this impact would be less than significant.

• New Policy: ***For new residential development that is proposed within 500 feet of active rail lines where vehicles emit diesel exhaust, or roadways where total daily traffic volumes from all roadways within 500 feet of such location exceed 100,000 vehicles per day, will, as part of its CEQA review, include an analysis of toxic air contaminants (which includes primarily diesel particulate matter (DPM)).*** If the results show that the carcinogenic human health risk exceeds the 10 people in a million standard for carcinogenic human health impacts established by the

BAAQMD, the City may require upgraded ventilation systems with high efficiency filters, or other equivalent mechanisms, to minimize exposure of future residents.

The above standard shall also apply to other sensitive uses such as schools, daycare facilities, and medical facilities with inpatient services.

[DEIR, page 2-22 (emphasis added)]

The Project is directly adjacent to the Union Pacific railway, and the Montague Expressway – both major sources of diesel air pollution. Both are far closer than 500 feet. Thus, under the TASP EIR, the City was required to analyze the impact and impose feasible mitigation measures. Nevertheless, the City failed entirely to analyze or even mention the impact. As the Court of Appeal has stated, "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 311 (Cal. App. 1st Dist. 1988). Since the TASP EIR places the burden on the City to conduct a TAC analysis for a project placed near a freeway or railway, the City's failure to conduct the analysis "enlarges the scope" of the fair argument in this case. Given these factors, there is a fair argument that the Project may have significant air quality impacts related to its proximity to the railway and freeway.

3. The Project will have Significant Greenhouse Gas Impacts.

The TASP EIR failed to analyze greenhouse gas ("GHG") impacts at all. The MND contains a brief GHG section, but fails to apply the recent BAAQMD CEQA

Guidance. The MND contends that GHG is less than significant because this is a transit oriented development. (MND 25) No such rule exists.

The BAAQMD CEQA significance thresholds, which are entirely ignored by the MND, provide that a mid-rise apartment project with more than 89 dus will have significant GHG impacts. The Project far exceeds this thresholds. It will therefore have significant GHG impacts that must be analyzed in an EIR. The City should consider mitigations such as solar panels, high efficiency insulation, energy star appliances, electric car charging stations, cool roofs, water conservation measures, and many other feasible measures not analyzed in the MND or the TASP EIR.

Since the BAAQMD did not have a CEQA significance threshold for GHG at the time of the TASP EIR, this is a new significant impact that must be analyzed in a supplemental EIR, as other cities have done. For example, the City of Hayward recently determined that the new BAAQMD CEQA thresholds for GHG required a supplemental EIR for a proposed project at the Hayward BART. (http://www.hayward-ca.gov/forums/SHBARTFBC/pdf/2011/SHBART-MissionBlvdSEIR-FINAL.pdf)

The Hayward BART SEIR states at Page 3-24:

> NEW INFORMATION
> This SEIR assesses whether new information, not known at the time of preparation of the Previous CEQA Documents, results in a new or significantly increased environmental effect.
>
> New information particular to the current Project includes:
>
> □ On March 18, 2010, new California Environmental Quality Act (CEQA) Guidelines amendments addressing greenhouse gas emissions and global climate change (which were not addressed in the previous EIRs) became effective.
>
> □ On June 2, 2010, new thresholds for air quality impacts and guidelines for assessing impacts were approved by the Bay Area Air Quality Management District (BAAQMD).
>
> The risk and hazards thresholds for new receptors were effective January 1, 2011.
>
> …This new information is included in this SEIR, along with an assessment of whether this new information indicates that the Project may have a new significant environmental effect or a substantial increase in the severity of previously identified significant effect.

The Air Quality section states on page 5-1:

AIR QUALITY
INTRODUCTION

This introduction provides an explanation as to why, for the topic of Air Quality, the Project warrants additional analysis within the context of a Supplemental EIR.

NEW INFORMATION

The Project area is located within the City of Hayward in Alameda County and within the San Francisco Bay Area Air Basin. The Bay Area Air Quality Management District (BAAQMD) administers air quality regulations applicable to this Air Basin . Recent air quality monitoring data collected in Alameda County shows air quality in the County periodically exceeds State and federal air quality standards for ozone and fine particulate matter (PM2.5) and State particulate matter standards for both fine and respirable (PM10) particulate matter. The San Francisco Bay Area Air Basin has been designated as being a nonattainment area for the State ozone, PM10 and PM2.5 standards, and nonattainment for the federal ozone and 24-hour PM2.5 standards.

On June 2, 2010, the BAAQMD approved a new set of CEQA Guidelines for consideration by lead agencies. The California Environmental Quality Act: Air Quality Guidelines ("BAAQMD CEQA Guidelines") provide guidance for consideration by lead agencies, consultants, and other parties evaluating air quality impacts conducted pursuant to the California Environmental Quality Act (CEQA). This includes guidance on evaluating air quality impacts of development projects and local plans, determining whether an impact is significant, and mitigating significant air quality impacts.

