CITY OF MILPITAS

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Agenda Item No. 1

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October 31, 2011

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RE: Citation Residential Project. 1200 Piper Drive (APN: 086-32-037 and 086-32-040)

Mayor Esteves and Honorable Members of the City Council:

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 Citation Residential Project, 1200 Piper Drive ("Project").[1] In particular, we request that the City of Milpitas ("City") conduct review of the Project to mitigate its impacts under the California Environmental Quality Act ("CEQA").

This letter supplements our letters of September 28, 2011 and October 11, 2011, which are incorporated herein by reference, and responds to the Staff Report posted by staff on or about October 28, 2011. Attached to this letter are additional expert comments of Certified Hydrogeologist Matthew Hagemann, PG, C. Hg., the former director of the United States Environmental Protection Agency's West Coast Regional

[1] Site Development Permit Amendment No. SA11-0005, Major Tentative Map Amendment No. TM11-0001 and Conditional Use Permit Amendment No. UA11-0008, Citation Residential Project. 1200 Piper Drive (APN: 086-32-037 and 086-32-040)

Superfund program (Exhibit A, B, C). Mr. Hagemann and Traffic Engineer Tom Brohard, PE (Exhibit D) have concluded that the proposed Project will have significant environmental impacts not analyzed in any prior CEQA document and that an environmental impact report ("EIR") is required to analyze the impacts and propose feasible mitigation measures.

SUMMARY

The City has improperly determined that the Project is exempt entirely from CEQA review due to an environmental impact report ("EIR") that was prepared in 2007 for the Transit Area Specific Plan ("TASP"), and pursuant to the CEQA exemption set forth in 14 Cal.Code Regs. 15168(c)(2). As discussed below, the Project is not subject to a CEQA exemption for several reasons, including but not limited to the following:

1. The Project site is on the Cortese List of contaminated sites due to the presence of highly toxic PCBs (polychlorinated biphenyls) from the former North American Transformer Company. Hydrogeologist Hagemann concludes that the site is still heavily contaminated with the toxic chemicals trichloroethylene (TCE) and perchloroethylene (PCE) " in soil vapor well above health-based screening concentrations." A site that is on the Cortese List may not be exempted from CEQA review since environmental analysis and mitigation is required to safeguard future residents and construction workers from potential environmental hazards. The Staff contends that the site has been adequately remediated and that a 2005 covenant requires a vapor barrier to protect future residents. Hydrogeologist Hagemann points out that much more substantial contamination was discovered at the site in 2009, far above health-based screening levels and that the vapor barrier is inadequate to mitigate the health risk.

   Furthermore, a 2006 letter from the Department of Toxic Substances Control to the City states that despite the TASP EIR, "***if volatile organic compounds are present in soil or groundwater, the potential human health risk from vapor intrusion into future buildings will need to be considered. If remediation activities are required, these activities should be discussed in the EIR or CEQA documents for individual development projects***." "Remediation activities" "should be discussed ***in the EIR or CEQA documents for individual development projects***." (May 4, 2006 Letter from DTSC to City of Milpitas) The City's refusal to conduct any CEQA review therefore contradicts DTSC's comments on this Project.

2. The Project has impacts and will require mitigation measures that are not analyzed in the 2007 TASP EIR. CEQA Guidelines 15168(c)(2) prohibits reliance on the exemption if there are any "new effect" or "new mitigation measures would be required." New impacts include:

a. The Project will have significant greenhouse gas ("GHG") impacts not analyzed in the TASP EIR. The Agenda Report states that GHGs were adequately analyzed in the TASP EIR. (Agenda Report II p.16) However, that TASP EIR concluded that the specific plan would have less than significant GHG impacts (TASP EIR, p. 3.12-7) and that therefore no mitigation measures would be required. (Id. at p. 3.12-9) The Bay Area Air Quality Management District ("BAAQMD") adopted new CEQA Guidelines in 2010 under which a mid-level apartment project of more than 93 dwelling units is presumed to have significant GHG impacts. The Project exceeds this threshold by over 7 times. This is a new significant impact that must be analyzed in an EIR and mitigation measures must be imposed.

b. The Project will have more significant traffic impacts than analyzed in the TASP EIR. Traffic Engineer Tom Brohard concludes that the Project will have significant traffic impacts that must be analyzed and mitigated through a CEQA document. Indeed the Agenda Report II admits that a Traffic Impact Analysis ("TIA") is required to identify "any project specific mitigation that may be required," thereby admitting that the Project may have significant traffic impacts requiring mitigation. (Agenda Report II, p. 16)

c. The Project will have significant air quality impacts. As discussed by Mr. Hagemann, the Project vastly exceeds BAAQMD significance thresholds for the ozone-precursor reactive organic gases ("ROGs"). The Agenda Report II states that this impact was analyzed in the TASP EIR. However, a review of the TASP EIR demonstrates that while ozone-precursors were identified as a "significant and unavoidable" (TASP EIR, p. 3.6-16) impact of the TASP project, the EIR erroneously concluded that "no mitigation measures are required." (TASP EIR 3.6-21) Since ROGs remain a significant unmitigated impact, CEQA review is required to impose feasible mitigation measures.

d. The Project will have significant impacts on public parks due to inconsistencies with the Specific Plan park requirements. As discussed below the Project provides significantly less parkland than required by the Specific Plan. Therefore, the Project has significant impacts on parkland that must be analyzed and mitigated in an EIR. The Agenda Report II dismisses this impact by stating that "the developer is required to revise design plans to reflect allowable open space areas." (Agenda Report II, p. 16) However, CEQA prohibits such "deferred mitigation," and requires specific mitigations to be set forth in a CEQA document, not deferred until after project approval.

e. The Project will have significant noise and vibration impacts. Agenda Report II dismisses these impacts by stating that analysis and mitigation will be required at a later time. However, CEQA does not allow such deferred mitigation.

3. Substantial changes are proposed to the Project. In particular, the developer proposes to add 93 townhouse units to the project, and add a 5th floor to the Project. This will significantly increase air quality, greenhouse gas, traffic, visual, and other impacts. An agency may only rely on a prior EIR for what is essentially the same project. This change alone exceeds that BAAQMD greenhouse gas significance threshold.

4. The TASP EIR specified that a toxic air contaminant ("TAC") analysis would be required for any future project proposed near a potentially significant source of air contaminants. The Project is adjacent to the Montague Expressway, 90 feet from a rail line, and 2600 feet southeast from a Union Pacific (UP) Milpitas Rail Yard at 224 Curtis Ave, Milpitas, CA. These are all significant sources of Toxic Air Contaminants according to the California Air Resources Board and Bay Area Air Quality Management District. Nevertheless, the City has failed to prepare any TAC analysis to identify impacts and to propose mitigation measures. Mr. Hagemann calculates that there is a fair argument that the Project may have significant adverse air quality impacts due to TACs.

Since the Project will have significant environmental impacts not analyzed in the prior EIRs, it may not be exempted from CEQA. A CEQA document is required to analyze these impacts and propose feasible mitigation measures to safeguard the health of future residents, construction workers who may be exposed to toxic soil contamination, and the general public who will suffer from increased traffic congestion, air pollution and other impacts.

PROJECT DESCRIPTION

The site contains 16 acres and is located near the intersection of Montague Expressway and Piper Drive. The project site is zoned High Density Residential (R3). On February 17, 2009, the City Council approved a tentative map for the parcel allowing construction of 639 condos. The developer now proposes to add 93 additional dwelling units (94 townhomes) and a fifth story, increasing the total number of dwelling units ("dus") to 732. The underlying zoning allows for 639 dwelling units. The proposed tentative map provides for the eventual development up to 732 dwelling units for the project site. The developer proposes to reduce the maximum number of dwelling units that may be built on a nearby undeveloped parcel by 93 du's to maintain the density

range for the sub-district. The project proponent proposes taking this density from 737 Montague Expressway. (SR12)

The entire increase in Project density is townhomes. The developer proposes to increase density by 93 units, and add 94 “townhome style” condominiums. The density would increase from 40 dwelling units per acre to approximately 45.75 dwelling units per acre. (SR, Att. C) The project proposes to amend its previously approved tentative map to accommodate the changes to the site layout, the additional floor and the introduction of the townhomes. The project also includes the dedication of right-of-way for new public roads and 1.4 acres for the proposed public park.

The City contends that the Project is exempt entirely from all CEQA review pursuant to CEQA Guidelines section 15168(c)(2), which provides a partial CEQA exemption for projects for which: (1) a program EIR has been prepared, (2) “no new effects could occur,” (3) “no new mitigation measures would be required,” and (4) “the activity is within the scope of the project covered by the program EIR.” As discussed below, the CEQA exemption does not apply because the Project site is on the Cortese List of contaminated sites, the project is not consistent with the specific plan, and the project will have new impacts and mitigation measures.

ANALYSIS

A. The City May Not Avoid Project-Level CEQA Review Because it Informed the Public When Preparing the TASP EIR that Project-Level CEQA Review Would be Required.

The TASP EIR promised the public that subsequent CEQA review would occur at the project level. The Notice of Preparation for the TASP EIR stated: “***For individual development projects proposed under the future specific plan, initial studies will need to be prepared to assess potential impacts specific to the projects, and determine what further environmental review may be required.”*** (TASP EIR Notice of Preparation, p. 8; TASP DEIR p. 811) Nevertheless, the City now seeks to dispense entirely with any environmental review for specific projects in the TASP area.

The courts have held that when a programmatic EIR promises that subsequent CEQA review will be conducted at the project level, then the agency will be held to its word, and may not later change its mind and evade CEQA review. For example, In the case of *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal. App. 4th 25, 43-44, the court held that a project level EIR was required to analyze the impacts of 2 billboards, even though a program level specific plan EIR had already analyzed the impacts of billboards generally in the area. The court focused on the fact that the specific plan EIR stated that it was a program EIR and promised later project level CEQA review. Almost identical to this case, the specific plan EIR at issue in the *Eller Media* case stated, "the individual development projects may have site-specific or

project-specific impacts that are significant and unavoidable; these impacts cannot be identified at this time, but would be subject to additional environmental review." The court held that, having promised the public that subsequent CEQA analysis would occur, the city could not later alter course.

B. The Project May Not be Exempted from CEQA Review Because it is on the Cortese List of Contaminated Sites.

The Project site, 1200 Piper Drive is listed on the State's official list of contaminated sites, known as the Cortese List, due to contamination with the highly toxic chemical polychlorinated biphenyls (PCBs) as well as petroleum hydrocarbons from former occupant, North American Transformer. (https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL18208588) Although the Cortese List states that the case for 1200 Piper Drive is closed, the site closure letter states:

> With respect to future development of the subject property, potential health impacts associated with the underlying Jones Chemical plume (i.e. via vapor intrusion into structures) must be adequately evaluated and, if necessary, mitigated.

Thus, the site closure expressly notes the potential for soil vapor intrusion – a process by which toxic chemicals migrate through soil and into the habitable space.

Certified hydrogeologist Matthew Hagemann, C. Hg., states in his attached analysis:

> As noted by the RWQCB, contaminants from the JCI Jones Chemical Inc. have moved beneath the 1200 Piper Drive property in groundwater and in soil vapor. The RWQCB has required a health risk assessment of the soil vapor intrusion pathway at the JCI Jones Chemical Inc. site, to include an evaluation of the health risks in adjacent proposed residential developments, including 1200 Piper Drive.[2] Soil vapor intrusion is a well-understood chemical pathway whereby volatile organic contaminants like TCE and PCE move from vapor in the pore space of soils into overlying structures. Vapors migrating via this pathway may concentrate in indoor air and present health risks to residents unless properly evaluated and remediated or mitigated.
>
> To date, a health risk assessment at JCI Jones Chemical Inc., or on downgradient properties to include 1200 Piper Drive, has not been conducted. As shown in the table below, samples of shallow soil vapor collected from three

[2] http://geotracker.waterboards.ca.gov/site_documents/1530018448/NAT%20southyard%20%2D%20NFA%20%2D2%2D26%2D07%2Epdf

wells at the 1200 Piper Drive property in July and August 2009 show levels of TCE and PCE in soil vapor well above health-based screening concentrations (see the results for wells SV20, SV23 and SV24).