The June, 2010 BAAQMD CEQA Guidelines include new thresholds of significance for Greenhouse Gas (GHG) emissions and revised thresholds for criteria air pollutants and precursors and health risks. Those new thresholds became effective immediately, except for the project-specific risk and hazard thresholds for the siting of sensitive receptors, which are currently scheduled to go into effect May 1, 2011. As an analysis of a revision to the General Plan, these criteria would not be directly applied to this analysis anyway, but have been included in the discussion of an overlay zone adjacent to Mission Boulevard under the Exposure of Sensitive Receptors to Toxic Air Contaminants section below.

The June, 2010 BAAQMD CEQA Guidelines constitute new information which became available after certification of the Previous CEQA Documents.

Chapter 6, page 6-1

GREENHOUSE GAS EMISSIONS

INTRODUCTION

At the time the Previous CEQA Documents were prepared and certified, CEQA and the CEQA Guidelines did not contain provisions for the evaluation of potential impacts resulting from greenhouse gas emissions. Similarly, the Bay Area Air Quality Management District (BAAQMD) Air Quality CEQA Guidelines also did not contain provisions addressed greenhouse gas emissions. The recently revised BAAQMD CEQA Guidelines, and new CEQA provisions addressing greenhouse gas emissions, constitute new information which became available after certification of the Previous CEQA Documents. Therefore, the purpose of this chapter is to address this new information as it pertains to the current modified Project.

This same analysis is equally applicable in Milpitas as it is in Hayward. The new BAAQMD CEQA significance thresholds are significant new information of new significant impacts that require a supplemental EIR.

4. The Project will Create Individually and Cumulatively Potentially Significant Impacts on Traffic.

The TASP DEIR admitted that the project would have significant unmitigated impacts on traffic at the intersection of McCandless and Montague. Since the impact was left unmitigated in the TASP EIR, it remains significant and must be analyzed and mitigated prior to approval of the Project, which is located at that very intersection. The DEIR stated:

5.1 SIGNIFICANT UNAVOIDABLE ENVIRONMENTAL IMPACTS

TRANSPORTATION
• Implementation of the proposed Transit Plan would result in freeway speeds and delays on I-680, I-880, and the SR-237 segments that are below the Congestion Management Program LOS standards;
• Implementation of the proposed Transit Plan would contribute to substandard roadway segment operations during the peak hours along numerous roads [NOTE: The DEIR identifies the “Harmony” project-relevant intersection #39 (McCandless & Montague Expy) as LOS F, and significantly impacted by build-out of the Transit Area Specific Plan. See Table 3.3-12 on page 3.3-64]; and
• Implementation of the proposed Transit Plan would contribute to substandard intersection operations during the peak hours along 15 key intersections.

> According to Santa Clara Valley Transportation Authority (VTA) policy direction, the mitigation measure for regional freeway impacts is participation in the Countywide Deficiency Plan (CDP) prepared by the VTA, which requires additional impact fees to provide for regional roadway and freeway improvements. The CDP has not received final approval; in addition, the mitigation of impacts to freeway operations cannot be guaranteed since the City of Milpitas does not have legal authority to mitigate freeway impacts. Thus, the project's impacts to the freeway system are considered significant and unavoidable.
>
> During the AM peak period, the addition of traffic from the proposed Plan under Year 2030 Preferred Transit Area Plan Conditions would degrade acceptable roadway level of service (LOS D or better) under 2030 General Plan Conditions to unacceptable level of service (LOS E and F) on three roadway segments, and exacerbate operations on 30 study roadway segments that are projected to operate at unacceptable levels under 2030 General Plan Conditions. During the PM peak hour, the proposed Plan is expected to degrade level of service on three roadway segments from acceptable levels under 2030 General Plan to unacceptable level of service under 2030 Preferred Transit Area Plan Conditions. Additionally, traffic from the proposed Plan is expected to exacerbate unacceptable 2030 General Plan Conditions operations on 47 study roadway segments in the PM peak hour.
>
> No feasible mitigation measures for physical improvements have been identified that would reduce freeways or roadway segments impacts—or to the 15 key intersections—to a level that is less than significant. However, other intersection improvements are outside of the City's jurisdiction, and thus have been deemed significant and unavoidable because the City does not control the implementation of these impacts.

Thus, the Project's significant unmitigated traffic impacts must be analyzed in an EIR.

5. The Project will Create Individually and Cumulatively Potentially Significant Impacts on School Facilities.

The MND admits that the Project will have significant impacts on schools that will need to be mitigated. The MND states:

> The number of new students generated by buildout of the proposed Plan will require at least one new elementary school and expansions of existing facilities. Since the provision of public school facilities is outside the control of the City, this is a ***significant and unavoidable impact***, although one that can be mitigated by action from the Milpitas Unified School District. (MND 43)

Since the MND itself admits that the Project will have a significant unmitigated adverse impact, and EIR is required.

Although the TASP EIR suggests that mitigation fees may be imposed, mitigation fees are not adequate mitigation unless the lead agency can show that the fees will fund a specific mitigation plan that will actually be implemented in its entirety. *Napa Citizens for Honest Gov. v. Bd. Of Supervisors* (2001) 91 CallApp.4th 342 (no evidence that impacts will be mitigated simply by paying a fee); *Anderson First Coal. v. City of Anderson* (2005) 130 Ca.App.4th 1173 (traffic mitigation fee is inadequate because it does not ensure that mitigation measure will actually be implemented); *Kings Co. Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692. But see, *Save Our Peninsula Comm v. Monterey Co.* (2001) 87 Cal.App.4th 99 (mitigation fee allowed when evidence in the record demonstrates that the fee will fund a specific mitigation plan that will actually be implemented in its entirety); *California Native Plant Society v. County of El Dorado et al.* (2009) 170 Cal. App. 4th 1026 (fee program must go through CEQA review for an agency to say that the payment of the fee alone is adequate CEQA mitigation); *Gray v. County of Madera* (2008). Here the City has identified no specific mitigation measure that will be implemented in its entirety as a result of the fee, and there is no reasonable assurance that the impact will be mitigated to less than significant. The City may therefore not find this impact less than significant.

CONCLUSION

For the foregoing reasons, the MND should be withdrawn, an environmental impact report should be prepared, and the draft EIR should be circulated for public review and comment in accordance with the requirements of the CEQA. Thank you for considering our comments.

Sincerely,

Richard Drury

PART I: THRESHOLDS OF SIGNIFICANCE & PROJECT SCREENING

2. THRESHOLDS OF SIGNIFICANCE

The SFBAAB is currently designated as a nonattainment area for state and national ozone standards and national particulate matter ambient air quality standards. SFBAAB's nonattainment status is attributed to the region's development history. Past, present and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant.

In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. Therefore, additional analysis to assess cumulative impacts is unnecessary. The analysis to assess project-level air quality impacts should be as comprehensive and rigorous as possible.

Similar to regulated air pollutants, GHG emissions and global climate change also represent cumulative impacts. GHG emissions contribute, on a cumulative basis, to the significant adverse environmental impacts of global climate change. Climate change impacts may include an increase in extreme heat days, higher concentrations of air pollutants, sea level rise, impacts to water supply and water quality, public health impacts, impacts to ecosystems, impacts to agriculture, and other environmental impacts. No single project could generate enough GHG emissions to noticeably change the global average temperature. The combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts.

BAAQMD's approach to developing a *Threshold of Significance* for GHG emissions is to identify the emissions level for which a project would not be expected to substantially conflict with existing California legislation adopted to reduce statewide GHG emissions needed to move us towards climate stabilization. If a project would generate GHG emissions above the threshold level, it would be considered to contribute substantially to a cumulative impact, and would be considered significant. Refer to Table 2-1 for a summary of Air Quality CEQA Thresholds and to Appendix D for *Thresholds of Significance* documentation.

Table 2-1 Air Quality CEQA Thresholds of Significance*			
Pollutant	**Construction-Related**	**Operational-Related**	
Project-Level			
Criteria Air Pollutants and Precursors (Regional)	**Average Daily Emissions (lb/day)**	**Average Daily Emissions (lb/day)**	**Maximum Annual Emissions (tpy)**
ROG	54	54	10
NO_X	54	54	10
PM_{10}	82 (exhaust)	82	15
$PM_{2.5}$	54 (exhaust)	54	10
$PM_{10}/PM_{2.5}$ (fugitive dust)	Best Management Practices	None	
Local CO	None	9.0 ppm (8-hour average), 20.0 ppm (1-hour average)	
GHGs – Projects other than Stationary Sources	None	Compliance with Qualified GHG Reduction Strategy OR 1,100 MT of CO_2e/yr OR 4.6 MT CO_2e/SP/yr (residents+employees)	
GHGs –Stationary Sources	None	10,000 MT/yr	
Risk and Hazards for new sources and receptors (Individual Project) ***Note: Threshold for new receptors is effective January 1, 2011***	Same as Operational Thresholds**	Compliance with Qualified Community Risk Reduction Plan OR Increased cancer risk of >10.0 in a million Increased non-cancer risk of > 1.0 Hazard Index (Chronic or Acute) Ambient $PM_{2.5}$ increase: > 0.3 µg/m^3 annual average Zone of Influence: 1,000-foot radius from property line of source or receptor	
Risk and Hazards for new sources and receptors (Cumulative Threshold) ***Note: Threshold for new receptors is effective January 1, 2011***	Same as Operational Thresholds**	Compliance with Qualified Community Risk Reduction Plan OR Cancer: > 100 in a million (from all local sources) Non-cancer: > 10.0 Hazard Index (from all local sources) (Chronic) $PM_{2.5}$: > 0.8 µg/m^3 annual average (from all local sources) Zone of Influence: 1,000-foot radius from property line of source or receptor	
Accidental Release of Acutely Hazardous Air Pollutants	None	Storage or use of acutely hazardous materials locating near receptors or new receptors locating near stored or used acutely hazardous materials considered significant	
Odors	None	5 confirmed complaints per year averaged over three years	