Table 2
Analytical Results for Soil-Vapor Samples Collected at the Off-Site Area
Former JCI Jones Chemicals Facility, Milpitas, California
Concentrations in micrograms per cubic meter of vapor (µg/m³)

Sample ID	Sample Depth (feet bgs)	Notes	Benzene	Toluene	Ethyl-benzene	Total Xylenes	1,1-DCA	cis-1,2-DCE	trans-1,2-DCE	1,1-DCE	Methylene Chloride	PCE	1,1,1-TCA	TCE	Vinyl Chloride
SV-1S	5	(10)	**140**	120	<8.7	<8.7	20	8.4	<7.9	<7.9	<6.9	<14	<11	<11	<10
SV-1	10	(1)	**210**	250	11	13	120	140	12	55	7.2	11 J	<11	460	36
SV-2	10	(2)	**120**	190	6.7 J	6.1 J	<7.9	<7.9	<7.9	<7.9	5.8 J,B	100	71	38	<10
SV-3	10	(3)	<46	28 J	<42	<42	<39	<38	<38	<38	43	**12,000**	<52	220	<49
SV-4S	5	(9)	**150**	220	<40	<40	<37	<37	<37	120	49 J,B	**16,000**	370	960	<47
SV-4	10		<170	70 J	<160	<160	<150	670	<140	870	140	**51,000**	1,100	**9,400**	<190
SV-5	10	(4)	41	120	<8.7	<8.7	110	33	<7.9	36	<6.9	**490**	28	810	<10
SV-6	10		<620	<490	<560	<560	<520	<510	<510	4,100	450 J	**200,000**	3,500	**31,000**	<660
SV-7	10		<600	<470	<540	<540	<500	<490	<490	**68,000**	500	**150,000**	42,000	**38,000**	<640
SV-8S	5		<90	<71	<82	<82	<76	<75	<75	27,000	1,300 J,B	**330,000**	10,000	**67,000**	<96
SV-8-P1	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	33,000	<1,400	**250,000**	13,000	**60,000**	<2,100
SV-8-P3	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	37,000	<1,400	**350,000**	15,000	**80,000**	<2,100
SV-8-P7	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	36,000	<1,400	**350,000**	14,000	**77,000**	<2,100
SV-9	10	(5)	56 J	78	<84	<84	80	4,500	<77	580	74 B	**16,000**	390	**1,900**	240
SV-11	10		<930	<730	<850	<850	<790	440 J	<390	27,000	870	**170,000**	12,000	**40,000**	<1,000
SV-10	10	(6)	43	73	<17	<17	<16	<15	<15	9.9 J	20	**6,000**	100	**3,900**	<20
SV-12	10		<590	<460	<540	<540	<500	750	<490	3,200	370 J,B	**63,000**	1,500	**8,600**	<630
SV-20S	5	(11)	62	120	<55	<55	<52	28 J	<51	640	<44	**15,000**	570	**2,000**	<220
SV-20	10		<460	<360	<420	<420	<390	3,500	<380	8,900	320 J,B	**69,000**	3,500	**16,000**	<490
SV-23	10	(7)	**110 J**	160	<160	<160	<150	<140	<140	1,100	140 B	**27,000**	950	**8,600**	<190
SV-24S	5	(12)	54 J	410	<84	<84	<79	<88	<77	77 J	<67	**22,000**	59 J	**2,200**	<99
SV-24	10	(8)	**110 J**	120 J	<140	<140	<130	<130	<130	240	94 J,B	**25,000**	150 J	**5,900**	<170
Screening Levels:															
CHHSL; Residential Land Use			36	135,000	NE	315,000	NE	1,590	3,190	NE	NE	528	991,000	528	13
CHHSL; Commercial-Industrial Land Use			122	378,000	NE	887,000	NE	4,440	8,870	NE	NE	603	2,790,000	603	44.8
RWQCB Shallow Soil-Gas ESL; Residential Land Use			84	63,000	980	2,100	1,500	7,300	15,000	42,000	5,200	410	46,000	1,200	31
RWQCB Shallow Soil-Gas ESL; Commercial Land Use			280	180,000	3,300	5,800	5,100	20,000	41,000	120,000	17,000	1,400	130,000	4,100	100
Risk-Based Concentrations - Residential Land Use (10 feet bgs)												2,082		5,700	120

(Comment letter of Matthew Hagemann, C. Hg. (Oct. 11, 2011) (Exhibit A))

City staff has suggested that a covenant signed in 2005 requiring a vapor barrier at the Project site is sufficient to mitigate this impact. Staff is mistaken for several reasons. Mr. Hagemann points out that much more severe toxic chemical contamination was discovered in 2009 – years after the 2005 covenant, and the vapor barrier is inadequate to mitigate this risk. Mr. Hagemann also points out that the State Department of Toxic Substances Control determined in 2006 that subsequent CEQA review would be required at the Project level to adequately remediate toxic chemical risks. Mr. Hagemann states:

> A Covenant and Environmental Restriction ("Covenant," attached) was prepared for the property in 2005 that identified groundwater underlying 1200 Piper Drive to contain TCE and PCE from a chemical release in 1982 from the nearby Jones Chemical, Inc. The Covenant stated that exposure to these contaminants could take place via ingestion, dermal contact with groundwater, or inhalation of vapors from groundwater under a residential scenario. To mitigate against the vapor

exposure pathway, the Covenant states that horizontal vapor barriers will be installed under residential structures.

New information has been developed since the Covenant was signed in 2005, most notably data generated in a 2009 soil vapor investigation that I cited in my October 11, 2011 letter. The data show that samples of shallow soil vapor collected from wells at the 1200 Piper Drive property in July and August 2009 greatly exceed health-based screening concentrations as follows:

PCE California Human Health Screening Level: 603 ug/m3
TCE California Human Health Screening Level: 1770 ug/m3

- SV20
  - PCE: 69,000 ug/m3
  - TCE: 16,000 ug/m3

- SV20S
  - PCE: 15,000 ug/m3
  - TCE: 2,000 ug/m3

- SV23
  - PCE: 27,000 ug/m3
  - TCE: 8,600 ug/m3

- SV24
  - PCE: 25,000 ug/m3
  - TCE: 5,900 ug/m3

- SV24S
  - PCE: 22,000 ug/m3
  - 2,200 ug/m3

The Covenant includes, as an attachment, a fact sheet that describes contaminants at the 1200 Piper Drive property to include areas of soil contamination that were excavated and the westward migration of contaminated groundwater beneath the site. No data on soil vapor contaminants were provided in the fact sheet. Instead, the fact sheet describes generally how vapors may be generated from shallow groundwater and how risks from that exposure pathway were evaluated in a risked-based model. Risks from the modeling conducted at the time were found to “represent an insignificant risk to future residential development” (Fact Sheet, p. 4, attached).

The modeling conducted in 2005 did not incorporate the data that were generated in 2009 that showed soil vapor concentrations to greatly exceed health-based screening levels. In my opinion, because new information shows

> vast exceedences of the California Human Screening Levels, an evaluation of the appropriateness of the vapor-barrier mitigation measure identified in the 2005 Covenant should be conducted for review by the RWQCB, to include a feasibility study of other measures that could include soil vapor extraction at the 1200 Piper Drive project site and groundwater flow barriers upgradient of 1200 Piper Drive. Following this evaluation, a new covenant should be prepared to ensure protection of public health of the future residents. The RWQCB has the authority for review of the appropriateness of the Covenant and can reconsider health effects and the adequacy of mitigation if new information becomes available. A DEIR should be prepared that includes a RWQCB review of the 2009 data and how it might impact the 1200 Piper Drive project and their evaluation of the adequacy of the mitigation identified in the 2005 Covenant along with any other mitigation measures that may be necessary.

Indeed, in 2006 – after the 2005 Covenant was signed – the Department of Toxic Substances Control (DTSC) wrote to the City stating that site-specific Project-level CEQA review should be conducted to analyze toxic chemical risks of particular development project in the Transit Area Specific Plan area. In a May 4, 2006 letter to the City, the DTSC stated:

> Thank you for the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Milpitas Transit Area Specific Plan. As you may be aware, DTSC oversees the cleanup of hazardous substance release sites pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a potential Responsible Agency, DTSC is submitting the following comments to ensure that the California Environmental Quality Act (CEQA) documentation prepared for this project and future associated development projects adequately address any remediation activities which may be required to address any hazardous substance releases.
> The project description indicates that land use changes are proposed.
> For each site where development is to occur under the Specific Plan, current and historical land use records should be consulted to identify land uses that may have resulted in a hazardous substance release. In particular, properties where there has been industrial uses could potentially have contamination. Sampling and analysis of soil and groundwater should be conducted at sites where current or historical operations may have caused a hazardous substance release. The results of sampling should be discussed in ***the EIR or the CEQA documents for individual development projects, which the NOP states will be prepared.***
>
> Screening levels or any risk assessments that are used in determining whether contamination poses a potential, significant human health or environmental risk should be identified and discussed. ***If volatile organic compounds are present in soil or groundwater, the potential human health risk from vapor intrusion into future buildings will need to be considered.***

> ***If remediation activities are required, these activities should be discussed in the EIR or CEQA documents for individual development projects*** along with the cleanup levels that will be applied and the anticipated regulatory agency oversight. Potential impacts associated with the remediation activities should also be addressed. For example, if the remediation activities include the need for soil excavation, ***the EIR or CEQA documents for individual development projects should include:*** (1) an assessment of air impacts and health impacts associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust and noise levels; (3) transportation impacts from removal or remedial activities; and (4) risk of upset should there be an accident at the site or during the transport of contaminated soil. (May 4, 2006 Letter from DTSC to City of Milpitas)

Mr. Hagemann concludes that "There is at the very least a fair argument that excavation, earth moving, and other activities associated with project construction and operation may disturb toxic soil contamination. This could potentially lead to exposure of workers and/or future residents of the project to significant levels of toxic chemicals, at levels above health-based standards. I conclude that this impact has not been adequately addressed in prior CEQA documents, and an EIR is required to analyze this impact and propose feasible mitigation measures."

CEQA expressly prohibits the use of a categorical exemption for any project site that is maintained on the Cortese List. CEQA Guidelines § 15300.2 provides "Exceptions: (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code." 14 CCR § 15300.2(e) (Cortese List). Government Code § 65962.5 lists include, among others, "[a]ll underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code." Gov. Code § 65962.5(c)(1). Since the Project site is on the Cortese List, it may not be exempted from CEQA review. Even if the Cortese List exception did not apply for some reason, the presence of highly toxic chemicals at levels many times above residential standards is an "unusual circumstance" precluding reliance on a CEQA exemption. (See, *McQueen v. Board*, 202 Cal.App.3d at 1149*; Association for a Cleaner Environment v. Yosemite Community College* (2004) 116 Cal. App. 4th 629)[3]

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[3] Staff admits that mitigation measures will be required to safeguard future residents from toxic chemical exposure via the soil-vapor intrusion route of exposure. (Agenda Report II, p. 14) A project that requires mitigation measures may not be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102. If mitigation measures are required, as here, at the very least a mitigated negative declaration is required to analyze the adequacy of the mitigation measures.

C. The Project is Not Exempt from CEQA Because it Will Have Significant Impacts Not Analyzed in the TASP EIR.

The 15168(c) CEQA exemption may not be used if "a later activity would have effects that were not examined in the program EIR," if "new effects would occur," or if "new mitigation measures would be required." (14 CCR 15168(c)(1), (2).

1. The Project Will Have Significant Air Quality Impacts (Greenhouse Gas and ROGs).

Mr. Hagemann concludes that the Project will have significant air quality impacts. In particularly, the Project far exceeds CEQA significance thresholds adopted by the Bay Area Air Quality Management District ("BAAQMD") in 2010 for reactive organic gases ("ROGs") and greenhouse gases ("GHGs") by several times. No estimates of Project emissions of criteria air pollutants and precursors were made in the Staff Report for the project and no estimates were made in the TASP. Mr. Hagemann states:

> We have compared the Project size to "Screening Level Sizes" established by the BAAQMD and have determined that the Project will likely exceed emissions thresholds for criteria pollutants and greenhouse gasses. The Project will involve the construction of 732 condominium units. According to the table below, a project size of 732 units exceeds screening sizes for operational criteria pollutants (ROG) and construction criteria pollutants (ROG) for "Condo/townhouse, high rise."[4] Additionally, the Project size of 732 units exceeds the screening size for operational greenhouse gasses by almost 8 times.

Table 3-1
Criteria Air Pollutants and Precursors and GHG Screening Level Sizes

Land Use Type	Operational Criteria Pollutant Screening Size	Operational GHG Screening Size	Construction Criteria Pollutant 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)

> Because the project size significantly exceeds the screening sizes, the Project will likely generate operational- and construction-related ROG and greenhouse gasses that would exceed the thresholds of significance.

[4] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx, p. 3-2

> Again, no mention of Project emissions was made in the Staff Report nor were they individually considered in the TASP. This is a significant omission and is a potential impact that needs to be evaluated in a DEIR. A DEIR should also be prepared to evaluate and identify any mitigation that is necessary to reduce exceedences of criteria pollutants and greenhouse gasses to levels below thresholds, including routine feasible measures that are considered in CEQA projects as listed below.

(Hagemann Comment Letter, p. 6 (Oct. 11, 2011))

The Agenda Report states that greenhouse ("GHGs") were adequately analyzed in the TASP EIR. (Agenda Report II p.16) However, that TASP EIR concluded that the specific plan would have less than significant GHG impacts (TASP EIR, p. 3.12-7) and that therefore no mitigation measures would be required. (Id. at p. 3.12-9) The Bay Area Air Quality Management District ("BAAQMD") adopted new CEQA Guidelines in 2010 under which a mid-level apartment project of more than 93 dwelling units is presumed to have significant GHG impacts. The Project exceeds this threshold by over 7 times. This is a new significant impact that must be analyzed in an EIR.

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

The TASP EIR stated:

> 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.
>
> …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)).

(TASP DEIR, p. 2-22)

Mr. Hagemann concludes that there is at least a fair argument that the Project may have significant adverse impacts related to TACs due to its proximity to the Montague Expressway, a Union Pacific Railyard, and nearby railway tracks. Moreover, by adding traffic to the Montague Expressway, the Project itself will contribute cumulatively to these impacts. Mr. Hagemann states:

The Site is located approximately 2600 feet southeast from a Union Pacific (UP) Milpitas Rail Yard at 224 Curtis Ave, Milpitas, CA. A rail line is also located approximately 90 feet west of the Site. Because these sources were not evaluated, future residents and workers face uncertain risks from fine particulate matter (PM2.5) and cancer risks from these sources.
The 2005 Air Quality and Land Use Handbook (Handbook) by the California Air Resources Board (CARB) has the following recommendations for projects being built near rail yards.[5]

- Avoid siting new sensitive land uses within 1,000 feet of a major service and maintenance rail yard.
- Within one mile of a rail yard, consider possible siting limitations and mitigation approaches.

The Handbook also states that there are cancer risks up to a 500 in a million associated with rail yards.[6] The Bay Area Air Quality Management District (BAAQMD) lists rail yards as "complex sources" of emissions[7] and states:

> For large, complex sources, such as those listed in Section 2.1 above, a larger radius may be appropriate, but the specifics should be determined on a case-by-case basis.[8]

Because the Rail Yard is a large complex source, an air quality analysis should be conducted to determine if the yard poses PM 2.5 emissions and cancer risks that would exceed BAAQMD thresholds. The need to conduct this analysis is especially necessary given that air pollution is channeled to the southeast in Santa Clara County. [9]

Similar projects proposed in the vicinity have conducted air quality impact analyses from nearby rail yards and railways and have provided mitigation measures for what were found to be significant impacts. For example, a proposed residential project at 1765 McCandless Dr., Milpitas, CA found that PM2.5 emissions and cancer risks exceeded BAAQMD thresholds. To mitigate these significant impacts, a vegetative buffer and building air filtration systems have been proposed.

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[5] http://www.arb.ca.gov/ch/handbook.pdf, p. 4
[6] http://www.arb.ca.gov/ch/handbook.pdf, p. 6
[7] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx?la=en, p. 11
[8] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx?la=en, p. 13
[9] http://hank.baaqmd.gov/dst/papers/bay_area_climate.pdf, p. 14

> The Project's location very close to the Montague Expressway will also add to the risk of toxic air contaminants since expressways are identified by the BAAQMD as a significant source of PM2.5 and TACs. The Project itself will contribute cumulatively to the TACs by contributing additional traffic to the Montague Expressway.
>
> Given the size of the project, the nature of air circulation in the region, and the proximity to the Rail Yard and rail line, there is fair argument that air quality impacts to residents of the proposed project are significant and unmitigated. A DEIR is therefore required to analyze potentially significant air emissions from the nearby UP Milpitas Rail Yard and rail line that were not analyzed in the 1200 Piper Drive Staff Report and that was not considered in the TASP.
>
> The DEIR should identify the proper mitigation measures to reduce any potential impacts, from PM2.5 emissions and cancer risk, to a less than significant level.

3. The Project will have Significant Traffic Impacts.

Traffic Engineer Tom Brohard concludes that the Project will have significant traffic impacts that must be analyzed in a CEQA document. Mr. Brohard states:

> With its location within the TASP on Piper Drive, the Project will contribute additional traffic to adjacent intersections and street segments on the Montague Expressway that are forecast to operate at Level of Service (LOS) F under Background Conditions and Cumulative Conditions. With this, it is my understanding that the Project may not be exempted from the requirements of the California Environmental Quality Act (CEQA) without further study.

(T. Brohard comment letter, p. 1 (Exhibit D))

Mr. Brohard concludes that the Project will have cumulatively significant traffic impacts at the following intersections:

> Montague Expressway and either pass through its intersection with Milpitas Boulevard or through Great Mall Parkway/Capitol Avenue. According to Table 3.3-10 on Page 3.3-56 of the TASP EIR, these two intersections on the Montague Expressway adjacent to Piper Drive will be significantly impacted by the TASP under Background Conditions. Just to the east at Montague Expressway and Milpitas Boulevard (Intersection #27), a significant traffic impact was forecast in the TASP EIR in the PM peak hour as the average vehicle delay increased from 39.7 seconds at LOS D to 90.4 seconds at LOS F with the addition of TASP trips. Just to the west at Montague Expressway and Great Mall Parkway/Capitol Avenue (Intersection #26), a significant traffic impact was

> forecast in the TASP EIR in both peak hours. In the AM peak hour at this intersection, the average vehicle delay increased from 98.9 seconds at LOS F to 129.8 seconds at LOS F with the addition of TASP trips. In the PM peak hour at this intersection, the average vehicle delay increased from 121.4 seconds at LOS F to 165.7 seconds at LOS F with the addition of TASP trips. The additional trips to and from the expanded Citation Residential Project may increase the forecast average vehicle delays even further.
>
> …
>
> All trips to and from the Citation Residential Project will use the Montague Expressway between Milpitas Boulevard and Great Mall Parkway/Capitol Avenue. According to Table 3.3-12 on Page 3.3-63 of the TASP EIR, this westbound Montague Expressway roadway segment which includes Piper Drive will operate at LOS F in the AM peak hour and be significantly impacted by the TASP under Year 2030 Cumulative Conditions. According to Table 3.3-12 on Page 3.3-68 of the TASP EIR, this eastbound Montague Expressway roadway segment which includes Piper Drive will operate at LOS F in the PM peak hour and will be significantly impacted by the TASP under Year 2030 Cumulative Conditions. The additional trips to and from the expanded Citation Residential Project may degrade the forecast volume to capacity ratios even further.

Since expert evidence indicates that the Project will have significant traffic impacts, this impact must be analyzed in a CEQA document to incorporate feasible mitigation measures.

4. The Project Will Have Significant Noise and Vibration Impacts.

Agenda Report II admits that the Project will have significant noise and vibration impacts requiring mitigation. (Agenda Report II, p. 15) Agenda Report II states that an acoustical and vibration study will be conducted at a later time after Project approval.

As discussed above, this is improper deferred mitigation prohibited by CEQA. Mitigation measures must be described to the public in a CEQA document to ensure their adequacy. Furthermore, since the City admits that mitigation measures will be required, a CEQA exemption is not allowed. If a project has impacts requiring mitigation, then at the very least a mitigated negative declaration is required, not a CEQA exemption. (*SPAWN v. Marin, supra*)

5. The Project Will Have Significant Parkland Impacts.

The Staff Report admits that under the Transit Area Specific Plan, 6.6 acres of parkland are required for the Project. However, the Project provides only 5.3 acres. (SR13). Agenda Report II dismisses this impact, stating that “the developer is required to revised design plans to reflect allowable open space areas for the purpose of being consistent with the Transit Area Specific Plan.” (Agenda Report II, p. 16)

An inconsistency with the applicable Specific Plan is a significant impact under CEQA.[10] The staff's proposal to require the developer to revise its project design is plainly unlawful deferred mitigation of a significant environmental impact. Given the extreme space constraints for this dense Project, it is not at all clear that a redesigned Project will be possible, or that it will be able to conform to Specific Plan parkland requirements. This is precisely the type of situation that must be addressed in a CEQA document, rather than after project approval.

6. The Project Will Have Significant Flood Impacts.

The Citation Project will have potentially significant impacts on the surrounding flood plain, and the City requires a study, including a cumulative impacts study. Resolution No. 11-048, p. 12 provides

Tentative Map

45. Prior to final map approval for the phase II (parcel 2 subdivision), Developer/Subdivider shall complete an area wide Flood Study, demonstrating that the proposed development has NO adverse impact to the surrounding flood plain within the Special Flood Hazard Area and flood carrying capacity of the area. The study should include cumulative effect of the proposed development combined with existing and anticipated developments will not increase the water surface elevation of the Base Flood (BFE) more than one/tenth of a foot at any point. Additionally, for the AO Flood Zone, the flood study is required in order to establish the BFE and development requirements. The flood study must be prepared consistent with the requirements in accordance with Title 44 of the Code of Federal Regulations by establishing a hydraulic model and HEC-RAS. Project to be included in this study, including but not limited to, D.R. Horton on McCandless, Integral ["McCandless Mixed Use Project"], Trumark @ Trade Zone, Capitol Towers, Montague/Piper TASP sub-district, and the BART Project.

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[10] Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist*. (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp*. (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

Thus, the City staff admits that the Project may have significant flood impacts that may require mitigation measures. As such, a CEQA document is required to analyze this impact and propose feasible mitigation and alternatives.

CONCLUSION

For the foregoing reasons, the City may not exempt the proposed Project from CEQA review. The City may not rely on the 2007 Transit Area Specific Plan EIR because the proposed Project is inconsistent with the Specific Plan. Also the proposed Project has adverse environmental impacts not analyzed in the prior EIR, including toxic soil contamination, significant individual and cumulative traffic impacts, air quality impacts, greenhouse gas impacts, and specific plan inconsistency impacts. A project-level EIR is required to analyze this Project and to propose feasible mitigation measures and alternatives.

Sincerely,

Richard Drury

EXHIBIT A

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

2503 Eastbluff Dr., Suite 206
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October 28, 2011

Richard Drury
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, CA94607

Subject: Supplemental Comments on the 1200 Piper Drive Project, Milpitas, California

Dear Mr. Drury:

This letter is written to supplement comments I made in an October 11, 2011 letter regarding hazards and hazardous materials issues at the 1200 Piper Drive. In those comments, I noted high concentrations of TCE and PCE in soil vapor that were detected by the developer's consultant in 2009 and noted that these chemicals had not yet been considered in a health risk assessment.

A Covenant and Environmental Restriction ("Covenant," attached) was prepared for the property in 2005 that identified groundwater underlying 1200 Piper Drive to contain TCE and PCE from a chemical release in 1982 from the nearby Jones Chemical, Inc. The Covenant stated that exposure to these contaminants could take place via ingestion, dermal contact with groundwater, or inhalation of vapors from groundwater under a residential scenario. To mitigate against the vapor exposure pathway, the Covenant states that horizontal vapor barriers will be installed under residential structures.

New information has been developed since the Covenant was signed in 2005, most notably data generated in a 2009 soil vapor investigation that I cited in my October 11, 2011 letter. The data show that samples of shallow soil vapor collected from wells at the 1200 Piper Drive property in July and August 2009 greatly exceed health-based screening concentrations as follow:

PCE California Human Health Screening Level: 603 ug/m3

TCE California Human Health Screening Level: 1770 ug/m3

- SV20
    - PCE: 69,000 ug/m3
    - TCE: 16,000 ug/m3
- SV20S
    - PCE: 15,000 ug/m3
    - TCE: 2,000 ug/m3
- SV23
    - PCE: 27,000 ug/m3
    - TCE: 8,600 ug/m3
- SV24
    - PCE: 25,000 ug/m3
    - TCE: 5,900 ug/m3
- SV24S
    - PCE: 22,000 ug/m3
    - 2,200 ug/m3

The Covenant includes, as an attachment, a fact sheet that describes contaminants at the 1200 Piper Drive property to include areas of soil contamination that were excavated and the westward migration of contaminated groundwater beneath the site. No data on soil vapor contaminants were provided in the fact sheet. Instead, the fact sheet describes generally how vapors may be generated from shallow groundwater and how risks from that exposure pathway were evaluated in a risked-based model. Risks from the modeling conducted at the time were found to "represent an insignificant risk to future residential development" (Fact Sheet, p. 4, attached).

The modeling conducted in 2005 did not incorporate the data that were generated in 2009 that showed soil vapor concentrations to greatly exceed health-based screening levels. In my opinion, because new information shows vast exceedences of the California Human Screening Levels, an evaluation of the appropriateness of the vapor-barrier mitigation measure identified

in the 2005 Covenant should be conducted for review by the RWQCB, to include a feasibility study of other measures that could include soil vapor extraction at the 1200 Piper Drive project site and groundwater flow barriers upgradient of 1200 Piper Drive. Following this evaluation, a new covenant should be prepared to ensure protection of public health of the future residents. The RWQCB has the authority for review of the appropriateness of the Covenant and can reconsider health effects and the adequacy of mitigation if new information becomes available. A DEIR should be prepared that includes a RWQCB review of the 2009 data and how it might impact the 1200 Piper Drive project and their evaluation of the adequacy of the mitigation identified in the 2005 Covenant along with any other mitigation measures that may be necessary.