Table 2-1
Air Quality CEQA Thresholds of Significance*

Pollutant	Construction-Related	Operational-Related
Plan-Level		
Criteria Air Pollutants and Precursors	None	1. Consistency with Current Air Quality Plan control measures, and 2. Projected VMT or vehicle trip increase is less than or equal to projected population increase
GHGs	None	Compliance with Qualified GHG Reduction Strategy OR 6.6 MT CO_2e/SP/yr (residents + employees)
Risks and Hazards	None	1. Overlay zones around existing and planned sources of TACs (including adopted Risk Reduction Plan areas) and 2. Overlay zones of at least 500 feet from all freeways and high volume roadways
Accidental Release of Acutely Hazardous Air Pollutants	None	None
Odors	None	Identify the location, and include policies to reduce the impacts, of existing or planned sources of odors
Regional Plans (Transportation and Air Quality Plans)		
GHGs, Criteria Air Pollutants and Precursors, and Toxic Air Contaminants	None	No net increase in emissions

CEQA = California Environmental Quality Act; CO = carbon monoxide; CO_2e = carbon dioxide equivalent; GHGs = greenhouse gases; lb/day = pounds per day; MT = metric tons; NO_X = oxides of nitrogen; $PM_{2.5}$= fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less; PM_{10} = respirable particulate matter with an aerodynamic resistance diameter of 10 micrometers or less; ppm = parts per million; ROG = reactive organic gases; SO_2 = sulfur dioxide; SP = service population; TACs = toxic air contaminants; TBP = toxic best practices; tons/day = tons per day; tpy = tons per year; yr= year; TBD: to be determined.

*It is the Air District's policy that the adopted thresholds apply to projects for which a Notice of Preparation is published, or environmental analysis begins, on of after the applicable effective date. The adopted CEQA thresholds – *except for the risk and hazards thresholds for new receptors* – are effective June 2, 2010. The risk and hazards thresholds for new receptors are effective January 1, 2011.

** The Air District recommends that for construction projects that are less than one year duration, Lead Agencies should annualize impacts over the scope of actual days that peak impacts are to occur, rather than the full year.

2.1. CRITERIA AIR POLLUTANTS AND PRECURSORS – PROJECT LEVEL

Table 2-2 presents the *Thresholds of Significance* for operational-related criteria air pollutant and precursor emissions. These represent the levels at which a project's individual emissions of criteria air pollutants or precursors would result in a cumulatively considerable contribution to the SFBAAB's existing air quality conditions. If daily average or annual emissions of operational-

related criteria air pollutants or precursors would exceed any applicable *Threshold of Significance* listed in Table 2-2, the proposed project would result in a cumulatively significant impact.

Table 2-2
Thresholds of Significance for Operational-Related Criteria Air Pollutants and Precursors

Pollutant/Precursor	Maximum Annual Emissions (tpy)	Average Daily Emissions (lb/day)
ROG	10	54
NO_X	10	54
PM_{10}	15	82
$PM_{2.5}$	10	54

Notes: tpy = tons per year; lb/day = pounds per day; NO_X = oxides of nitrogen; $PM_{2.5}$ = fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or lCOess; PM_{10} = respirable particulate matter with an aerodynamic resistance diameter of 10 micrometers or less; ROG = reactive organic gases; tpy = tons per year.
Refer to Appendix D for support documentation.

2.2. GREENHOUSE GASES – PROJECT LEVEL

The *Thresholds of Significance* for operational-related GHG emissions are:

- For land use development projects, the threshold is compliance with a qualified GHG Reduction Strategy; or annual emissions less than 1,100 metric tons per year (MT/yr) of CO_2e; or 4.6 MT CO_2e/SP/yr (residents + employees). Land use development projects include residential, commercial, industrial, and public land uses and facilities.

- For stationary-source projects, the threshold is 10,000 metric tons per year (MT/yr) of CO_2e. Stationary-source projects include land uses that would accommodate processes and equipment that emit GHG emissions and would require an Air District permit to operate.

If annual emissions of operational-related GHGs exceed these levels, the proposed project would result in a cumulatively considerable contribution of GHG emissions and a cumulatively significant impact to global climate change.