Indeed, in 2006 – after the 2005 Covenant was signed – the Department of Toxic Substances Control (DTSC) wrote to the City stating that site-specific Project-level CEQA review should be conducted to analyze toxic chemical risks of particular development project in the Transit Area Specific Plan area. In a May 4, 2006 letter to the City, the DTSC stated:

> Thank you for the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Milpitas Transit Area Specific Plan. As you may be aware, DTSC oversees the cleanup of hazardous substance release sites pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a potential Responsible Agency, DTSC is submitting the following comments to ensure that the California Environmental Quality Act (CEQA) documentation prepared for this project and future associated development projects adequately address any remediation activities which may be required to address any hazardous substance releases.
>
> The project description indicates that land use changes are proposed.
>
> For each site where development is to occur under the Specific Plan, current and historical land use records should be consulted to identify land uses that may have resulted in a hazardous substance release. In particular, properties where there has been industrial uses could potentially have contamination. Sampling and analysis of soil and groundwater should be conducted at sites where current or historical operations may have caused a hazardous substance release. ***The results of sampling should be discussed in the EIR or the CEQA documents for individual development projects, which the NOP states will be prepared***.
>
> Screening levels or any risk assessments that are used in determining whether contamination poses a potential, significant human health or environmental risk should be identified and discussed***. If volatile organic compounds are present in soil or***

groundwater, the potential human health risk from vapor intrusion into future buildings will need to be considered.

If remediation activities are required, these activities should be discussed in the EIR or CEQA documents for individual development projects along with the cleanup levels that will be applied and the anticipated regulatory agency oversight. Potential impacts associated with the remediation activities should also be addressed. For example, if the remediation activities include the need for soil excavation, the EIR or CEQA documents for individual development projects should include: (1) an assessment of air impacts and health impacts associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust and noise levels; (3) transportation impacts from removal or remedial activities; and (4) risk of upset should there be an accident at the site or during the transport of contaminated soil. (May 4, 2006 Letter from DTSC to City of Milpitas)

There is at the very least a fair argument that excavation, earth moving, and other activities associated with project construction and operation may disturb toxic soil contamination. This could potentially lead to exposure of workers and/or future residents of the project to significant levels of toxic chemicals, at levels above health-based standards. I conclude that this impact has not been adequately addressed in prior CEQA documents, and an EIR is required to analyze this impact and propose feasible mitigation measures.

Sincerely,

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

EXHIBIT B

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

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October 28, 2011

Richard Drury
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

Subject: Supplemental Air Quality Comments on the 1200 Piper Drive Project, Milpitas, California

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Dear Mr. Drury:

This letter is written to supplement the comments we made in an October 9, 2011 letter regarding a proposal for a 16-acre parcel at 1200 Piper Drive. This letter focuses on what are likely to be significant unmitigated air quality impacts and cancer risks that were not evaluated and are therefore unmitigated.

The Site is located approximately 2600 feet southeast from a Union Pacific (UP) Milpitas Rail Yard at 224 Curtis Ave, Milpitas, CA. A rail line is also located approximately 90 feet west of the Site. Because these sources were not evaluated, future residents and workers face uncertain risks from fine particulate matter (PM2.5) and cancer risks from these sources.

The 2005 Air Quality and Land Use Handbook (Handbook) by the California Air Resources Board (CARB) has the following recommendations for projects being built near rail yards.[1]

- Avoid siting new sensitive land uses within 1,000 feet of a major service and maintenance rail yard.
- Within one mile of a rail yard, consider possible siting limitations and mitigation approaches.

---

[1] http://www.arb.ca.gov/ch/handbook.pdf, p. 4

The Handbook also states that there are cancer risks up to a 500 in a million associated with rail yards.[2] The Bay Area Air Quality Management District (BAAQMD) lists rail yards as "complex sources" of emissions[3] and states:

> For large, complex sources, such as those listed in Section 2.1 above, a larger radius may be appropriate, but the specifics should be determined on a case-by-case basis.[4]

Because the Rail Yard is a large complex source, an air quality analysis should be conducted to determine if the yard poses PM 2.5 emissions and cancer risks that would exceed BAAQMD thresholds. The need to conduct this analysis is especially necessary given that air pollution is channeled to the southeast in Santa Clara County. [5]

Similar projects proposed in the vicinity have conducted air quality impact analyses from nearby rail yards and railways and have provided mitigation measures for what were found to be significant impacts. For example, a proposed residential project at 1765 McCandless Dr., Milpitas, CA found that PM2.5 emissions and cancer risks exceeded BAAQMD thresholds. To mitigate these significant impacts, a vegetative buffer and building air filtration systems have been proposed.

The Project's location very close to the Montague Expressway will also add to the risk of toxic air contaminants since expressways are identified by the BAAQMD as a significant source of PM2.5 and TACs. The Project itself will contribute cumulatively to the TACs by contributing additional traffic to the Montague Expressway.

Given the size of the project, the nature of air circulation in the region, and the proximity to the Rail Yard and rail line, there is fair argument that air quality impacts to residents of the proposed project are significant and unmitigated. A DEIR is therefore required to analyze potentially significant air emissions from the nearby UP Milpitas Rail Yard and rail line that were not analyzed in the 1200 Piper Drive Staff Report and that was not considered in the TASP.

The DEIR should identify the proper mitigation measures to reduce any potential impacts, from PM2.5 emissions and cancer risk, to a less than significant level.

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[2] http://www.arb.ca.gov/ch/handbook.pdf, p. 6

[3] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx?la=en, p. 11

[4] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx?la=en, p. 13

[5] http://hank.baaqmd.gov/dst/papers/bay_area_climate.pdf, p. 14

Sincerely,

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

EXHIBIT C

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

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October 11, 2011

Richard Drury
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Subject: Comments on the 1200 Piper Drive Project, Milpitas, California

Dear Mr. Drury:

I have reviewed the September 28, 2011 Staff Report prepared for the condominium and townhouse project at 1200 Piper Drive in Milpitas, California ("Project"). The Project would construct 732 dwelling units on a 16-acre parcel in two five-story buildings. Parking for the Project would be provided in a separate seven-story structure. The Project is located near the intersection of Montague Expressway and Piper Drive on a site that has a history of industrial use that includes storage of electrical transformers.

The city of Milpitas has determined the Project to be exempt from further California Environmental Quality Act (CEQA) review, finding it to be consistent with the Transit Area Specific Plan Environmental Impact Report (TASP) adopted on June 3, 2008 by the City Council. The TASP encompasses 437 acres and promotes the development of 7,109 dwelling units, 287,075 square feet of retail space, and 993,843 square feet of office and industrial space.

We have determined that the 1200 Piper Drive project is not CEQA exempt because the site is on the Cortese List of contaminated sites. We have also determined that the project will have significant impacts on air quality and greenhouse gas emissions, unless mitigated; these impacts were not evaluated in the TASP.

The Site Cannot be Exempted from California Environmental Quality Act Because of Releases of Hazardous Materials

The California EPA lists the former North American Transformer Company at 1200 Piper Drive as a site identified "as meeting the Cortese List requirements".[1] The Cortese list, under provisions of Government Code 65962.5(a), requires that the Department of Toxic Substances Control compile and update a list of the following:

> (1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.
>
> (2) All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.
>
> (3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.
>
> (4) All sites listed pursuant to Section 25356 of the Health and Safety Code.
>
> (5) All sites included in the Abandoned Site Assessment Program.

Development projects proposed on a site on the Cortese List do not qualify for the exemptions from CEQA.[2]

Transformers containing PCBs were formerly stored on the subject site. PCBs were first detected in soil at the Site in 2001. An additional investigation in 2005 detected elevated concentrations of PCBs (Aroclor 1254 and 1260) in soil at up to 157 ppm beneath the Site which is well above the 0.22 ppm cleanup goal established by the California Regional Water Quality Control Board (RWQCB).

In 2005 and 2006, the RWQCB required the North American Transformer Company to treat 15,000 cubic yards of PCB-contaminated soil at the site and to excavate 550 yards of PCB-contaminated soil that did not meet cleanup objectives.

The RWQCB issued the site a No Further Action letter for the PCB soil contamination in February 2007, stating:

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[1] http://www.calepa.ca.gov/sitecleanup/corteselist/ -- see List of "active" CDO and CAO from Water Board (MS Excel, 632 KB)

[2] Pub.Res. Code § 21084. (c)

> Based upon the available information and considering the planned high-density residential land use, and with the provision that the information provided to this agency was accurate and representative of site conditions, no further action related to the PCB releases at the subject site is required.[3]

However the RWQCB also stated, in the No Further Action letter:

> As you are also aware, underlying groundwater at this site has been impacted by the releases of volatile organic compounds originating from the Jones Chemical site located upgradient. With respect to future development of the subject property, potential health impacts associated with the underlying Jones Chemical plume (i.e. via vapor intrusion into structures) must be adequately evaluated and, if necessary, mitigated.[4]

As stated above, preparation of a DEIR is necessary to meet CEQA/Cortese Act requirements. The DEIR should be prepared to identify the site as one which is on the Cortese list and to disclose the history of use by North American Transformer along with the results of the remediation efforts and contamination by the adjacent property.

Because the site is included on the Cortese List, it cannot be exempted from the requirements of CEQA. As documented below, contaminants have been found in soil vapor beneath the 1200 Piper Drive site which may pose hazards to construction workers and to future residents unless addressed. These hazards must be evaluated and mitigated as necessary in a DEIR to ensure the protection of human health.

Contaminants from the Adjacent Property Present Health Risks Unless Evaluated and Mitigated

The JCI Jones Chemical Inc. site is located at 985 Montague Expressway, directly southeast of 1200 Piper Drive. The Jones Chemical site is undergoing active investigation, under a RWQCB lead, for soil, soil vapor and groundwater contamination to include trichloroethylene (TCE) and perchloroethylene (PCE). The State Water Resources Control Board Geotracker Web site lists the JCI Jones Chemical Inc. site status as "open."[5]

As noted by the RWQCB, contaminants from the JCI Jones Chemical Inc. have moved beneath the 1200 Piper Drive property in groundwater and in soil vapor. The RWQCB has required a health risk assessment of the soil vapor intrusion pathway at the JCI Jones Chemical Inc. site to include an evaluation of the health risks in adjacent proposed residential developments

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[3] http://geotracker.waterboards.ca.gov/site_documents/1530018448/NAT%20southyard%20-%20NFA%20-2-26-07.pdf

[4] Ibid.

[5] http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL18213593

including 1200 Piper Drive.[6] Soil vapor intrusion is a well-understood chemical pathway whereby volatile organic contaminants like TCE and PCE move from vapor in the pore space of soils into overlying structures. Vapors migrating via this pathway may concentrate in indoor air and present health risks to residents unless properly evaluated and remediated or mitigated.

To date, a health risk assessmentat JCI Jones Chemical Inc., or on downgradient properties to include 1200 Piper Drive, has not been conducted. As shown in the table below, samples of shallow soil vapor collected from three wells at the 1200 Piper Drive property in July and August 2009 show levels of TCE and PCE in soil vapor well above health-based screening concentrations(see the results for wells SV20, SV23 and SV24).[7]

Table 2
Analytical Results for Soil-Vapor Samples Collected at the Off-Site Area
Former JCI Jones Chemicals Facility, Milpitas, California
Concentrations in micrograms per cubic meter of vapor (µg/m^3)

Sample ID	Sample Depth (feet bgs)	Notes	Benzene	Toluene	Ethyl-benzene	Total Xylenes	1,1-DCA	cis-1,2-DCE	trans-1,2-DCE	1,1-DCE	Methylene Chloride	PCE	1,1,1-TCA	TCE	Vinyl Chloride
SV-1S	5	(10)	**140**	120	<8.7	<8.7	20	8.4	<7.9	<7.9	<6.9	<14	<11	<11	<10
SV-1	10	(1)	**210**	250	11	13	120	140	12	55	7.2	11 J	<11	460	36
SV-2	10	(2)	**120**	190	6.7 J	6.1 J	<7.9	<7.9	<7.9	<7.9	5.8 J,B	100	71	38	<10
SV-3	10	(3)	<46	28 J	<42	<42	<39	<38	<38	<38	43	**12,000**	<52	220	<49
SV-4S	5	(9)	**150**	220	<40	<40	<37	<37	<37	120	49 J,B	**16,000**	370	960	<47
SV-4	10		<170	70 J	<160	<160	<150	670	<140	870	140	**51,000**	1,100	**9,400**	<190
SV-5	10	(4)	41	120	<8.7	<8.7	110	33	<7.9	36	<6.9	**490**	28	810	<10
SV-6	10		<620	<490	<560	<560	<520	<510	<510	4,100	450 J	**200,000**	3,500	**31,000**	<660
SV-7	10		<600	<470	<540	<540	<500	<490	<490	**68,000**	500	**150,000**	42,000	**38,000**	<640
SV-8S	5		<90	<71	<82	<82	<76	<75	<75	27,000	1,300 J,B	**330,000**	10,000	**67,000**	<96
SV-8-P1	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	33,000	<1,400	**250,000**	13,000	**60,000**	<2,100
SV-8-P3	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	37,000	<1,400	**350,000**	15,000	**80,000**	<2,100
SV-8-P7	10		<1,900	<1,500	<1,800	<1,800	<1,600	<1,600	<1,600	36,000	<1,400	**350,000**	14,000	**77,000**	<2,100
SV-9	10	(5)	56 J	78	<84	<84	80	4,500	<77	580	74 B	**16,000**	390	**1,900**	240
SV-11	10		<930	<730	<850	<850	<790	440 J	<390	27,000	870	**170,000**	12,000	**40,000**	<1,000
SV-10	10	(6)	43	73	<17	<17	<16	<15	<15	9.9 J	20	**6,000**	100	**3,900**	<20
SV-12	10		<590	<460	<540	<540	<500	750	<490	3,200	370 J,B	**63,000**	1,500	**8,600**	<630
SV-20S	5	(11)	62	120	<55	<55	<52	28 J	<51	640	<44	**15,000**	570	**2,000**	<220
SV-20	10		<460	<360	<420	<420	<390	3,500	<380	8,900	320 J,B	**69,000**	3,500	**16,000**	<490
SV-23	10	(7)	**110 J**	160	<160	<160	<150	<140	<140	1,100	140 B	**27,000**	950	**8,600**	<190
SV-24S	5	(12)	54 J	410	<84	<84	<79	<88	<77	77 J	<67	**22,000**	59 J	**2,200**	<99
SV-24	10	(8)	**110 J**	120 J	<140	<140	<130	<130	<130	240	94 J,B	**25,000**	150 J	**5,900**	<170
Screening Levels:															
CHHSL; Residential Land Use			36	135,000	NE	315,000	NE	1,590	3,190	NE	NE	528	991,000	528	13
CHHSL; Commercial-Industrial Land Use			122	378,000	NE	887,000	NE	4,440	8,870	NE	NE	603	2,790,000	603	44.8
RWQCB Shallow Soil-Gas ESL; Residential Land Use			84	63,000	980	2,100	1,500	7,300	15,000	42,000	5,200	410	46,000	1,200	31
RWQCB Shallow Soil-Gas ESL; Commercial Land Use			280	180,000	3,300	5,800	5,100	20,000	41,000	120,000	17,000	1,400	130,000	4,100	100
Risk-Based Concentrations - Residential Land Use (10 feet bgs)												2,082		5,700	120