2.3. LOCAL COMMUNITY RISK AND HAZARD IMPACTS – PROJECT LEVEL

The *Thresholds of Significance* for local community risk and hazard impacts are identified below, which apply to both the siting of a new source and to the siting of a new receptor. Local community risk and hazard impacts are associated with TACs and $PM_{2.5}$ because emissions of these pollutants can have significant health impacts at the local level. If emissions of TACs or fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less ($PM_{2.5}$)

exceed any of the *Thresholds of Significance* listed below, the proposed project would result in a significant impact.

- Non-compliance with a qualified risk reduction plan; or
- An excess cancer risk level of more than 10 in one million, or a non-cancer (i.e., chronic or acute) hazard index greater than 1.0 would be a cumulatively considerable contribution; or
- An incremental increase of greater than 0.3 micrograms per cubic meter ($\mu g/m^3$) annual average $PM_{2.5}$ would be a cumulatively considerable contribution.

Cumulative Impacts

A project would have a cumulative considerable impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius from the fence line of a source, or from the location of a receptor, plus the contribution from the project, exceeds the following:

- Non-compliance with a qualified risk reduction plan; or
- An excess cancer risk levels of more than 100 in one million or a chronic non-cancer hazard index (from all local sources) greater than 10.0; or
- 0.8 $\mu g/m^3$ annual average $PM_{2.5}$.

A lead agency should enlarge the 1,000-foot radius on a case-by-case basis if an unusually large source or sources of risk or hazard emissions that may affect a proposed project is beyond the recommended radius.

2.4. LOCAL CARBON MONOXIDE IMPACTS – PROJECT LEVEL

Table 2-3 presents the *Thresholds of Significance* for local CO emissions, the 1- and 8-hour California Ambient Air Quality Standards (CAAQS) of 20.0 parts per million (ppm) and 9.0 ppm, respectively. By definition, these represent levels that are protective of public health. If a project would cause local emissions of CO to exceed any of the *Thresholds of Significance* listed below, the proposed project would result in a significant impact to air quality.

Table 2-3
Thresholds of Significance for Local Carbon Monoxide Emissions

CAAQS Averaging Time	Concentration (ppm)
1-Hour	20.0
8-Hour	9.0
Refer to Appendix D for support documentation.	

2.5. ODOR IMPACTS – PROJECT LEVEL

The *Thresholds of Significance* for odor impacts are qualitative in nature. A project that would result in the siting of a new source or the exposure of a new receptor to existing or planned odor sources should consider the screening level distances and the complaint history of the odor sources:

- Projects that would site a new odor source or a new receptor farther than the applicable screening distance shown in Table 3-3 from an existing receptor or odor source, respectively, would not likely result in a significant odor impact.

- An odor source with five (5) or more confirmed complaints per year averaged over three years is considered to have a significant impact on receptors within the screening distance shown in Table 3-3.

Facilities that are regulated by the CalRecycle agency (e.g. landfill, composting, etc) are required to have Odor Impact Minimization Plans (OIMP) in place and have procedures that establish fence line odor detection thresholds. The Air District recognizes a Lead Agency's discretion under CEQA to use established odor detection thresholds as thresholds of significance for CEQA review for CalRecycle regulated facilities with an adopted OIMP. Refer to *Chapter 7 Assessing and Mitigating Odor Impacts* for further discussion of odor analysis.

2.6. CONSTRUCTION-RELATED IMPACTS – PROJECT LEVEL

2.6.1. Criteria Air Pollutants and Precursors

Table 2-4 presents the *Thresholds of Significance* for construction-related criteria air pollutant and precursor emissions. If daily average emissions of construction-related criteria air pollutants or precursors would exceed any applicable *Threshold of Significance* listed in Table 2-4, the project would result in a significant cumulative impact.

Table 2-4
Thresholds of Significance for Construction-Related Criteria Air Pollutants and Precursors

Pollutant/Precursor	Daily Average Emissions (lb/day)
ROG	54
NO_X	54
PM_{10}	82*
$PM_{2.5}$	54*

* Applies to construction exhaust emissions only.
Notes: CO = carbon monoxide; lb/day = pounds per day; NO_X = oxides of nitrogen; $PM_{2.5}$ = fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less; PM_{10} = respirable particulate matter with an aerodynamic resistance diameter of 10 micrometers or less; ROG = reactive organic gases; SO_2 = sulfur dioxide. Refer to Appendix D for support documentation.

2.6.2. Greenhouse Gases

The District does not have an adopted *Threshold of Significance* for construction-related GHG emissions. However, the Lead Agency should quantify and disclose GHG emissions that would occur during construction, and make a determination on the significance of these construction-generated GHG emission impacts in relation to meeting AB 32 GHG reduction goals, as required by the Public Resources Code, Section 21082.2. The Lead Agency is encouraged to incorporate

best management practices to reduce GHG emissions during construction, as feasible and applicable.

2.6.3. Local Community Risk and Hazards

The *Threshold of Significance* for construction-related local community risk and hazard impacts is the same as that for project operations. Construction-related TAC and PM impacts should be addressed on a case-by-case basis, taking into consideration the specific construction-related characteristics of each project and proximity to off-site receptors, as applicable. The Air District recommends that for construction projects that are less than one year duration, Lead Agencies should annualize impacts over the scope of actual days that peak impacts are to occur, rather than the full year.

2.7. THRESHOLDS OF SIGNIFICANCE FOR PLAN-LEVEL IMPACTS

The *Thresholds of Significance* for plans (e.g., general plans, community plans, specific plans, regional plans, congestion management plans, etc.) within the SFBAAB are summarized in Table 2-5 and discussed separately below.

Table 2-5
Thresholds of Significance for Plans

Criteria Air Pollutants and Precursors	Construction: none Operational: Consistency with Current AQP and projected VMT or vehicle trip increase is less than or equal to projected population increase.
GHGs	Construction: none Operational: 6.6 MT CO_2e/SP/yr (residents & employees) or a Qualified GHG Reduction Strategy. The efficiency threshold should only be applied to general plans. Other plans, e.g. specific plans, congestion management plans, etc., should use the project-level threshold of 4.6 CO_2e/SP/yr.
Local Community Risk and Hazards	Land use diagram identifies special overlay zones around existing and planned sources of TACs and $PM_{2.5}$, including special overlay zones of at least 500 feet (or Air District-approved modeled distance) on each side of all freeways and high-volume roadways, and plan identifies goals, policies, and objectives to minimize potentially adverse impacts.
Odors	Identify locations of odor sources in plan; identify goals, policies, and objectives to minimize potentially adverse impacts.
Regional Plans (transportation and air quality plans)	No net increase in emissions of GHGs, Criteria Air Pollutants and Precursors, and Toxic Air Contaminants. Threshold only applies to regional transportation and air quality plans.

Notes: AQP = Air Quality Plan; CO_2e = carbon dioxide equivalent; GHGs = greenhouse gases; MT = metric tons; SP = service population; TACs = toxic air contaminants; yr = year; $PM_{2.5}$= fine particulate matter
Refer to Appendix D for support documentation.

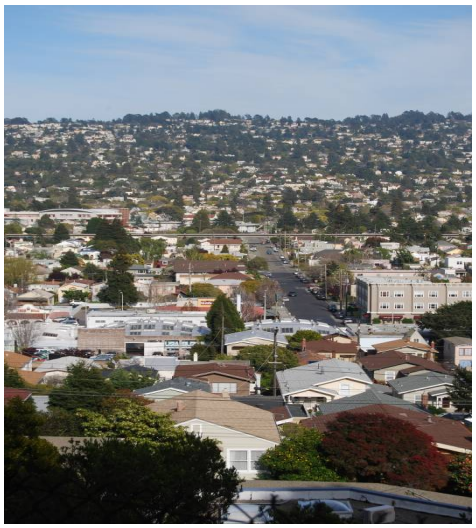
2.7.1. Criteria Air Pollutants and Precursor Emissions

Proposed plans (except regional plans) must show the following over the planning period of the plan to result in a less than significant impact:

- Consistency with current air quality plan control measures.
- A proposed plan's projected VMT or vehicle trips (VT) (either measure may be used) increase is less than or equal to its projected population increase.

2.7.2. Greenhouse Gases

The *Threshold of Significance* for operational-related GHG impacts of plans employs either a GHG efficiency-based metric (per Service Population [SP]), or a GHG Reduction Strategy option, described in Section 4.3.



The *Thresholds of Significance* options for plan level GHG emissions are:

- A GHG efficiency metric of 6.6 MT per SP per year of carbon dioxide equivalent (CO_2e). If annual maximum emissions of operational-related GHGs exceed this level, the proposed plan would result in a significant impact to global climate change.
- Consistency with an adopted GHG Reduction Strategy. If a proposed plan is consistent with an adopted GHG Reduction Strategy that meets the standards described in Section 4.3, the plan would be considered to have a less than significant impact. This approach is consistent with the plan elements described in the State CEQA Guidelines, Section 15183.5.

2.7.3. Local Community Risk and Hazards

The *Thresholds of Significance* for plans with regard to community risk and hazard impacts are:

1. The land use diagram must identify:
    a. Special overlay zones around existing and planned sources of TACs and PM (including adopted risk reduction plan areas); and
    b. Special overlay zones of at least 500 feet (or Air District-approved modeled distance) on each side of all freeways and high-volume roadways.
2. The plan must also identify goals, policies, and objectives to minimize potential impacts and create overlay zones around sources of TACs, PM, and hazards.