Under a 2011 health assessment, the U.S. EPA classifies TCE as a human carcinogen and states

[6] http://geotracker.waterboards.ca.gov/site_documents/1530018448/NAT%20southyard%20%2D%20NFA%20%2D2%2D26%2D07%2Epdf

[7] Requirement for Technical Report – Former JCI Jones Chemicals Facility, 985Montague Expressway, Milpitas, California, Santa Clara County, December 1, 2010 letter from Arcadis to the Regional Water Quality Control Board, Table 2.

TCE's movement from contaminated ground water and soil, into the indoor air of overlying buildings, is of serious concern.[8]

PCE is a probable human carcinogen and health effects include acting as a central nervous system depressant that can enter the body through respiratory exposure, including inhalation of vapors, or through contact with skin.[9]

On the basis of these results, a letter was prepared by a JCI Jones Chemical Inc. consultant on December 1, 2010 that outlines:

> "a strategy for methods and measures to mitigate the potential health risks associated with the volatile organic compounds (VOCs) detected in soil vapor associated with the VOC-affected groundwater that is present at the on-site and off-site properties to the west of the former JCI Facility"[10]

The letter offers only a strategy for the evaluation of health risks: we stress that health risks at the 1200 Piper Drive property have not yet been evaluated nor has the RWQCB posted comments to the Geotracker website on the on adequacy of the December 1, 2010 letter. The letter offers only general recommendations that include further review of data with respect to intended residential land use, consideration of vapor barriers and venting systems, and periodic monitoring.

The DEIR, that is required under CEQA/Cortese Act requirements as stated above, should include an assessment of the health risks from inhalation of vapors that would be faced by construction workers and future residents along with necessary mitigation measures to reduce those risks. The December 1, 2010 letter prepared by the JCI Jones Chemical Inc. consultant only outlines proposed measures that may be used to mitigate the high soil vapor concentrations under a residential scenario; however, we stress that health risks have yet to be evaluated and remedial measures and mitigation have not been proposed to the RWQCB to date.

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[8] http://yosemite.epa.gov/opa/admpress.nsf/1e5ab1124055f3b28525781f0042ed40/b8d0e4d8489ad991852579190058d6c3!OpenDocument

[9] http://en.wikipedia.org/wiki/Tetrachloroethylene

[10] Requirement for Technical Report – Former JCI Jones Chemicals Facility, 985 Montague Expressway, Milpitas, California, Santa Clara County, December 1, 2010 letter from Arcadis to the Regional Water Quality Control Board, p. 1.

Project Size Exceeds Thresholds and Air and Greenhouse Gas Emissions Need Mitigation

The Staff Report does not consider the potential of the Project to exceed thresholds for air quality and greenhouse gasses from emissions during construction and operation. To determine the potential significance of project emissions, the Bay Area Air Quality Management District (BAAQMD) has established tables for various projects types which would, if above a certain size, likely result in exceedences of thresholds and would need to be mitigated. No estimates of Project emissions of criteria air pollutants and precursors were made in the Staff Report for the project and no estimates were made in the TASP.

We have compared the Project size to "Screening Level Sizes" established by the BAAQMD and have determined that the Project will likely exceed emissions thresholds for criteria pollutants and greenhouse gasses. The Project will involve the construction of 732 condominium units. According to the table below, a project size of 732 units exceeds screening sizes for operational criteria pollutants (ROG) and construction criteria pollutants (ROG) for "Condo/townhouse, high rise."[11] Additionally, the Project size of 732 units exceeds the screening size for operational greenhouse gasses by almost 8 times.

Table 3-1
Criteria Air Pollutants and Precursors and GHG Screening Level Sizes

Land Use Type	Operational Criteria Pollutant Screening Size	Operational GHG Screening Size	Construction Criteria Pollutant 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)

Because the project size significantly exceeds the screening sizes, the Project will likely generate operational- and construction-related ROG and greenhouse gasses that would exceed the thresholds of significance.

Again, no mention of Project emissions was made in the Staff Report nor were they individually considered in the TASP. This is a significant omission and is a potential impact that needs to be evaluated in a DEIR. A DEIR should also be prepared to evaluate and identify any mitigation that is necessary to reduce exceedences of criteria pollutants and greenhouse gasses to levels below thresholds, including routine feasible measures that are considered in CEQA projects as listed below.

[11] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx, p. 3-2

Operational Emissions Mitigation

- Install photovoltaic panels on the roof or on undeveloped land within the Project boundary;
- Use electric equipment for landscaping;
- Increase wall insulation beyond Title 24 requirements;
- Install Energy Star approved roofing and windows;
- Use energy-efficient and automated controls for air conditioning;
- Use lighting controls and energy-efficient interior lighting;
- Use energy-efficient low sodium parking lot and street lights;
- Use light-colored roof materials and paint to reflect heat;
- Substitute materials, *e.g.*, use water-based paint;
- Use concrete or other non-pollutant materials for parking lots instead of asphalt;
- Landscape with drought-resistant species, and use groundcovers rather than pavement to reduce heat reflection;
- Use ozone-destruction catalyst on air condition systems; and
- Reduce standard paving by 20%.

Construction Emissions Mitigation

- Require preparation of a traffic control plan;
- Demonstrate proper inspection and maintenance of construction equipment;
- Limit idling to 5 minutes;
- Provide on-site lunch, *e.g.*, a lunch wagon;
- Implement a carpool program for construction workers.
- Require all deliveries to the construction site to be made with trucks that meet clean engine standards or are otherwise equipped with post-combustion controls that reduce emissions compared to uncontrolled equivalents by 50% for NOx, 90% for ROG and CO, and 80% for PM10/PM2.5.

- Prohibit the use of conventional cut-back asphalt for paving and restrict the maximum VOC content of asphalt emulsion;
- Use low-ROG paints and other low-ROG construction materials;
- Employ a construction site manager to verify that engines are properly maintained and keep a maintenance log;
- Configure construction parking to minimize traffic interference;
- Consolidate truck deliveries when possible;
- Provide dedicated turn lanes for movement of construction trucks and equipment on and off site;
- Suspend use of all construction equipment operations during second stage smog alerts;
- Establish a staging zone for trucks that are waiting to load or unload material at the work zone in a location where diesel emissions from the trucks will have minimum impact on abutters and the general public;
- Locate construction equipment away from sensitive receptors such as fresh air intakes to buildings, air conditioners and operable windows;
- Require all diesel trucks used by construction contractor(s) at the site, or for on-road hauling of construction material, to be post-1996 models; and
- Diesel portable generators less than 50 hp shall not be allowed at the construction site.

Cumulative Air Impacts have not been Assessed

Six large residential and mixed use projects have been proposed within a 4,000 radius of the 1200 Piper Drive site:

- Milpitas Blvd. and Montague: 303 dwelling units (DUs);single family, town home and brownstone) on 12.1 acres;
- 1765 McCandless Drive: 1,328 DUs in eight buildings, including 92,000 square feet of commercial space on 23 acres;
- 1102 Abel Street: 366 DUs on a 5.2 acre parcel;

- 300, 324-368 Montague: 134 DUs on an 9.2 acres;
- 750 E. Capitol Ave.: three, 12 story towers with 460 DUs on 5.6 acres; and
- 1315 McCandless: 351 units and 62,000 s.f. commercial space in Building 1 and 211 units and 3,976 s.f. commercial space in Building 2.

The 1765 McCandless Drive project alone exceeds all three of the BAAQMD screening sizes of a mid-rise apartment project:

- Operational criteria pollutant: 494 DU (ROG)
- Operational greenhouse gasses: 87 DU
- Construction criteria pollutant: 240 DU (ROG).[12]

The 750 E. Capitol Ave. project exceeds size thresholds for operational greenhouse gasses and construction criteria pollutants. The 1315 McCandless project exceeds size thresholds for operational greenhouse gasses and construction criteria pollutants. Collectively, the six projects, along with the 1200 Piper Drive project, greatly exceed all threshold sizes.

No consideration was given in the Staff Report to the other projects proposed in the vicinity of 1200 Piper Drive and the potential exceedences of BAAQMD thresholds for screening sizes and for the emissions that would be the cumulative result of the six projects. The TASP also does not consider the exceedences of the BAAQMD thresholds from the projects. We note that when the TASP was prepared the 2011 BAAQMD CEQA guidance had not been published and therefore the comparisons to screening sizes to determine project significance were not possible.

A DEIR is therefore required to analyze significant cumulative air emissions that were not analyzed in the 1200 Piper Drive Staff Report and that were not considered in the TASP.

Sincerely,

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

[12] http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx, p. 3-2

EXHIBIT D

Tom Brohard and Associates

October 10, 2011

Mr. Richard Drury, Attorney at Law
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607

SUBJECT: Environmental Exemption for the Citation Residential Project at 1200 Piper Drive in the City of Milpitas – Traffic Issues

Dear Mr. Drury:

Tom Brohard, P.E., has reviewed the September 28, 2011 Milpitas Planning Commission Agenda Report for the Citation Residential Project at 1200 Piper Drive in the City of Milpitas. This Project now proposes 732 dwelling units on a site that was previously approved for 639 dwelling units, an increase of 93 units. Other documents including Chapter 3.3 (Transportation) of the October 2007 Draft EIR for the Milpitas Transit Area Specific Plan (TASP EIR) and Chapter 3 of the June 2008 Milpitas Transit Area Specific Plan have also been reviewed.

I understand that the City of Milpitas Planning Commission is scheduled to discuss the Citation Residential Project at 1200 Piper Drive on October 12, 2011. According to the Agenda Report, the Planning Division conducted an initial environmental assessment of the Project and believes that the Project is exempt from further environmental review. This conclusion was apparently reached after staff determined that the Project was consistent with the certified EIR for the Transit Area Specific Plan adopted on June 3, 2008 by the City Council.

From my review of the TASP EIR, a number of significant traffic impacts will occur. With its location within the TASP on Piper Drive, the Project will contribute additional traffic to adjacent intersections and street segments on the Montague Expressway that are forecast to operate at Level of Service (LOS) F under Background Conditions and Cumulative Conditions. With this, it is my understanding that the Project may not be exempted from the requirements of the California Environmental Quality Act (CEQA) without further study.

Until the various issues and concerns raised in this letter are addressed, there is at least a "fair argument" that the Citation Residential Project at 1200 Piper Drive in the City of Milpitas will contribute to the adverse traffic impacts that have been disclosed in the TASP EIR. Traffic analysis of the Project is required to determine if any mitigation is feasible. If the significantly impacted intersections and street segments cannot be mitigated, then the City must adopt a statement of overriding consideration for the Citation Residential Project at 1200 Piper Drive.

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Phone (760) 398-8885 Fax (760) 398-8897
Email tbrohard@earthlink.net

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the Cities of Big Bear Lake, Mission Viejo, and San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental documents and traffic studies for various projects.

Traffic Issues

Based on the information regarding the Citation Residential Project at 1200 Piper Drive and my review of the other documents, there is at least a "fair argument" that this Project will contribute additional traffic to adjacent intersections and street segments on the Montague Expressway that are forecast to be significantly impacted in the TASP EIR. Additional study is required to determine if any mitigation is feasible.

1) Additional Trips with the Citation Residential Project – The TASP EIR utilized trip generation rates published in April 2002 by the San Diego Association of Governments, SANDAG, in their Not So Brief Guide of Vehicular Traffic Generation Rates for the San Diego Region. As indicated in Table 3.3-7 on Page 3.3-41 of the TASP EIR, each multi-family residential dwelling unit is forecast to generate 8 daily trips including 0.64 AM peak hour trips and 0.80 PM peak hour trips. Applying these trip rates to the proposed Citation Residential Project with 732 dwelling units and comparing to the previously approved project with 639 dwelling units provides the following trip forecasts:

Project	Dwelling Units	Daily Trips	AM Peak Hour Trips	PM Peak Hour Trips
Proposed	732	5,856	468	586
Approved	639	5,112	409	511
Increases	+93	+744	+59	+75

As indicated above, the Citation Residential Project at 1200 Piper Drive as now proposed with an increase of 93 dwelling units up to a total of 732 dwelling units will result in an increase of 744 daily trips including an additional 59 AM peak hour trips and an additional 75 PM peak hour trips.

2) All Project Trips Must Use Montague Expressway – All vehicular access to and from the Citation Residential Project will occur at a cul-de-sac on Piper Drive about 1,200 feet north of Montague Expressway. Existing raised medians at Piper Drive and the Montague Expressway allow only right turns to and from Piper Drive at this intersection. As a result, all traffic to or from the Citation Residential Project must use the Montague Expressway and either pass through its intersection with Milpitas Boulevard about 1,400 feet to the east of Piper Drive or through its intersection with the Great Mall Parkway/Capitol Avenue about 900 feet to the west of Piper Drive.

3) Montague Expressway Intersections Significantly Impacted By TASP – In its analysis, the TASP EIR determined Background Conditions by adding traffic volumes associated with planned but not completed or fully occupied projects to existing traffic volumes. The analysis also included planned and fully funded improvement projects. Traffic to and from the TASP was then added to Background Conditions and compared to identify significant traffic impacts. Table 3.3-10 beginning on Page 3.3-55 of the TASP EIR forecast 15 of the 52 intersections in the study area would be significantly impacted by the TASP.

   All trips to and from the Citation Residential Project will use the Montague Expressway and either pass through its intersection with Milpitas Boulevard or through Great Mall Parkway/Capitol Avenue. According to Table 3.3-10 on Page 3.3-56 of the TASP EIR, these two intersections on the Montague Expressway adjacent to Piper Drive will be significantly impacted by the TASP under Background Conditions. Just to the east at Montague Expressway and Milpitas Boulevard (Intersection #27), a significant traffic impact was forecast in the TASP EIR in the PM peak hour as the average vehicle delay increased from 39.7 seconds at LOS D to 90.4 seconds at LOS F with the addition of TASP trips. Just to the west at Montague Expressway and Great Mall Parkway/Capitol Avenue (Intersection #26), a significant traffic impact was forecast in the TASP EIR in both peak hours. In the AM peak hour at this intersection, the average vehicle delay increased from 98.9 seconds at LOS F to 129.8 seconds at LOS F with the addition of TASP trips. In the PM peak hour at this intersection, the average vehicle delay increased from 121.4 seconds at LOS F to 165.7 seconds at LOS F with the addition of TASP trips. The additional trips to and from the expanded Citation Residential Project may increase the forecast average vehicle delays even further.

4) Street Segments Significantly Impacted By TASP – For Year 2030 cumulative conditions with buildout of the City's General Plan and the TASP, Table 3.3-12 beginning on Page 3.3-62 of the TASP EIR indicates that 31 roadway segments in the AM peak hour and 49 roadway segments in the PM peak hour would be significantly impacted by traffic to and from the TASP.

All trips to and from the Citation Residential Project will use the Montague Expressway between Milpitas Boulevard and Great Mall Parkway/Capitol Avenue. According to Table 3.3-12 on Page 3.3-63 of the TASP EIR, this westbound Montague Expressway roadway segment which includes Piper Drive will operate at LOS F in the AM peak hour and be significantly impacted by the TASP under Year 2030 Cumulative Conditions. According to Table 3.3-12 on Page 3.3-68 of the TASP EIR, this eastbound Montague Expressway roadway segment which includes Piper Drive will operate at LOS F in the PM peak hour and will be significantly impacted by the TASP under Year 2030 Cumulative Conditions. The additional trips to and from the expanded Citation Residential Project may degrade the forecast volume to capacity ratios even further.

5) TASP Impacts Considered Significant and Unavoidable – On Page 3.3-76 of the TASP EIR, Table 3.3-14 indicates that the traffic impacts at Montague Expressway and Great Mall Parkway/Capitol Avenue (Intersection #26) are significant and unavoidable. The table indicates an urban interchange at this location is proposed in regional planning documents and further discussion is provided on Page 3.3-84. The traffic impacts at Montague Expressway and Milpitas Boulevard (Intersection #27) are also deemed significant and unavoidable, and the table indicates no mitigation measures are feasible. Page 3.3-89 of the TASP EIR indicates that no mitigation measures are considered feasible for any roadway segments except for the Great Mall Parkway/Tasman Drive corridor. Traffic analysis of the Citation Residential Project is required to determine if any mitigation of the significantly impacted intersections and roadway segments is feasible.

In summary, the Citation Residential Project at 1200 Piper Drive will contribute additional traffic to adjacent intersections and street segments on the Montague Expressway that are forecast to be significantly impacted in the TASP EIR. The Citation Project will therefore have a cumulatively significant adverse impact on traffic. Additional study is required to determine if any mitigation is feasible. If the significantly impacted intersections and street segments cannot be mitigated, then the City must adopt a statement of overriding consideration. If you have questions regarding these comments, please call me at your convenience.

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard

Tom Brohard, PE
Principal

Enclosure

REGISTERED PROFESSIONAL ENGINEER
TOM BROHARD
C24577
CIVIL
STATE OF CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER
TOM BROHARD
TR724
TRAFFIC
STATE OF CALIFORNIA

Tom Brohard, PE

Licenses: 1975 / Professional Engineer / California – Civil, No. 24577
1977 / Professional Engineer / California – Traffic, No. 724
2006 / Professional Engineer / Hawaii – Civil, No. 12321

Education: 1969 / BSE / Civil Engineering / Duke University

Experience: 40+ Years

Memberships: 1977 / Institute of Transportation Engineers – Fellow, Life
1978 / Orange County Traffic Engineers Council - Chair 1982-1983
1981 / American Public Works Association - Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer for the City of Indio. He also currently provides "on call" Traffic and Transportation Engineer services to the Cities of Big Bear Lake, Mission Viejo, and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower ..... 1997 - 1998
- Bell Gardens ..... 1982 - 1995
- Huntington Beach ..... 1998 - 2004
- Lawndale ..... 1973 - 1978
- Los Alamitos ..... 1981 - 1982
- Oceanside ..... 1981 - 1982
- Paramount ..... 1982 - 1988
- Rancho Palos Verdes ..... 1973 - 1978
- Rolling Hills ..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates ..... 1973 - 1978, 1984 - 1991
- San Marcos 1981
- Santa Ana ..... 1978 - 1981
- Westlake Village ..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over $5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

In his service to the City of Indio since May 2005, Tom has accomplished the following:

- Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints. Reviewed Riverside County's updated traffic model for consistency with the adopted City of Indio Circulation Plan.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of a $1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit; reviewed plans to install traffic signals and widen three of four ramps at the I-10/Monroe Street Interchange.

- Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.

- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 40 traffic signal installations and modifications.

- Reviewed and approved over 600 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.

- Oversaw preparation of a City wide traffic safety study of conditions at all schools.

- Prepared over 500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.

- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 200 street segments.

- Reviewed and approved traffic impact studies for more than 25 major developments.

- Developed the Golf Cart Transportation Program and administrative procedures; implemented routes forming the initial baseline system.

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

EXHIBIT E

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

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

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

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 Certification:

California Professional Geologist
California Certified Hydrogeologist

Professional Experience:

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

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

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – present;
- 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 numerous environmental impact reports under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions and geologic hazards.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a comunity adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

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

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.
- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the dischrge 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.

In Fall 2010, Matt taught Physical Geology (lecture and lab) to students at Golden West College in Huntington Beach, California.

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 Geologist licensing examination, 2009-2010.

EXHIBIT F

Department of Toxic Substances Control

Dan Skopec
Acting Secretary
Cal/EPA

Maureen F. Gorsen, Director
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

May 4, 2006

Mr. Dennis Carrington
Senior Planner
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

Dear Mr. Carrington:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Milpitas Transit Area Specific Plan. As you may be aware, DTSC oversees the cleanup of hazardous substance release sites pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a potential Responsible Agency, DTSC is submitting the following comments to ensure that the California Environmental Quality Act (CEQA) documentation prepared for this project and future associated development projects adequately address any remediation activities which may be required to address any hazardous substance releases.

The project description indicates that land use changes are proposed. For each site where development is to occur under the Specific Plan, current and historical land use records should be consulted to identify land uses that may have resulted in a hazardous substance release. In particular, properties where there has been industrial uses could potentially have contamination. Sampling and analysis of soil and groundwater should be conducted at sites where current or historical operations may have caused a hazardous substance release. The results of sampling should be discussed in the EIR or the CEQA documents for individual development projects, which the NOP states will be prepared. Screening levels or any risk assessments that are used in determining whether contamination poses a potential, significant human health or environmental risk should be identified and discussed. If volatile organic compounds are present in soil or groundwater, the potential human health risk from vapor intrusion into future buildings will need to be considered.

If remediation activities are required, these activities should be discussed in the EIR or CEQA documents for individual development projects along with the cleanup levels that will be applied and the anticipated regulatory agency oversight. Potential impacts associated with the remediation activities should also be addressed. For example, if the remediation activities include the need for soil excavation, the EIR or CEQA documents

for individual development projects should include: (1) an assessment of air impacts and health impacts associated with the excavation activities, (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust and noise levels; (3) transportation impacts from removal or remedial activities; and (4) risk of upset should there be an accident at the site or during the transport of contaminated soil.

DTSC can assist your agency in overseeing characterization and cleanup activities through our Voluntary Cleanup Program. A fact sheet describing this program is enclosed. We are aware that projects such as this one are typically on a compressed schedule, and in an effort to use the available review time efficiently, we request that DTSC be included in any meetings where issues relevant to our statutory authority are discussed.

Please contact Jacinto Soto at (510) 540-3842 if you have any questions or would like to schedule a meeting. Thank you in advance for your cooperation in this matter.

Sincerely,

Mark Piros

Mark Piros, P.E., Unit Chief
Northern California - Coastal Cleanup Operations Branch

Enclosure

cc: without enclosure

Governor's Office of Planning and Research
State Clearinghouse
P. O. Box 3044
Sacramento, California 95812-3044

Guenther Moskat
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

EXHIBIT G

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT
SINCE 1955

ALAMEDA COUNTY
Tom Bates
Scott Haggerty
Janet Lockhart
Nate Miley

CONTRA COSTA COUNTY
John Gioia
Mark Ross
(Chair)
Michael Shimansky
Gayle B. Uilkema

MARIN COUNTY
Harold C. Brown, Jr.

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
Chris Daly
Jake McGoldrick
Gavin Newsom

SAN MATEO COUNTY
Jerry Hill
(Vice-Chair)
Carol Klatt

SANTA CLARA COUNTY
Erin Garner
Yoriko Kishimoto
Liz Kniss
Patrick Kwok

SOLANO COUNTY
John F. Silva

SONOMA COUNTY
Tim Smith
Pamela Torliatt
(Secretary)

Jack P. Broadbent
EXECUTIVE OFFICER/APCO

December 20, 2007

Scott Gregory
Contract Planner to the City of Milpitas
c/o Veronica Bejines
Milpitas Planning Division
455 East Calaveras Blvd.
Milpitas, CA 95035

Subject: Draft Environmental Impact Report for Milpitas Transit Area Specific Plan

Dear Mr. Gregory:

Bay Area Air Quality Management District (District) staff have reviewed the draft Milpitas Transit Area Specific Plan (Plan) and the Draft Environmental Impact Report (DEIR) for the Plan. We understand that the Plan proposes to develop 437 acres of industrial land in central Milpitas into a mixed use transit oriented area with high density housing. Implementation of the Plan will result in development of up to 7,100 new residential units supporting approximately 18,000 new residents, approximately 1 million of square feet of new office space, 285,000 square feet of retail space, and 175,000 square feet of hotel space. 3-A

The DEIR characterizes Impact 3.6-6, exposure of sensitive receptors to toxic air contaminants (TAC), as less than significant. In addition, the DEIR states that "the greatest level of exposure to TAC would be from short term construction related emissions." The DEIR, however, provides no scientific analysis or impact evaluation to support these statements. The DEIR should have identified existing sources of TAC (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 TAC 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. 3-B

Spare the Air

Please contact Nadine Wilmot, Environmental Planner, at (415) 749-5074 or at nwilmot@baaqmd.gov, if you have any questions regarding these comments.

Sincerely,

Jean Roggenkamp
Deputy Air Pollution Control Officer

cc: BAAQMD Director Erin Garner
BAAQMD Director Yoriko Kishimoto
BAAQMD Director Liz Kniss

CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

11/01/2011
Agenda Item No. 1

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

From: Michael Sullivan [mailto:mikes@scsdevelopment.com]
Sent: Tuesday, November 01, 2011 10:16 AM
To: Sheldon AhSing
Subject: FW: 1200 Piper Drive, Milpitas

Hi Sheldon,

As discussed, please see the email below from Mark Johnson of the Regional Water Quality Control Board. We are going to be working with Mr. Johnson on a vapor mitigation plan that will address the safety for construction crews as well as future residents within the Piper/Montague Subdistrict. Please let me know if you have any questions.

Thank you,
Mike

From: Mark Johnson [mailto:MJohnson@waterboards.ca.gov]
Sent: Monday, October 31, 2011 3:46 PM
To: Michael Sullivan
Subject: 1200 Piper Drive, Milpitas

Mike
I would like to follow up on our conversation and clarify the Regional Water Board requirements. The subject property (former North American Transformer) received a "No Further Action" letter from this agency relating to environmental investigation and cleanup in 2005. One of the conditions for issuing this letter was the recordation of an environmental covenant and deed restriction, a copy of which is attached. This document sets forth requirements and restrictions that run with the land and remain in effect in perpetuity. Pursuant to Article III, Section 3.1, b. of the document, a vapor barrier must be installed on all residential structures being constructed on the property. While the "No Further Action" letter we issued acknowledges that no further investigations or cleanups are required for the property, the residential development being proposed does invoke the requirements of the environmental deed restriction with respect to vapor barriers.

Vapor mitigation systems have been evolving quickly over the past few years and there are many effected designs and materials on the market. As your company moves forward with design drawing for your development, we will be requiring that you submit a detailed design of the vapor mitigation system(s) you have chosen for our review. These designs must have accompanying them a letter which has been signed and stamp by a registered professional stating that the design is adequate and appropriate for the site pollutants and conditions. Once the barriers have been installed, we will also require a completion report be submitted to this agency which includes as built drawings and a letter, signed and stamped by a registered professional, stating that the barriers have been properly installed and inspected. We will also require that this information be submitted electronically to our Geotracker website.

Should you have any questions, please do not hesitate to contact me. Please also keep us apprized of your schedule, so as we can budget time and quickly review documents submitted.

Thank you for your cooperation.
Mark Johnson
Engineering Geologist
510-622-2493

RECORDING REQUESTED BY
FIRST AMERICAN TITLE
#0131-611958 ala

FIRST AMERICAN TITLE COMPANY
HEREBY CERTIFIES THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT
BY:
RECORDED: Sept. 15, 2005
SERIES NO.: 18579881

Recording Requested By:

Waukesha Electric Systems, Inc. c/o SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277

When Recorded, Mail To:

Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

Former Waukesha Electric Systems, Inc.
1200 Piper Drive
Milpitas, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 8 day of September 2005, by Waukesha Electric Systems, Inc. ("Covenantor") who is the Owner of record of that certain property situated at 1200 Piper Drive, in the City of Milpitas, County of Santa Clara, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board"), with reference to the following facts:

A. The groundwater underlying the Burdened Property contains volatile organic compounds. Groundwater at the Burdened Property was contaminated by a chemical release in 1982 from nearby Jones Chemical, Inc.

B. Contamination of the Burdened Property. The Burdened Property was previously used for the manufacture and repair of transformers. Soil at the property was impacted primarily with transformer oil, chromium, polychlorinated biphenyls (PCBs), trichloroethane (TCA) trichloroethene (TCE) and perchloroethene (PCE) which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Soils at the Site were cleaned up to a more conservative or lower value of the Regional Board ESLs or USEPA PRGs for residential use. Final cleanup standards were as follows: TCE .26; PCE .088; PCBs .22; chromium 210; TPH-Transformer Oil 500; and, TPH-D 500 (Note: all concentrations in mg/kg). Hazardous substances in the soil under the Burdened Property have been remediated as approved by the Board to residential cleanup goals to make the site suitable for future residential development.

In order to address the residual chemicals in the soil, a Removal Action Plan, dated December 10, 2004 was developed. The removal action measures included removal and offsite disposal of 5,063 tons of impacted soil.

VOCs in groundwater are currently being remediated by Jones Chemicals, Inc. via *in-situ* methods (*i.e.*, injection of a bio-remediation substrate).

A Fact Sheet was developed which explains in easily understandable terms the environmental conditions of the Burdened Property and associated responsibilities of the homeowners to comply with this covenant.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater under the Burdened Property. Without the control and mitigation measures that will be performed on the Burdened Property, exposure to these contaminants could take place via ingestion, dermal contact with groundwater or inhalation of vapors from groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is a vacant lot, intended for future residential development. Properties adjacent to the Burdened Property include commercial and industrial facilities.

E. Full and voluntary disclosure to the Board of the presence of groundwater impacts on the Burdened Property has been made and extensive investigatory work, including but not limited to subsurface sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous wastes or other pollutants in groundwater.

G. Environmental Fact Sheet. An Environmental Fact Sheet has been prepared for the Burdened Property and is attached hereto and incorporated herein by this reference as "Exhibit B". Prospective purchasers of the Burdened Property must be made aware of the existence of the Environmental Fact Sheet and a copy provided to them prior to entering into any sales agreement. The seller is responsible for providing a copy of the Fact Sheet to prospective purchasers.

ARTICLE I
GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in

Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials or wastes. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II
DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, re-gradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its

successors in interest, who hold title to all or any portion of the Burdened Property

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. Development of the Burdened Property shall be conducted in a commercially reasonable manner so as to minimize direct contact to shallow groundwater.

b. Development of the Burdened Property shall be conducted in a commercially reasonable manner so as to minimize direct contact to VOC vapors emanating from shallow groundwater by the installation of horizontal vapor barriers under residential structures constructed on the Burdened Property.

c. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work sufficiently deep enough to have direct contact with the shallow groundwater (approximately 12-15 feet below grade) on the Property, unless expressly permitted in writing by the Board.

d. No Owners or Occupants of the Burdened Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, irrigation, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

e. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

f. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of the vapor barrier installed beneath all residential structures.

g. Any Owner or Occupant of any portion of the Burdened Property shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to the vapor barrier installed on their portion of the Burdened Property; and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or leases relating to the Burdened Property. Any such instrument shall contain the following statement:

> The land described herein contains hazardous materials in groundwater under the property, and is subject to a deed restriction dated as of _____, 2005, and recorded on ___ _____, 2005, in the Official Records of Santa Clara County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists. In conjunction with and incorporated into the Deed Restriction as Exhibit "B" is an Environmental Fact Sheet, which has been prepared in order to assist in understanding the conditions on the property. Any owner selling any portion of the property within the Burdened Property must provide a copy of the Environmental Fact Sheet (Exhibit "B" of the above referenced deed restriction) to all prospective purchasers of the property, prior to their committing to purchase any portion of the property. In addition, all prospective purchasers must be allowed adequate time to review the Environmental Fact Sheet, prior to the then current owner accepting a purchase offer from them. Should any prospective purchaser request copies of the Deed Restriction; the seller must provide copies in a timely manner.

ARTICLE IV
VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"

Dan McGrade
Director, Environmental
Waukesha Electric Systems, Inc. c/o SPX Corporation
13515 Ballantyne Corporate Place
Charlotte, NC 28277

If To: "Board"

Regional Water Quality Control Board
San Francisco Bay Region
Attention: Executive Officer
1515 Clay Street, Suite 1400
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor:

Waukesha Electric Systems, Inc.

By: _____ Date: 9/8/05
Its: President

Agency:

State of California
Regional Water Quality Board,
San Francisco Bay Region

By: _____ Date: 8-22-05
Bruce H. Wolfe
Executive Officer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Alameda } ss

On August 23, 2005 (Date) before me, Shaune K. Edwards (Name and Title of Officer (e.g. "Jane Doe Notary Public")),
personally appeared Bruce Wolfe (Name(s) of Signer(s)),

☑ ~~personally known to me~~
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal.

Shaune K. Edwards
Signature of Notary Public

SHAUNE K. EDWARDS
Commission # 1487269
Notary Public - California
Alameda County
My Comm. Expires May 2, 2008

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: Environmental Restriction

Document Date: 8/22/05 Number of Pages: _____

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Acknowledgment – Representative Capacity

State of Wisconsin)
)
County of Waukesha)

This Covenant and Environmental Restriction on Property by Waukesha Electric Systems, Inc., was acknowledged before me on September 8, 2005, by Myron Bechtel, who executed the instrument in his authorized capacity as President of Waukesha Electric Systems, Inc.

James R. Cauley

James R. Cauley, Notary Public
My commission is permanent

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Parcel One:

All that portion of land designated and delineated as "Parcel One" under Resolution No. 6842, of The City of Milpitas Authorizing The Lot Line Adjustment Project No. 2163, filed for record in the office of the Recorder of the County of Santa Clara on February 5, 1999, under Recorder's Series No. 14643238, Official Records and being more particularly described as follows:

All of that parcel of land conveyed to Federal Pacific Electric Company by The Western Pacific Railroad Company by that instrument recorded March 27, 1967 in Book 7675 of Official Records at Page 220; together with that 2.00 acre parcel of land conveyed to Federal Pacific Electric Company by Pacific Gas and Electric Company by that instrument recorded August 16, 1967 in book 7822 of Official Records at Page 615; together with a portion of that parcel of land conveyed to Federal Pacific Electric Company by Ameron, Inc. by that Corporation Grant Deed recorded November 16, 1970 in Book 9122 of Official Records at Page 195, and being more particularly described as follows:

Commencing at the point of intersection of the Easterly line of that certain 60.00 foot strip of land conveyed by Annie M. Carson to The Western Pacific Railroad Company by Deed recorded December 29, 1920 in Book 527 of Deeds at Page 222, Santa Clara County Records, and the Northerly line of that certain 124.075 acre tract of land described in the Deed from Mildred A. Fountain to The Western Pacific Railroad Company as recorded June 18, 1951 in Volume 2234 of Official Records of Santa Clara County at Page 86;

Thence from said point of commencement North 78° 19' 00" East along the Northerly line of said 124.075 acre tract of land, a distance of 30.68 feet to the Point of Beginning of this description;

Thence continuing along said Northerly line North 78° 19' 00" East 1284.33 feet to the Northeast corner of said 2.00 acre parcel of land;

Thence along the Easterly line of said 2.00 acre parcel South 12° 36' 40" East 400.06 feet to the Northerly line of Parcel 2, as said parcel is shown on that certain Parcel Map filed for record December 28, 1971 in Book 294 of Maps at Page 35, Santa Clara County Records;

Thence continuing along the Southerly prolongation of said Easterly line, South 12° 36' 40" East 40.01 feet to a point on a line parallel and 40.00 feet Southeasterly, measured at right angles, to said Northerly line of said Parcel 2;

Thence along said parallel line, South 78° 19' 00" West 173.36 feet;

Thence at right angles, South 11° 41' 00" East 50.16 feet to a line parallel and 170.00 feet Northeasterly, measured at right angles, to the Southerly line of said Parcel 2.

Thence along said parallel line South 78° 19' 00" West 438.84 feet;

Thence at right angles, South 11° 41' 00" East 170.00 feet to a point on the Southerly line of said Parcel 2, said point being distant along said Southerly line South 78° 19' 00" West 992 48 feet from the most Easterly corner of said Parcel 2;

Thence along said Southerly line South 78° 19' 00" West 503.15 feet to the Westerly line of said Parcel 2, said Westerly line being the Easterly line of Piper Drive (64 feet wide) as shown on said Parcel map;

Thence along the general Westerly boundary of said Parcel 2 and the Easterly lines of said Piper Drive, the following three (3) courses:
1. North 23° 46' 01" West 148.86 feet;
2. Northerly and Northeasterly along a tangent curve to the right, having a radius of 60.00 feet, through a central angle of 64° 37' 23" for an arc length of 67.67 feet to a point of reverse curvature;
3. Northerly along said reverse curve to the left, having a radius of 66.00 feet, through a central angle 54° 17' 31" for an arc length of 62.54 feet to the Southerly line of said parcel of land conveyed by that instrument recorded March 27, 1967 in Book 7675 of Official Records at Page 220;

Thence along the Southerly and Westerly boundary of the last said parcel of land the following two (2) courses:
1. Continuing along the last said curve to the left, through a central angle of 137° 38' 11' for an arc length of 158.55 feet;
2. North 23° 46' 01" West 367.2 1 feet to said Point of Beginning.

Parcel Two:

All that portion of land designated and delineated as "'Parcel Four" under Resolution No. 6842, of The City of Milpitas Authorizing The Lot Line Adjustment Project No. 2163, filed for record in the office of the Recorder of the County of Santa Clara on February 5, 1999, under Recorder's Series No. 14643238, Official Records and being more particularly described as follows:

That portion of that parcel of land conveyed to Federal Pacific Electric Company by Ameron, Inc. by that Corporation Grant Deed recorded November 16, 1970 in Book 9122 of Official Records at Page 195 being described as follows:

Beginning at the most Northeasterly corner of Parcel 2, as shown on that certain Parcel Map filed for record December 28, 1971 in Book 294 of Maps at Page 35, Santa Clara County Records;

Thence along the Northerly Line of said Parcel 2 South 78° 19' 00" West 376.71 feet to the Southeasterly corner of that 2.00 acre parcel of land conveyed to Federal Pacific Electric Company by Pacific Gas and Electric Company by that instrument recorded August 16, 1967 in book 7822 of Official Record at Page 615;

Thence along the Southerly prolongation of the Easterly Line of said 2.00 acre parcel South 12° 36' 40" East 40.01 feet to a paint on a line parallel and 40.00 feet Southeasterly, measured at right angles, to said Northerly line of said Parcel 2;

Thence along said parallel line North 78° 19' 00" East 165.68 feet;

Thence at right angles South 11° 41" 00" East 40.16 feet;

Thence parallel to the Southerly of said Parcel 2 North 78° 19' 00" East 211.68 feet to a point on the Easterly line of said Parcel 2, said point being distant along said Easterly line North 12° 36' 40" West 180.03 feet from the most Easterly corner of said Parcel 2;

Thence along said Easterly line North 12° 36' 40" West 80.17 feet to said Point of Beginning.

Parcel Three:

An easement for railroad purposes as granted to Federal Pacific Electric Company by Deed recorded March 27, 1967 in Book 7675 page 234, Official Records, and being more particularly described as follows:

Beginning at the intersection of the Easterly line of that certain 60.0 foot strip of land granted by Annie M. Carson to the Western Pacific Railroad Company by Deed recorded December 29, 1920 in Book 527 of Deeds, page 222, Santa Clara County Records, and the Northerly line of that certain 124.075 acre tract of land described in the Deed from Mildred A. Fountain to the Western Pacific Railroad Company as recorded June 18, 1951 in book 2234 page 86, Official Records; thence from said point of beginning along the Northerly line of said 124.075 acre tract of land, North 78° 19' 00" East 113.53 feet; thence Northwesterly along a curve to the right, with a radius of 367.25 feet (the center of said curve bears North 18° 05' 49" East), through a central angle of 34° 00' 57", an arc length of 218.03 feet to the Easterly line of said 60.0 foot strip conveyed to Western Pacific Railroad Company; thence along the said Easterly line South 23° 47' 06" East 160.14 feet to the said point of beginning.

Parcel Four:

A non-exclusive roadway easement described as follows:

Beginning at the intersection of the Easterly line of that certain 60.0 foot strip of land granted by Annie M. Carson to the Western Pacific Railroad Company by Deed recorded December 29, 1920 in Book 527 of Deeds page 222, Santa Clara County Records, and the Northerly line of that certain 124.075 acre tract of land described in the Deed from Mildred A. Fountain to the Western Pacific Railroad Company as recorded June 18, 1951 in Book 2234, page 86, Official Records; thence from said point of beginning along the Easterly line of said 60.0 foot strip South 23° 47' 06" East 431.13 feet; thence Northeasterly along a curve to the right having a radius of 70.00 feet (the center of said curve bears North 66° 13' 39" East), through a central angle of 55° 08' 03", an arc length of 67.36 feet to the North line of said 124.075 acre tract of land; thence along said North line, South 78° 19' 00" West 30.68 feet to the said point of beginning.

Parcel Five:

An easement for the purposes of operation, use, inspection, maintenance, repair, removal and for replacement of an overhead Electrical Distribution Systems within the strips of land described as follows:

STRIP 1:

A 10-foot wide strip of land beginning at a point on the Southwesterly line of said Parcel Three as contained in that certain Deed recorded May 28, 1999 as Document No. 14835097, distant South 11° 41' 00" East, 33.85 feet from the most Northwesterly corner of Parcel Three

Thence leaving said Southwesterly line the following two (2) courses:

North 77° 16' 55" East, 49.11 feet;
North 38° 28' 45" East, 51.45 feet to the Northerly line of said Parcel Three;

Thence along said Northerly line North 78° 19' 00" East, 15.61 feet;

Thence leaving said Northerly line the following two (2) courses:

South 38° 28' 45" West, 66.96 feet;
South 77° 16' 55" West, 52.8 1 feet to said Southwesterly line of said Parcel Three;

Thence along said Southwesterly line North 11° 41' 00" West, 10.00 feet to the point of beginning.

STRIP 2:

Beginning at the most Northeasterly corner of said Parcel Three as contained in that certain Deed recorded May 28, 1999 as Document No. 14835097;

Thence along the Northwesterly line of said Parcel Three South 78° 19' 00" West, 211.68 feet;

Thence along the Northeasterly line of said Parcel Three North 11° 41' 00" West, 35.32 feet to the true point of beginning;

Thence continuing along said Northeasterly line North 11° 41' 00" West, 4.84 feet;

Thence along the Northwesterly line of said Parcel Three South 78° 19' 00" West, 71.32 feet;

Thence leaving said Northwesterly line the following two (2) courses:

North 84° 22' 47" East, 46.62 feet;
North 78° 07' 03" East, 24.96 feet to the true point of beginning.

STRIP 3:

Beginning at the most Northwesterly corner of said Parcel Two as contained in that certain Deed recorded May 28, 1999 as Document No.14835097;

Thence along the Northwesterly line of said Parcel Two North 78° 19' 00" East, 115.42 feet;

Thence leaving said Northwesterly line South 77° 14' 08" West, 115.44 feet to the Southwesterly line of said Parcel Two;

Thence along said Southwesterly line North 11° 41' 00" West, 2.18 feet to the point of beginning.

APN: 086-32-037; 040
ARB: 86-32-x18

EXHIBIT B

ENVIRONMENTAL FACT SHEET

Environmental Fact Sheet:
1200 Piper Drive, Milpitas, CA

This Fact Sheet has been prepared to inform prospective purchasers of the previous uses, environmental investigations and residual constituents of concern which exist on the former North American Transformer, Inc./Waukesha Electric Systems, Inc. property located at 1200 Piper Drive, Milpitas, California (the "Site"). It is the responsibility of the then current property owner ("Owner") of the Site to provide all prospective purchasers a copy of this Fact Sheet, and if requested, a copy of the environmental Deed Restriction for the property. The current Owner must allow prospective purchasers adequate time to review the Fact Sheet, and if requested, the environmental Deed Restriction, prior to accepting any purchase offer.

History of the Site

The Site was owned by Waukesha Electric Systems, Inc. as of July 2005.

Historically, the Site was used as a manufacturing and testing facility for electrical transformers from approximately 1958 to 2002. Manufacturing operations at the plant utilized solvents, kerosene, transformer oil, polychlorinated biphenyls (PCBs), acids and bases, and paints and thinners.

Several environmental investigation activities have been conducted at the Site since 1989. Investigations include soil borings and monitoring well installation in 1989, soil borings from six different investigation events in 1990-1993, and additional soil borings in 1999 and 2004. Laboratory reports indicated that elevated levels of the following chemicals of concern were present in Site soils: PCBs, volatile organic compounds (VOCs), hydrocarbons (as diesel and transformer oil), and chromium.

Shallow groundwater under the Site and in the vicinity is impacted with VOCs due to a release in 1982 from a nearby facility operated by Jones Chemical, Inc. at 985 Montague (East of the Site). As of 2005 groundwater was being remediated by Jones Chemical, Inc. via an *in-situ* method, which includes the injection of cheese whey into underlying groundwater. The cheese whey creates a condition that allows for the natural degradation of the VOCs over time. This ongoing cleanup is anticipated to last for several more years. As part of this cleanup, groundwater will be monitored by sampling wells throughout the affected area, including the 1200 Piper Drive property.

To facilitate the redevelopment of the Site for residential use, a plan was developed to: 1) remove soil containing elevated concentrations of several chemicals of concern; and 2) prohibit contact with the groundwater beneath the Site. This plan is discussed further below.

Removal Action Plan

To address the elevated concentrations of constituents in soil and groundwater, a Removal Action Plan was developed under the oversight and approval of the Regional Water Quality Control Board (RWQCB), which is the State of California public agency with primary authority for overseeing environmental remediation of the Site located at 1200 Piper Drive, Milpitas, California in order to protect human health and the environment from hazardous substances based on applicable laws.

The Removal Action Plan identified chemicals of concern ("COCs"). The cleanup goals for the COCs in soil were developed specifically for the Site to be protective of human health in a residential setting and protective of the environment. The cleanup goals for the COCs at the Site were:

Constituent Chemical	Soil Cleanup Goal (mg/kg)
TCE	0.26
PCE	0.088
PCBs	0.22
TPH-TO	500
TPH-D	500
Chromium	210

To reduce the on-Site concentrations of the COCs to the approved cleanup goals, the areas of elevated concentrations of the constituents were located and excavated. The soil from these excavations was disposed off-Site at a properly licensed location. After excavation, samples of soil at the sides and base of each excavation were collected and analyzed for the appropriate COCs to confirm that no additional excavation was required. The analytical program for the confirmation soil samples was based on COCs that were present in the excavation area. Soil excavation and confirmatory sampling continued until in-place concentrations reached levels that were acceptable to the RWQCB. The excavations were backfilled with clean soil and compacted to previously existing grade.

To help prohibit contact with the groundwater and the residual chemicals present in the groundwater, a deed restriction has been recorded for the Site to prohibit activities that would allow contact with the groundwater directly beneath the Site. The groundwater beneath the Site is not currently used for drinking water.

Public Disclosure

A Deed Restriction, which includes a copy of this Fact Sheet, has been recorded for the Site. The Deed Restriction will be used to ensure that future residents will not have direct contact with the shallow groundwater unless permitted in writing by the RWQCB. The Deed Restriction stipulates that no Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including, but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the RWQCB. Although not required by the RWQCB, the Removal Action Plan recommended that a vapor barrier be installed beneath structures built on the Site. This vapor barrier would prevent the possibility of VOCs emanating from groundwater, migrating up into buildings over the affected groundwater and cause potential exposure to occupants.

Pursuant to the Deed Restriction recorded for the Site property, all prospective purchasers of any portion of the property must be given a copy of this Fact Sheet to review and consider, prior to committing to purchase any properties within the Site development. It is the responsibility of the property Owner to provide prospective purchasers a copy of this Fact Sheet, and allow them ample time to review and understand the conditions at the property prior to accepting any commitment to purchase. Should the prospective purchasers request a copy of the entire deed restriction, the seller must provide a copy in a timely manner.

Commonly Asked Questions

How did the groundwater become affected with volatile organic compounds?

In 1982, Jones Chemicals, Inc., -at 985 Montague, had a chemical release of a chlorinated solvent from a tank rupture. VOCs from the solvent reached the groundwater and migrated with groundwater westward, as far as the Great Mall property. Groundwater remediation has been conducted in the past through groundwater extraction and treatment, which was then switched to the injection of a cheese whey mixture to enhance the natural degradation of the VOCs. Jones Chemical is continuing to remediate this release.

Why are volatile organic compounds and their breakdown products still in the groundwater?

The complete removal of VOCs from groundwater is not a simple task. Jones has extracted over 1 billion gallons of groundwater in its efforts to restore the quality of groundwater. At this point, a large portion of the mass of pollutants has been removed and concentrations of VOCs in

groundwater have declined. The remaining residual compounds will likely naturally degrade over time, with the help of the *in-situ* groundwater remediation, via injection technology. Also, the shallow groundwater is currently not being used for beneficial purposes such as drinking, washing or irrigation. This means that the groundwater will not be used for a domestic source, so no direct exposure to the chemicals is likely to occur. Since the sources have been removed and natural degradation is occurring, under current conditions, the shallow groundwater does not pose an environmental or human health threat. The Deed Restriction was established to prevent any direct groundwater exposure.

How could a person be exposed to the shallow groundwater?

A person could be exposed if a well was installed into the shallow groundwater to use water or if a person excavated into the soil deep enough to contact the groundwater (roughly 12-15 ft below surface). The Deed Restriction was established to prevent direct groundwater contact. Since the shallow groundwater is not being used as a domestic source, this pathway of exposure is eliminated. The Deed Restriction mandates that no drilling or excavation into the shallow groundwater is permitted. As long as the conditions of the Deed Restriction are followed, a person will not be directly exposed to groundwater.

Potential exposure also includes inhalation of vapor generated from the shallow groundwater. Future risks were determined for residential development through risk-based statistical modeling based on conservative assumptions to ensure that human health and the environment are protected. Results indicate that soil vapor generated from the shallow groundwater represents an insignificant risk to future residential development. While the risk is insignificant, the Deed Restriction mandates a vapor barrier be installed to further limit the exposure of future residents to possible vapors emanating from the water table, thereby eliminating this pathway of exposure.

For More Information

Copies of the environmental reports generated have been filed with the Regional Water Quality Control Board. You may review these documents. For the 1200 property (North American Transformer), please reference file no. 43S0247 and for the Jones Chemicals, Inc., file no. 43S0065. Should you have any additional questions, you may contact: Regional Water Quality Control Board, San Francisco Bay Region. 1515 Clay Street, Suite 1400 Oakland, CA 94612. (510) 622-2300