2.7.4. Odors

The *Thresholds of Significance* for plans with regard to odor impacts are to identify locations of odor sources in a plan and the plan must also identify goals, policies, and objectives to minimize potentially adverse impacts.

2.7.5. Regional Plans

The *Thresholds of Significance* for regional plans is to achieve a no net increase in emissions of criteria pollutants and precursors, GHG, and toxic air contaminants. This threshold applies only to regional transportation and air quality plans.

3. SCREENING CRITERIA

The screening criteria identified in this section are **not thresholds of significance**. The Air District developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether the proposed project could result in potentially significant air quality impacts. If all of the screening criteria are met by a proposed project, then the lead agency or applicant would not need to perform a detailed air quality assessment of their project's air pollutant emissions. These screening levels are generally representative of new development on greenfield sites without any form of mitigation measures taken into consideration. In addition, the screening criteria in this section do not account for project design features, attributes, or local development requirements that could also result in lower emissions. For projects that are mixed-use, infill, and/or proximate to transit service and local services, emissions would be less than the greenfield type project that these screening criteria are based on.

If a project includes emissions from stationary source engines (e.g., back-up generators) and industrial sources subject to Air District Rules and Regulations, the screening criteria should not be used. The project's stationary source emissions should be analyzed separately from the land use-related indirect mobile- and area-source emissions. Stationary-source emissions are not included in the screening estimates given below and, for criteria pollutants, must be added to the indirect mobile- and area-source emissions generated by the land use development and compared to the appropriate Thresholds of Significance. Greenhouse gas emissions from permitted stationary sources should not be combined with operational emissions, but compared to a separate stationary source greenhouse gas threshold.

3.1. OPERATIONAL-RELATED IMPACTS

3.1.1. Criteria Air Pollutants and Precursors

The screening criteria developed for criteria pollutants and precursors were derived using the default assumptions used by the Urban Land Use Emissions Model (URBEMIS). If the project has sources of emissions not evaluated in the URBEMIS program the screening criteria should not be used. If the project meets the screening criteria in Table 3-1, the project would not result in the generation of operational-related criteria air pollutants and/or precursors that exceed the *Thresholds of Significance* shown in Table 2-2. Operation of the proposed project would therefore result in a less-than-significant cumulative impact to air quality from criteria air pollutant and precursor emissions.

3.1.2. Greenhouse Gases

The screening criteria developed for greenhouse gases were derived using the default emission assumptions in URBEMIS and using off-model GHG estimates for indirect emissions from electrical generation, solid waste and water conveyance. If the project has other significant sources of GHG emissions not accounted for in the methodology described above, then the screening criteria should not be used. Projects below the applicable screening criteria shown in Table 3-1 would not exceed the 1,100 MT of CO_2e/yr GHG threshold of significance for projects other than permitted stationary sources.

If a project, including stationary sources, is located in a community with an adopted qualified GHG Reduction Strategy, the project may be considered less than significant if it is consistent with the GHG Reduction Strategy. A project must demonstrate its consistency by identifying and implementing all applicable feasible measures and policies from the GHG Reduction Strategy into the project.

Table 3-1
Operational-Related Criteria Air Pollutant and Precursor Screening Level Sizes

Land Use Type	Operational Criteria Pollutant Screening Size	Operational GHG Screening Size	Construction-Related Screening Size
Single-family	325 du (NOX)	56 du	114 du (ROG)
Apartment, low-rise	451 du (ROG)	78 du	240 du (ROG)
Apartment, mid-rise	494 du (ROG)	87 du	240 du (ROG)
Apartment, high-rise	510 du (ROG)	91 du	249 du (ROG)
Condo/townhouse, general	451 du (ROG)	78 du	240 du (ROG)
Condo/townhouse, high-rise	511 du (ROG)	92 du	252 du (ROG)
Mobile home park	450 du (ROG)	82 du	114 du (ROG)
Retirement community	487 du (ROG)	94 du	114 du (ROG)
Congregate care facility	657 du (ROG)	143 du	240 du (ROG)
Day-care center	53 ksf (NOX)	11 ksf	277 ksf (ROG)
Elementary school	271 ksf (NOX)	44 ksf	277 ksf (ROG)
Elementary school	2747 students (ROG)	-	3904 students (ROG)
Junior high school	285 ksf (NOX)	-	277 ksf (ROG)
Junior high school	2460 students (NOX)	46 ksf	3261 students (ROG)
High school	311 ksf (NOX)	49 ksf	277 ksf (ROG)
High school	2390 students (NOX)	-	3012 students (ROG)
Junior college (2 years)	152 ksf (NOX)	28 ksf	277 ksf (ROG)
Junior college (2 years)	2865 students (ROG)	-	3012 students (ROG)
University/college (4 years)	1760 students (NOX)	320 students	3012 students (ROG)
Library	78 ksf (NOX)	15 ksf	277 ksf (ROG)
Place of worship	439 ksf (NOX)	61 ksf	277 ksf (ROG)
City park	2613 acres (ROG)	600 acres	67 acres (PM10)
Racquet club	291 ksf (NOX)	46 ksf	277 ksf (ROG)
Racquetball/health	128 ksf (NOX)	24 ksf	277 ksf (ROG)
Quality restaurant	47 ksf (NOX)	9 ksf	277 ksf (ROG)
High turnover restaurant	33 ksf (NOX)	7 ksf	277 ksf (ROG)
Fast food rest. w/ drive thru	6 ksf (NOX)	1 ksf	277 ksf (ROG)
Fast food rest. w/o drive thru	8 ksf (NOX)	1 ksf	277 ksf (ROG)
Hotel	489 rooms (NOX)	83 rooms	554 rooms (ROG)
Motel	688 rooms (NOX)	106 rooms	554 rooms (ROG)
Free-standing discount store	76 ksf (NOX)	15 ksf	277 ksf (ROG)
Free-standing discount superstore	87 ksf (NOX)	17 ksf	277 ksf (ROG)
Discount club	102 ksf (NOX)	20 ksf	277 ksf (ROG)
Regional shopping center	99 ksf (NOX)	19 ksf	277 ksf (ROG)
Electronic Superstore	95 ksf (NOX)	18 ksf	277 ksf (ROG)
Home improvement superstore	142 ksf (NOX)	26 ksf	277 ksf (ROG)
Strip mall	99 ksf (NOX)	19 ksf	277 ksf (ROG)
Hardware/paint store	83 ksf (NOX)	16 ksf	277 ksf (ROG)
Supermarket	42 ksf (NOX)	8 ksf	277 ksf (ROG)
Convenience market (24 hour)	5 ksf (NOX)	1 ksf	277 ksf (ROG)
Convenience market with gas pumps	4 ksf (NOX)	1 ksf	277 ksf (ROG)
Bank (with drive-through)	17 ksf (NOX)	3 ksf	277 ksf (ROG)
General office building	346 ksf (NOX)	53 ksf	277 ksf (ROG)

Table 3-1
Operational-Related Criteria Air Pollutant and Precursor Screening Level Sizes

Land Use Type	Operational Criteria Pollutant Screening Size	Operational GHG Screening Size	Construction-Related Screening Size
Office park	323 ksf (NOX)	50 ksf	277 ksf (ROG)
Government office building	61 ksf (NOX)	12 ksf	277 ksf (ROG)
Government (civic center)	149 ksf (NOX)	27 ksf	277 ksf (ROG)
Pharmacy/drugstore w/ drive through	49 ksf (NOX)	10 ksf	277 ksf (ROG)
Pharmacy/drugstore w/o drive through	48 ksf (NOX)	10 ksf	277 ksf (ROG)
Medical office building	117 ksf (NOX)	22 ksf	277 ksf (ROG)
Hospital	226 ksf (NOX)	39 ksf	277 ksf (ROG)
Hospital	334 beds (NOX)	84 ksf	337 beds (ROG)
Warehouse	864 ksf (NOX)	64 ksf	259 ksf (NOX)
General light industry	541 ksf (NOX)	121 ksf	259 ksf (NOX)
General light industry	72 acres (NOX)	-	11 acres (NOX)
General light industry	1249 employees (NOX)	-	540 employees (NOX)
General heavy industry	1899 ksf (ROG)	-	259 ksf (NOX)
General heavy industry	281 acres (ROG)	-	11 acres (NOX)
Industrial park	553 ksf (NOX)	65 ksf	259 ksf (NOX)
Industrial park	61 acres (NOX)	-	11 acres (NOX)
Industrial park	1154 employees (NOX)	-	577 employees (NOX)
Manufacturing	992 ksf (NOX)	89 ksf	259 ksf (NOX)

Notes: du = dwelling units; ksf = thousand square feet; NO_X = oxides of nitrogen; ROG = reactive organic gases.
Screening levels include indirect and area source emissions. Emissions from engines (e.g., back-up generators) and industrial sources subject to Air District Rules and Regulations embedded in the land uses are not included in the screening estimates and must be added to the above land uses.
Refer to Appendix D for support documentation.
Source: Modeled by EDAW 2009.

3.2. COMMUNITY RISK AND HAZARD IMPACTS

Please refer to Chapter 5 for discussion of screening criteria for local community risk and hazard impacts.

3.3. CARBON MONOXIDE IMPACTS

This preliminary screening methodology provides the Lead Agency with a conservative indication of whether the implementation of the proposed project would result in CO emissions that exceed the *Thresholds of Significance* shown in Table 2-3.

The proposed project would result in a less-than-significant impact to localized CO concentrations if the following screening criteria is met:

1. Project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans.