CITY OF PITTSBURG
AMENDED AGENDA

DECEMBER 16, 2024

CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA

CANCELLED - SPECIAL MEETING
PLANNING COMMISSION APPEAL

REGULAR MEETING
7:00 P.M.

CITY COUNCIL
HOUSING AUTHORITY
PITTSBURG ARTS AND COMMUNITY FOUNDATION
PITTSBURG POWER COMPANY
SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT DISTRICT II
SUCCESSOR AGENCY

PRESIDING

Jelani Killings, Mayor/Chair
Dionne Adams, Vice-Mayor/Chair
Angelica Lopez, Council Member/Board Member
Shanelle Scales-Preston, Council Member/Board Member
Juan Antonio Banales, Council Member/Board Member

FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member

Pittsburg City Council regular meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.pittsburgca.gov. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

CANCELLED - SPECIAL MEETING FOR A PLANNING COMMISSION APPEAL
THIS ITEM WILL BE CONTINUED TO A DATE TO BE DETERMINED

1. Appeal of the Planning Commission's Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc. Oakstone Northern California Expansion Project (AP-23-0046)

   On February 27, 2024, the Planning Commission adopted Resolution No.10243, granting approval for a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA).

   On March 7, 2024, Safe Fuel and Energy Resources California (SAFER CA), pursuant to PMC 18.18.060, filed an appeal of the Planning Commission's determination.

7:00 PM - CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

PUBLIC COMMENTS

Members of the audience who wish to address the City Council or Agency Boards on issues that are not scheduled for the agenda and on any items listed as part of the Consent Calendar should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. (No Action Required)

COMMITTEE REPORTS

Council Members may make a report on their committee assignments at this time. (see attached list of adhoc committees and other public agencies in which Council members participate). (No Action Required)

PUBLIC HEARING

2. Adoption of a City Council Resolution Approving a Rate Increase Requested by Contra Costa Waste Service, Inc. for the Operation of the Recycling Center and Transfer Station

   Contra Costa Waste Service, Inc.(Operator) operates the Recycling Center and Transfer Station (RCTS) on Loveridge Road under an Exclusive Operating

Agreement (Agreement) between the Operator and the City of Pittsburg. The Agreement requires that the Operator obtain City Council approval prior to modifying the authorized mixed waste rate charged at the RCTS. The Operator has requested a Consumer Price Index (CPI) increase of 3.41% effective January 1, 2025.

3. Adoption of a City Council Resolution Approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047

   This is a public hearing on a request to adopt a resolution (Attachment 1) approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743).

   On October 22, 2024, the Planning Commission voted unanimously 5-0 to adopt Resolution No. 10258 (Attachment 2) recommending approval of the proposal in its entirety.

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

CONSIDERATION

4. Adoption of a City Council Minute Order Directing the Process on Filling One Vacant City Council Seat

   A general municipal election was held in the City of Pittsburg, California, on Tuesday, November 5, 2024, as required by law. The Contra Costa County Elections Department (County) has certified its canvassing of the votes and Councilmember Shanelle Scales-Preston has been elected to serve as Contra Costa County Supervisor for District 5, which will result in one vacant seat on the Pittsburg City Council upon her resignation. Staff is seeking direction from City Council on how to fill the vacancy.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY, SOUTHWEST PITTSBURG GHAD II AND SUCCESSOR AGENCY CONSENT CALENDAR

5. Minutes of November 18, 2024

6. Receive and File Report on the Review of Development Impact Fees Received by the City of Pittsburg that are Subject to AB 1600 Reporting Requirements

   AB 1600 (Government Code Sections 66000–66008) requires cities to justify and account for developer fees which they enact, increase or impose as a condition of new development for the purposes of financing “public facilities and improvements.” AB 1600 also requires an annual review of the developer fees that

have been collected and spent during the previous year. This report fulfills the AB 1600 requirements.

7. Adoption of a Successor Agency Minute Order Approving the July 1, 2025 – June 30, 2026 Recognized Obligation Payment Schedule

   The Successor Agency for the Redevelopment Agency of the City of Pittsburg (Successor Agency) has prepared its Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2025 – June 30, 2026 (ROPS 25-26), pursuant to AB 26x1, also referred to as the "Dissolution Act".

8. Adoption of a City Council Resolution to Authorize Application and Receipt of Program Funding from Senate District 7 for the Accessory Dwelling Unit Accelerator Program Grant

   On September 7, 2024, Senator Glazer of Senate District 7 issued a Notice of Funding Availability for approximately $2.5 million dollars in one-time funds for the Accessory Dwelling Unit (ADU) Accelerator Program ("Program") Grant. The purpose of the non-competitive funding is to provide financial assistance to encourage and facilitate the construction of ADUs throughout 15 cities in the East Bay located in Senate District 7. Staff is requesting authorization to apply for $190,406.96 in program funds designated for the City.

9. Adoption of a City Council Resolution Authorizing the City Manager to Execute a First Contract Amendment for the Consulting Service Agreement with Oliver John for the Baywalk Specific Plan Project

   The proposed item would authorize the City Manager to execute a first amendment to the consulting service agreement with Oliver John in an amount not to exceed $70,000 for contract planning `services related to the proposed Baywalk Specific Plan Project.

10. Adoption of a City Council Resolution Authorizing the City Manager to Execute a First Contract Amendment for the Consulting Service Agreement with Raney Planning and Management, Inc. for the Baywalk Specific Plan Project

    The proposed item would authorize the City Manager to execute a First Amendment to the consulting service agreement with Raney Planning and Management, Inc. in an amount not to exceed $147,750 for California Environmental Quality Act (CEQA) planning services related to the proposed Baywalk Specific Plan Project.

11. Adoption of a City Council Resolution Granting an Easement to Pacific Gas & Electric to Provide Service for Project 3080-Pittsburg Premier Fields

    Project 3080-Pittsburg Premiere Fields (the Project) requires electric, gas, and communication facilities to power restrooms, lighting, and future site improvements. An easement to Pacific Gas & Electric (PG&E) is necessary to install, operate, and maintain the facilities needed to serve the site.

12. Adoption of a City Council Resolution to Accept U.S. Department of Transportation Safe Streets and Roads for All 2024 Planning and Demonstration Grant Funds and Allocate Local Matching Funds

    The City has been awarded the Safe Streets and Roads for All (SS4A) Planning and Demonstration Grant (the Grant) in the amount of $408,000 to update the Pittsburg Moves Active Transportation Plan and American with Disability Act (ADA) Transition Plan. If approved, the resolution will accept the grant funds and authorize the allocation of matching funds for a total approved project budget of $510,000.

13. Adoption of a City Council Resolution Accepting Project 8336-Americana Park Bypass Channel as Complete and Authorizing the City Engineer to File a Notice of Completion

    Project 8336-Americana Park Bypass Channel (the “Project”) constructed a bypass channel to remediate the storm water floods on North Parkside Drive. This resolution will accept the construction contract as complete and authorize the City Engineer to file a Notice of Completion.

14. Adoption of a City Council Resolution to Amend the Master Pay Schedule to Include Amendments to the Seasonal Salary Schedule and Previously Approved Positions and Compensation

    Effective January 1, 2025, the California minimum wage will increase from $16.00 per hour to $16.50 per hour. As the seasonal salary schedule presently has wages below the minimum, the City is required to increase the salaries affected by the State’s new minimum wage and update the salary schedule to comply with CalPERS’ interpretation of the requirements of California Code of Regulations, Title 2, Section 570.5 by amending the single master pay schedule.

15. Adoption of a City Council Resolution Authorizing the Execution of a Fourth Contract Amendment for a Consulting Service Agreement with 4LEAF, Inc. for Building Inspector and Chief Building Official On-call Services

    The proposed item would authorize the execution of the Fourth Amendment in an amount not to exceed $570,000. This amount would allocate an additional $120,000 to the existing contract amount of $450,000 for Building Inspector and Chief Building Official on-call services.

16. Adoption of a Pittsburg Power Company Resolution Adopting the 2023 Power Content Label to the California Energy Commission

    The Pittsburg Power Company (PPC), in compliance with the State law (Public Utilities Code 398.1(b)), is disclosing both the power sources portfolio information and comparison to California’s total system power mix on an annual Power Content Label (PCL). For public agencies submitting board resolutions as attestation, in lieu of a requirement to provide a report from an auditor, the Board of Directors must attest to and adopt the PCL.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Council Members may request items to be considered for future agendas. An item will only be brought forward with a majority vote and will appear on a future agenda with staff recommendations for further Council consideration.

COUNCIL MEMBER REMARKS

Council Members may make brief announcements or informal comments at this time. (No Action Required)

ADJOURNMENT TO JANUARY 6, 2025

NOTICE TO PUBLIC

GENERAL INFORMATION

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SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given up to three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action taken by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled residents. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at (925) 252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones and electronic devices, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.pittsburgca.gov on the Agendas and Live Meetings page. Past meetings and approved minutes are also archived on that webpage. Watch the live meeting via the City's webcast (www.pittsburgca.gov - Agendas and Live Meetings), on Comcast Channel 24 Delta TV, AT&T U-Verse Channel 99 Delta TV. Contact the City Clerk's office at (925) 252-4850 for more information

City Council Agency/Liaison/Subcommittee Assignments as of June 17, 2024

OUTSIDE AGENCY BOARDS	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
ABAG	Dionne Adams / Jelani Killings Alternate	Standing	Annual		G. Evans
Delta Diablo*	Juan Banales / Shanelle Scales-Preston Alternate	Standing	2nd Wednesday	4:30 PM	J. Samuelson
East Co. Co. County Habitat Conservancy	Angelica Lopez / Juan Banales Alternate	Standing	4th Monday Bi-Monthly	2:00 PM	J. Davis
East County Water Management	Juan Banales / Jelani Killings Alternate	Standing	Annual		J. Samuelson
MCE Clean Energy Board	Shanelle Scales-Preston / Angelica Lopez Alternate	Standing	Quarterly	7:00 PM	D. Buchanan
TRANSPLAN / ECCRFFA	Shanelle Scales-Preston / Juan Banales Alternate	Standing	2nd Thursday	6:30 PM	J. Samuelson
Tri-Delta Transit (2 reps)**	Shanelle Scales-Preston & Dionne Adams / Jelani Killings Alternate	Standing	4th Wednesday	4:00 PM	J. Samuelson

LIAISON TO	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
East Bay League of California Cities	Shanelle Scales-Preston / Jelani Killings Alternate	Standing	3rd Thursday		G. Evans
Los Medanos Health Advisory Committee	Shanelle Scales-Preston & Jelani Killings	Ad Hoc	As needed		M. Aliotti
Mayor's Conference	Juan Banales / Jelani Killings Alternate	Standing	1st Thursday	6:30 PM	G. Evans
Pittsburg Police Activities League (PAL)	Shanelle Scales-Preston & Angelica Lopez / Dionne Adams Alternate	Standing	Monthly		S. Albanese
School Districts Committee (2x2)	Jelani Killings & Angelica Lopez / Dionne Adams Alternate	Standing	Quarterly		M. Aliotti

SUBCOMMITTEES	COUNCIL MEMBER(S)	TYPE	MEETS	TIME	STAFF
Budget Sustainability	Juan Banales & Jelani Killings	Ad Hoc	As needed		G. Evans
Community and Economic Development	Jelani Killings & Dionne Adams / Juan Banales Alternate	Standing	2nd Wednesday	5:00 PM	J. Davis
Facilities Rental and Usage	Jelani Killings & Dionne Adams	Ad Hoc	As needed		G. Evans
Finance Management	Juan Banales & Jelani Killings / Shanelle Scales-Preston Alternate	Standing	3rd Friday	4:00 PM	P. Rodrigues
Government Performance	Juan Banales & Jelani Killings	Ad Hoc	4th Friday	4:00 PM	J. Brizel
Green Empowerment Zone	Dionne Adams/ Jelani Killings Alternate	Standing	3rd Friday Bi-monthly	9:30 AM	J. Davis
Infrastructure and Transportation	Shanelle Scales-Preston & Dionne Adams / Juan Banales Alternate	Standing	4th Thursday	5:30 PM	J. Samuelson
Life Enrichment	Dionne Adams & Angelica Lopez / Shanelle Scales-Preston Alternate	Standing	3rd Wednesday	5:30 PM	K. Simonton
Pittsburg Arts and Community Foundation	Shanelle Scales-Preston & Jelani Killings	Standing	As needed		K. Simonton
Public Safety	Shanelle Scales-Preston & Angelica Lopez / Jelani Killings Alternate	Standing	1st Wednesday	5:30 PM	S. Albanese
Tobacco, Cannabis, Alcohol Policy Review	Shanelle Scales-Preston & Jelani Killings	Ad Hoc	As needed		G. Evans

*Stipend of $170 per month
**Stipend of $100 per month

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Appeal of the Planning Commission's Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc. Oakstone Northern California Expansion Project (AP-23-0046)

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

On February 27, 2024, the Planning Commission adopted Resolution No.10243, granting approval for a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA).

On March 7, 2024, Safe Fuel and Energy Resources California (SAFER CA), pursuant to PMC 18.18.060, filed an appeal of the Planning Commission's determination.

FISCAL IMPACT

There is no fiscal impact associated with the recommended action. All on-site project improvements and upgrades to the existing facilities will be borne by the project applicant.

RECOMMENDATION

Staff recommends the City Council open the appeal hearing, take comment from the appellant (Safer California), the project proponent (Linde Inc.) and the public, close the appeal hearing. Following close of the appeal hearing, the City Council may consider and take one of the following actions:

1. City Council adopt a resolution denying the appeal, and upholding the Planning Commission's approval of the project; *or*
2. City Council adopt a resolution to uphold the appeal, reverse the Planning Commission's approval of the project, and deny the project without prejudice.

BACKGROUND

On February 27, 2024, the Planning Commission held a duly noticed public meeting on the proposed project, considered testimony, and voted 5-0 to adopt Resolution No. 10243 granting approval for the Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA).

On March 7, 2024, Adams Broadwell Joseph and Cardozo on behalf of SAFER CA, filed an appeal of the Planning Commission's determination pursuant to PMC 18.18.060.

As required under PMC section 18.18.050, the City Council shall hear an appeal from the decision of the Planning Commission. The decision of the City Council is final. The City Council appeal hearing is conducted de novo pursuant to PMC section 18.18.060(D). The City Council hears the appeal as a new matter and is not bound by the evidence or testimony presented to the Planning Commission.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Proposed Project:

The proposed Linde Inc. Oakstone Northern California Expansion Project, is a development project that would result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility located at 2000 Loveridge Road ("Project"). The new facility will expand Linde's current production of liquid nitrogen, oxygen, and argon. No additional or new products will be produced. The liquid products will be distributed via truck to the San Francisco Bay Area market, the Central Valley, and into nearby states. The proposed plant expansion area is an approximately 2.5-acre undeveloped portion of a 31.55-acre parcel. The Union Pacific Railroad and Pittsburg-Antioch Highway are to the north and SR 4 HWY is to the south and Loveridge Road is to the east.

Additional details related to General Plan and Zoning compliance, as well as the required findings to approve the project, and a detailed staff analysis can be found in the Planning Commission Staff Report dated February 27, 2024 (Attachment 10).

Environmental:

On October 13, 2023, staff circulated the project Mitigated Negative Declaration (MND) (Attachment 1 Exhibits A&B) for a 30-day public review and comment. Comments were received from the Department of Toxic Substances Control (DTSC) and the California Department of Transportation (Caltrans).

Public Notice: On or prior to December 6, 2024, notice of the December 16, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the City's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of

property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods.

SAFER CA Appeal

On March 7, 2024, Adams Broadwell Joseph and Cardozo, on behalf of SAFER CA, filed an appeal of the Planning Commission's determination pursuant to PMC 18.18.060. The appeal letter argues that the IS/MND is deficient in six respects, which mirror the comments outlined in the February 27, 2024 Adams Broadwell Joseph and Cardozo letter. The following is a summary of the six arguments outlined in the March 7, 2024, appeal letter are shown below, followed by a response of staff's assessment of each issues raised:

Comment No. 1: *"First, the IS/MND fails to analyze indirect operational emissions, substantial evidence supports a fair argument that those emissions are significant, and feasible mitigation measures are available to reduce those impacts."*

Response No. 1: The air quality analysis within the IS/MND was prepared in accordance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines (2022). Consistent with BAAQMD Guidance and the California Air Pollution Control Officers Association (CAPCOA) California Emissions Estimator Model (CalEEMod) User Guide (2022), indirect emissions of criteria pollutants from off-site electricity generation facilities, such as natural gas power plants, are not quantified in CEQA air quality analyses and the BAAQMD thresholds of significance are not intended for comparison to such emissions. Energy generating facilities and their associated direct emissions of criteria air pollutants are subject to their own environmental review and compliance and are subject to air quality permitting and the purchase of emissions offsets. Attributing these indirect emissions to an individual project would result in a "double counting" of emissions. Furthermore, there is no accurate way to trace the source of electricity being supplied to a given facility at a given time or the location at which such indirect emissions are being generated and emitted.

Comment No. 2: *"Second, the IS/MND lacks substantial evidence to conclude health risks are less than significant because it relies on clearly erroneous meteorological data."*

Response No. 2: The air quality analysis and health risk assessment within the IS/MND was prepared in accordance with BAAQMD, OEHHA, and CARB Guidance. All methodologies and assumptions were clearly outlined and provided in the Health Risk Assessment Technical Report provided in Appendix B of the IS/MND.

BAAQMD does not provide specific instruction as to which meteorological data to use in a dispersion model, other than to note the most appropriate station may not necessarily be the meteorological station closest to the project site. No data collected at a single station will fully capture localized weather phenomena representative of any project site.

The Pittsburg (Dow Chemical) meteorological data was not selected for the health risk assessment due to its location adjacent to the eastern Carquinez Strait. According to the BAAQMD's 2012 CEQA Guidelines, there are many industrial facilities with substantial air pollutant emissions in the Carquinez Strait area, yet the pollution potential of this area is often moderated by these high wind speeds. Considering the nearest sensitive receptors to

the west of the Project Site, a more conservative analysis was performed by selecting meteorological data from a station that experiences lower speeds and where the prevailing winds do not overwhelmingly come from the west (Concord Buchanan Field monitoring station). According to the BAAQMD's 2012 CEQA Guidelines, monitoring stations in Concord report annual average wind speeds of 5 mph. As shown in the Concord Buchanan Field wind rose in the February 27, 2024, Comment Letter (Exhibit A, Figure 3 on page 13), the highest wind speeds come from the south. Thus, the meteorological data from the Buchanan Field monitoring station was selected to provide a more conservative assessment of the effects of Project emissions to the closest sensitive receptors to the west.

As outlined in the IS/MND (page 23) and Health Risk Assessment (Appendix B, page 12), cancer risk levels attributed to the Project was roughly one percent of the significance for construction and roughly 10 to 15 percent of the significance threshold for operations. Using the meteorological data from the Dow Chemical meteorological station would result in even lower risk levels due to increased wind speeds and greater dispersion of pollutants away from the closest sensitive receptors.

Comment No. 3: *"Third, the IS/MND fails to analyze acute hazard risks and impacts to on-site construction workers from diesel particulate matter ("DPM") emissions during Project construction."*

Response No. 3: This comment was addressed in the City's response to the December 12, 2023, SAFER CA Comment Letter. The Office of Environmental Health Hazard Assessment (OEHHA) has developed reference exposure levels (REL) to determine potential non-cancer health impacts from toxic air contaminants (TAC). An REL is used as an indicator of potential non-cancer health impacts and is defined as the concentration at which no adverse non-cancer health effects are anticipated.

REL's incorporate uncertainty factors to help ensure that the REL is protective for nearly all individuals, including sensitive populations.[1] However, OEHHA has not developed an acute REL for diesel particulate matter (DPM); therefore, acute DPM impacts were not evaluated in the Health Risk Assessment and IS/MND. This is consistent with OEHHA Guidance and the California Air Resources Board (CARB) HARP2 Air Dispersion Modeling Program that was used in development of the proposed Project's Health Risk Assessment summarized in the air quality section of the Draft IS/MND and found in Appendix B of the IS/MND.

The Bay Area Air Quality Management District (BAAQMD) local risk and hazards significance thresholds apply to sensitive receptors only. The Project's Health Risk Assessment (Appendix B of the IS/MND) analyzed potential health impacts from construction and operation of the Project on nearby residents and off-site workers. As shown on page 23 and 24 (Tables 6 and 7) of the Draft IS/MND, the Project would not expose nearby sensitive receptors or off-site workers to significant health risks as the Project would be below all BAAQMD health risk significance thresholds.

Comment No. 4: *"Fourth, substantial evidence supports a fair argument that cancer and hazard risks from construction DPM are significant."*

Response No. 4: As noted above in Response No. 2, if a revised Health Risk Assessment was prepared with Dow Chemical meteorological data instead of Concord Buchanan Field meteorological data and all other assumptions remained the same as in the Health Risk

1 OEHHA, Air Toxics Hot Spots, Program Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments, February 2015, Accessed at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf

Assessment prepared for the IS/MND (Appendix B of the IS/MND), risk levels would be reduced due to greater wind speed and directionality away from the nearest sensitive receptors to the west.

As noted above in Response No. 3, the Project's Health Risk Assessment analyzed potential health impacts from construction and operation of the Project on nearby residents and off-site workers. As shown on page 23 and 24 (Tables 6 and 7) of the Draft IS/MND, the Project would not expose nearby sensitive receptors or off-site workers to significant health risks as the Project would be below all BAAQMD health risk significance thresholds.

Comment No. 5: *"Fifth, the IS/MND fails to analyze operational hazards, including the impact of potential air contaminants on safe operation and impacts from loading and transportation of liquified products."*

Response No. 5: The proposed Project is a facility expansion of Linde's production of liquid nitrogen, oxygen, and argon, and related loading and transportation of such liquified products. The existing facility has an Emergency Action Plan in place that would be extended to the facility expansion under the proposed Project, as required by OSHA and CalOSHA. The Emergency Action Plan is reviewed and updated annually, and employees undergo annual training. The Emergency Action Plan is posted in the control room and front office and will be posted in new locations associated with the proposed Project.

The February 27, 2024, comment letter references three air separation accidents that occurred in China over the last approximately 30 years. No evidence of an accident could be found for facilities anywhere else in the world. The existing facility has and the future expanded facility under the Project will have an automated system in place that alarms any time there is an increase in pressure

Trace contaminants in the air pose no operational hazards to the Linde's air separation equipment or process, as demonstrated by Linde's operation at the site since 1959. Trace contaminants are removed by pre-purifier vessels and are returned to the ambient air.

Comment No. 6: *"Sixth, substantial evidence supports a fair argument that ambient air contaminants could affect safe operation and feasible mitigation measures are available to reduce the risk of accidents."*

Response No. 6: As noted above in Response No. 5, the proposed Project is a facility expansion of Linde's production of liquid nitrogen, oxygen, and argon, and related loading and transportation of such liquified products. Trace contaminants are removed by prepurifier vessels and are returned to the ambient air.

ATTACHMENTS:

1. Proposed Resolution Denying the Appeal and Upholding Approval of the Project
    a. Exhibit A – Initial Study/Mitigated Negative Declaration
    b. Exhibit B – Mitigation Monitoring and Reporting Program
2. Proposed Resolution Upholding the Appeal and Denying Approval of the Project without Prejudice
3. Comment Letters and Responses
4. Project Plans
5. Existing Conditions Photos
6. Map of Surrounding Land Uses

7. DRDG Consistency Table
8. Development Standard Consistency Table
9. Notice of Public Hearing/Vicinity Map
10. Planning Commission Staff Report dated February 27, 2024
11. Planning Commission Resolution No. 10243
12. Planning Commission Minutes February 27, 2024
13. March 7, 2024 – Appellant Letter

Report Prepared By: Maurice Brenyah-Addow, Senior Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Denying an Appeal and Upholding the Planning Commission's Decision to Approve a Use Permit, Design Review And Variance, and Adopt an Initial Study And Mitigated Negative Declaration and Mitigation Monitoring Reporting Program For the Linde Inc. Oakstone Northern California Expansion Project (AP-23-0046)	RESOLUTION NO. 24-

WHEREAS, on March 28, 2023, Eugene Gordon of SGE Engineers, on behalf of Linde Inc, filed Planning Application No. 23-0046, requesting approval of: 1) Use Permit, 2) Design Review and 3) Variance, application for the Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road; and

WHEREAS, the proposed project is governed by the applicable goals and policies of the Pittsburg General Plan and the Pittsburg Municipal Code (PMC); and

WHEREAS, the project is subject to the California Environmental Quality Act ("CEQA") (Public Resources Code 21000-21189) and the State CEQA guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387); and

WHEREAS, the proposed project is subject to the California Environmental Quality Act (CEQA), and the State CEQA Guidelines (Public Resources Code section 21080). Pursuant to the provisions of the State CEQA Guidelines, an Initial Study was prepared for the project. Based on the analysis in the study, the Zoning Administrator determined that potentially significant effects of the project could be lessened through specified mitigations, and subsequently, a Mitigated Negative Declaration was prepared; and

WHEREAS, on October 13, 2023, a Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) was distributed to the public for a 30-day review, in accordance with CEQA Guidelines section 15105(b). Public distribution of the NOI consisted of delivery to the County Clerk's Office, posting on the City's website, and posting at the subject property in accordance with CEQA Guidelines section 15072; and

WHEREAS, on or prior to February 16, 2024, in accordance with Government Code section 65091 and Pittsburg Municipal Code (PMC) section 18.14.020, a "Notice of Public Hearing" for the February 27, 2024, public hearing on this item was posted at City Hall and at and near the project site; was delivered to the Pittsburg Library; was mailed via first class mail to the applicant and property owner, to owners of property located within 300 feet of the project site, and to local service agencies anticipated to provide services to the business; and was mailed via first class mail or email to individuals and organizations who had previously filed written request for such notice. A copy of the notice was also placed

on the “Public Notices” page of the city website the same day. The notice was also posted on www.nextdoor.com (“Nextdoor”); and

WHEREAS, on February 27, 2024, the Planning Commission held a duly noticed public meeting on the proposed project, considered testimony, and voted 5-0 to adopt Resolution No. 10243 granting approval for the Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA); and

WHEREAS, on March 7, 2024, Adams Broadwell Joseph and Cardozo on behalf of SAFER CA, filed an appeal of the Commission’s determination pursuant to PMC 18.18.060; and

WHEREAS, on or prior to December 6, 2024, notice of the December 16, 2024, public hearing was posted at City Hall, near the proposed project site, and on the ‘Public Notices’ section of the city’s website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com (“Nextdoor”) and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods; and

WHEREAS, on December 16, 2024, the City Council held a public hearing on the appeal of the Planning Commission’s Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde inc. Oakstone Northern California Expansion Project (AP-23-0046(UP, DR, VA); and

WHEREAS, documents and other materials constituting the record of the proceedings upon which the City’s decision and its findings are based, are located at the City of Pittsburg Planning Division, located at 65 Civic Avenue in Pittsburg, California 94565.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Recitals

The recitals set forth above are true and correct statements and are incorporated herein.

Section 2. Findings

1. Based on the City Council Staff Report dated December 16, 2024, and entitled, “Appeal of the Planning Commission’s Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation

Monitoring Reporting Program for the Linde Inc. Oakstone Northern California Expansion Project AP-23-0046 (UP, DR, VA). AP-24-0023 (AP).", and based on all written and oral testimony presented at the meeting, the City Council finds that:

a. All recitals above are true and correct and are incorporated herein by reference.

b. The Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program, attached as Exhibit A and Exhibit B to this resolution and for the project was prepared in compliance with Government Code Section 15120, et. Seq and the City Council has independently reviewed and considered the information contained therein.

Use Permit Findings PMC section 18.16.040:

A. The proposed project will be in accordance with the objectives of the Zoning Ordinance, the purpose of the land use district in which it is located and is appropriate to the specific location, in that the proposed heavy manufacturing activity is a conditionally permitted use in the IG District. It constitutes an expansion of the existing Linde air separation plant. It is in keeping with other industrial uses in the immediate surroundings.

B. The proposed project will not be detrimental to the health, safety, and general welfare of the City, in that upon compliance with applicable conditions of approval, it will meet health and safety requirements of the Pittsburg Community Development Department, the Contra Costa Fire Protection District, Contra Costa Health Services – Hazardous Materials Programs, and the Regional Water Quality Control Board as well as the habitat conservation requirements of the East Contra Costa County Habitat Conservation Plan (HCP).

C. The proposed project will not adversely affect the orderly development of property within the City, in that it is located an expansion of an existing use in a general industrial area.

D. The proposed project will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the City, in that the project will utilize the site for an industrial purpose consistent with its General Industrial zoning.

E. The proposed project will be consistent with site's 'Industrial' General Plan land use designation, in that the designation is intended to provide sites for manufacturing uses. The project is also consistent with the General Plan economic development objectives (General Plan, page 6-2) which support retention and expansion of the City's manufacturing base and encourage employment growth.

F. The proposed project will not create a nuisance or enforcement problem within the neighborhood, in that it will be required to meet performance standards, as set forth by PMC chapter 18.82, which are intended to address ongoing safety, noise, odor, and maintenance concerns.

G. The proposed project will not encourage marginal development within the neighborhood, in that the project will consist of air separation equipment similar to other equipment installations at the Linde plant.

H. The proposed project will not create a demand for public services within the City beyond that of the ability of the City to meet in light of taxation and spending restraints imposed by law, in that the project will have access to existing infrastructure, including fire, police, and water.

I. The proposed project will not be inconsistent with the City's approved funding priorities, in that it does not require any City funding.

Design Review Findings PMC section 18.36.220(A):

A. The planning commission shall consider the following aspects of each application to the extent that they are applicable to the proposal:

1. Maximum height, lot coverage and setbacks (if not covered in the zoning ordinance);
   The project requires a height variance to allow a 137-foot-tall tower where 75 feet maximum is required. The variance findings support granting the requested variance.

2. Overall mass and bulk of structures;
   The overall mass and bulk of the proposed structures is consistent with the rest of the structures at the Linde plant and surrounding industrial plants.

3. Special features of the development, such as walls, screen, towers and signs;
   The special features of the development such as towers are consistent with the Linde plant and surrounding industrial plants.

4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment; The site perimeter will be fenced to minimize public view, however the scale of the installations are industrial in nature so some supporting structures and piping will be reasonably visible.

5. Colors and materials on the exterior face of building or structure, striving for a limited number of colors and materials for each project;
   The proposed colors are limited to white, blue and silver.
6. Avoidance of repetition of identical entities whenever possible;
   The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance.

7. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;

The proposed new installations are sited and organized in an orderly manner and will be harmonious with the existing Linde plant installation and adjacent industrial sites.

8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Pittsburg climate and which are large enough in size to be effective.
   A condition of approval requires attractive landscaping around the perimeter of the site to minimize visual impacts on adjacent properties.

B. The standards to be used by the planning commission in reviewing an application:

1. The structure conforms with good taste, good design and in general contributes to the character and image of the City as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality, in that the proposed new installations are sited and organized in an orderly manner. The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance. The site perimeter will also be fenced to minimize public view.

2. The structure will be protected against exterior and interior noise, vibrations and other factors that may tend to make the environment less desirable, in that the project would be required to meet applicable performance standards to minimize potential noise and vibration impacts.

3. The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value in that, the proposed equipment have been designed to have sleek and less reflective finishes to minimize adverse visual impacts on the surroundings.

4. The structure is in harmony with proposed developments on land in the general area in that, the proposed equipment are similar to the other structures at the existing Linde plant site.

5. The application conforms with the criteria set forth in any applicable City adopted Development Review Design Guidelines (DRDG), in that the proposed plant expansion has been analyzed in accordance with the applicable DRDGs and found to be conforming.

<u>Variance Findings, PMC Section 18.16.050</u>

A. Because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same land use district. As such, the project expansion area is relatively flat with limited vegetation on the site fringes and some wetlands that limit the extent of the development footprint on the 2.5-acre portion of the parcel. This 2.5-acre project area constrains the horizontal orientation of the proposed 137-foot

tall “Rectification Cold Box” tower from the property boundaries forcing the cold box and equipment to be more vertically stacked to avoid impacts on the wetlands and vegetation. This proposed layout and project design approach is intended to balance operational efficiency with preservation of the wetlands.

B. The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district, in that the proposed variance request to allow for a 137-foot tall “Rectification Cold Box” tower where only 75 feet maximum is allowed not in isolation of its surroundings since it is an expansion of an existing air separation plant with similar towers for venting and separating essential industrial and commercial gases. There are similar towers with heights in excess of 75 feet at the plant and on other manufacturing plants in the IG zone in the project vicinity and therefore granting the height variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity.

C. The variance substantially complies with the intent and purpose of the land use district to which the property is classified, in that the existing and proposed use is consistent with the IG zoning it allows the proposed plant to install an important tower that is essential for operations and similar to other towers in the vicinity.

D. In the case of a variance from open space regulations, the grant of a variance is consistent with Government Code Section 65911 and will not conflict with general plan policies governing orderly growth and development and the preservation and conservation of open space lands.

2. The staff report entitled, “Appeal of the Planning Commission’s Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigated Monitoring Reporting Program for the Linde inc. Oakstone Northern California Expansion Project. AP-24-0023 (AP)”, is referenced hereto as additional support for the findings.

Section 3. Decision

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Pittsburg hereby:

A. Denies Appeal Application No. AP-24-0023 and Upholds the Planning Commission’s approval and adoption of an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Oakstone Northern California Expansion Project Application No. AP-24-0046 (UP, DR, VA).

General Use Conditions

1. Indemnification: The applicant agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person challenging the validity of this project approval, subsequent project approval,

or other action arising out of, or in connection with, this project approval. The parties shall cooperate in defending such action or proceeding. The parties shall use reasonable efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel at applicant's sole cost and expense. The applicant may select its own legal counsel to represent the applicant's interests at the applicant's sole cost and expense. The applicant shall pay for City's costs of defense, whether directly or by timely reimbursement to City on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent responding to and defending the claim, action or proceeding.

2. Finality of Decision: This decision is final and cannot be further appealed. Anyone willing to challenge this decision must do so in court within 90 days of the date of this decision.

Section 4: Effective Date

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Attachment 1a. – Exhibit A
Initial Study/Mitigated Negative Declaration

Available online at: Initial Study-Mitigated Negative Declaration

MITIGATION MONITORING AND REPORTING PROGRAM – OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT (AP-23-0046)

Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
AIR QUALITY			
Mitigation Measure AQ-1: The Applicant shall implement BAAQMD's basic BMPs for construction-related fugitive dust, which include: • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph. • All trucks and equipment, including their tires, shall be washed off prior to leaving the site. • Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted wood chips, mulch, or gravel. • A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.	City of Pittsburg Community Development Department	During construction activities	
BIOLOGICAL RESOURCES			
Mitigation Measure BIO-1: As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Burrowing Owl during construction: 1. Prior to any ground disturbance, a U.S. Fish and Wildlife Service (USFWS)/California Department of Fish and Wildlife (CDFW) qualified biologist shall conduct a pre-construction survey of the study area for Burrowing Owls. The pre-construction survey shall establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game, 1993). On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership shall not be required to be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys shall document whether Burrowing Owls are nesting in or directly adjacent to disturbance areas. During the non-breeding	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities	

MITIGATION MONITORING AND REPORTING PROGRAM – OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT (AP-23-0046)

Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or non-breeding) during which the survey is conducted. 2. If burrowing owls are found during the breeding season (February 1–August 31), the Project applicant shall avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1– January 31), the Project applicant shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below). 3. If occupied burrows for Burrowing Owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The Project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.			
Mitigation Measure BIO-2: As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Golden Eagles during construction: 1. Prior to implementation of construction activities, a qualified biologist shall conduct a pre-construction survey to establish whether an active golden eagle nest is present within the study area. If an occupied nest is present, minimization requirements and construction monitoring shall be required, as detailed below. 2. Construction activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the construction activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size. 3. Construction monitoring shall ensure that no construction activities occur within the buffer zone established around an active nest. Construction monitoring shall ensure that direct effects to Golden Eagles are avoided.	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities	
Mitigation Measure BIO-3: As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Swainson's Hawks during construction: 1. Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15–September 15), a qualified biologist shall conduct a preconstruction survey no more than 1 month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the Project	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities	

MITIGATION MONITORING AND REPORTING PROGRAM – OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT (AP-23-0046)

Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
site are occupied. If potentially occupied nests within 1,000 feet are off the Project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging) near the Project site. If nests are occupied, minimization measures and construction monitoring are required (see below). 2. During the nesting season (March 15–September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size. 3. If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the Project applicant can apply to the Implementing Entity for a waiver of this avoidance measure. Any waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place. 4. All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the Project proponent according to the requirements below in **Mitigation Measure BIO-4**.			
Mitigation Measure BIO-4: If Project-related disturbance activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the study area (typically February through August in the Project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities. If active nests are found in areas that could be directly affected or are within 300 feet of disturbance activities and would be subject to prolonged construction-related noise, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be a minimum of 50 feet, and may be enlarged by considering factors such as the following: • Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity; • Distance and amount of vegetation or other screening between the construction site and the nest; and • Sensitivity of individual nesting species and behaviors of the nesting birds.	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities	
Mitigation Measure BIO-5: If Project activities take place during the Western red bat maternity roosting period between May 1 and August 31 (when pre-flight/nursing young may be present), then a qualified biologist shall conduct a roosting habitat evaluation to assess potential roosting habitat in the study area. If potential roosting habitat is identified in the roosting habitat evaluation, then a preconstruction maternity roost survey shall be conducted within 3 days of equipment staging or initial ground	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities	

MITIGATION MONITORING AND REPORTING PROGRAM – OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT (AP-23-0046)

Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
disturbance. The survey will observe a 300-foot buffer around the Project footprint to determine if a maternity roost is present, and to identify and map potential maternity roost sites. If active maternity roost sites are found, then a 300-foot no-disturbance buffer shall be observed around potential maternity roost sites. The buffer shall be maintained until bats have vacated the roost and Wildlife Agencies concur that the roost is vacant. If Project activities take place during the winter months (November 1 through March 31), then a qualified biologist shall conduct a winter hibernaculum survey. If an active winter hibernaculum is found within 300 feet of the Project footprint, then a 300-foot no disturbance buffer shall be observed around the hibernaculum until the bats have vacated and the agencies concur that the hibernaculum is vacant.			
Mitigation Measure BIO-6: Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features. If the aquatic resources delineation concludes that development of the Project will not avoid the aquatic features present onsite, the Applicant shall do one of the following: 1) Redesign the Project site plan and/or temporary staging areas to avoid the aquatic features onsite; or 2) Obtain the applicable permit of the U.S. Army Corps of Engineers and the Regional Water Quality Control Board to fill the aquatic features necessary to develop the Project if redesigning the Project site plan is not feasible. In addition, the Project Applicant shall implement the following avoidance measures described in the HCP/NCCP to avoid and minimize impacts on wetlands and riparian woodland/scrub during construction activities: a. All wetlands, ponds, streams, and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by a qualified biologist. b. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas. c. Trash generated by covered activities will be promptly and properly removed from the site. d. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill. e. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material	City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy	Prior to ground disturbance and construction activities (and during ground disturbance and construction activities)	

MITIGATION MONITORING AND REPORTING PROGRAM – OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT (AP-23-0046)

Mitigation Measure	Monitoring Agency	Implementation Schedule	Sign-off
that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site. f. Fiber rolls used for erosion control will be certified as free of noxious weed seed. g. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species. h. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures). i. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.			
CULTURAL RESOURCES			
Mitigation Measure CUL-1: If human remains or any associated funerary artifacts are discovered during construction, all work shall cease within the immediate vicinity of the discovery. In accordance with the California Health and Safety Code (Section 7050.5), the Contra Costa County Sheriff/Coroner must be contacted immediately. If the Coroner determines the remains to be Native American, the Coroner will notify the Native American Heritage Commission, which will in turn appoint a Most Likely Descendent (MLD) to act as a tribal representative. The MLD will work with the Applicant and a qualified archaeologist to determine the proper treatment of the human remains and any associated funerary objects. Construction activities shall not resume until either the human remains are exhumed, or the remains are avoided via Project construction design change.	City of Pittsburg Community Development Department	During ground disturbance and construction activities	

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BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Upholding an Appeal and Reversing the Planning Commission's Decision to Approve a Use Permit, Design Review And Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program For the Linde Inc. Oakstone Northern California Expansion Project (AP-23-0046) Without Prejudice	RESOLUTION NO. 24-

WHEREAS, on March 28, 2023, Eugene Gordon of SGE Engineers, on behalf of Linde Inc, filed Planning Application No. 23-0046, requesting approval of: 1) Use Permit, 2) Design Review and 3) Variance, application for the Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road; and

WHEREAS, the proposed project is governed by the applicable goals and policies of the Pittsburg General Plan and the Pittsburg Municipal Code (PMC); and

WHEREAS, the project is subject to the California Environmental Quality Act ("CEQA") (Public Resources Code 21000-21189) and the State CEQA guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387); and

WHEREAS, the proposed project is subject to the California Environmental Quality Act (CEQA), and the State CEQA Guidelines (Public Resources Code section 21080). Pursuant to the provisions of the State CEQA Guidelines, an Initial Study was prepared for the project. Based on the analysis in the study, the Zoning Administrator determined that potentially significant effects of the project could be lessened through specified mitigations, and subsequently, a Mitigated Negative Declaration was prepared; and

WHEREAS, on October 13, 2023, a Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) was distributed to the public for a 30-day review, in accordance with CEQA Guidelines section 15105(b). Public distribution of the NOI consisted of delivery to the County Clerk's Office, posting on the City's website, and posting at the subject property in accordance with CEQA Guidelines section 15072; and

WHEREAS, on or prior to February 16, 2024, in accordance with Government Code section 65091 and Pittsburg Municipal Code (PMC) section 18.14.020, a "Notice of Public Hearing" for the February 27, 2024, public hearing on this item was posted at City Hall and at and near the project site; was delivered to the Pittsburg Library; was mailed via first class mail to the applicant and property owner, to owners of property

located within 300 feet of the project site, and to local service agencies anticipated to provide services to the business; and was mailed via first class mail or email to individuals and organizations who had previously filed written request for such notice. A copy of the notice was also placed on the "Public Notices" page of the city website the same day. The notice was also posted on www.nextdoor.com ("Nextdoor"); and

WHEREAS, on February 27, 2024, the Planning Commission held a duly noticed public meeting on the proposed project, considered testimony, and voted 5-0 to adopt Resolution No. 10243 granting approval for the Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA); and

WHEREAS, on March 7, 2024, Adams Broadwell Joseph and Cardozo on behalf of SAFER CA, filed an appeal of the Commission's determination pursuant to PMC 18.18.060; and

WHEREAS, on or prior to December 6, 2024, notice of the December 16, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods; and

WHEREAS, on December 16, 2024, the City Council held a public hearing on the appeal of the Planning Commission's Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde inc. Oakstone Northern California Expansion Project (AP-23-0046(UP, DR, VA); and

WHEREAS, documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based, are located at the City of Pittsburg Planning Division, located at 65 Civic Avenue in Pittsburg, California 94565; and

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Recitals

The recitals set forth above are true and correct statements and are incorporated herein.

Section 2. Findings

Based on the City Council Staff Report dated December 16, 2024, and entitled, “Appeal of the Planning Commission’s Decision to Approve a Use Permit, Design Review and Variance, and Adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc. Oakstone Northern California Expansion Project AP-23-0046 (UP, DR, VA). AP-24-0023 (AP),” and based on all written and oral testimony presented at the meeting, the City Council finds that the Mitigated Negative Declaration for the project is potentially inadequate, and pursuant to the California Environmental Quality Act (Public Resource Code Sections 20180[d]), there is potential evidence that the project may have a significant effect on the environment, and an EIR is required in order to ensure the Planning Commission and/or City Council, as appropriate, can make the necessary findings for project approval contained within PMC sections 18.16.040, 18.36.220(A), and 18.16.050.

Section 3. Decision

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Pittsburg hereby uphold Appeal Application No. AP-24-0023 and denies Application No. AP-24-0046 (UP, DR, VA).

PASSED AND ADOPTED by the City Council of the City of Pittsburg on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Oakstone Northern California Expansion Project
Initial Study/ Mitigated Negative Declaration

Response to Comments
January 18, 2023

This Response to Comments document contains comments received during the public review period of the Oakstone Northern California Expansion Project Draft Initial Study/Mitigated Negative Declaration (IS/MND).

BACKGROUND

The City of Pittsburg Planning Division, as lead agency, released the Draft IS/MND for public review beginning on October 13, 2023, and ending on November 13, 2023, pursuant to CEQA Guidelines Section 15105. The Draft IS/MND and supporting documents were made available on the City's website and by appointment during normal business hours at the City of Pittsburg Planning Division, located at 65 Civic Avenue, Pittsburg, CA 94565. According to CEQA Guidelines Sections 15073 and 15074, the lead agency must consider the comments received during consultation and review periods together with the negative declaration. However, unlike with an Environmental Impact Report, comments received on a negative declaration are not required to be attached to the negative declaration, nor must the lead agency make specific written responses to public agencies. Nonetheless, the City has chosen to provide responses to the comments received on the Draft IS/MND. It is important to note that Comment Letter C listed below was received on December 12, 2023, well after the public review period closed on November 13, 2023. Nevertheless, the City has included responses to Comment Letter C.

LIST OF COMMENTERS

The City received two comment letters during the public comment period on the Draft IS/MND for the proposed Project and one comment letter on December 12, 2023 (well after the public comment period was closed). The comment letters were authored by the following:

Letter A .....California Department of Transportation, November 9, 2023
Letter B .....California Department of Toxic Substances Control, November 13, 2023
Letter C .....Adams Broadwell Joseph & Cardozo, December 12, 2023

RESPONSE TO COMMENTS

The Response to Comments below include responses to the comment letters submitted regarding the proposed project. The letters are numbered and bracketed with assigned comment numbers. The bracketed comment letters are followed by numbered responses corresponding to each bracketed comment. Where revisions to the Draft IS/MND text were made, new text is <u>double underlined</u> and deleted text is ~~struck through~~.

California Department of Transportation

DISTRICT 4
OFFICE OF REGIONAL AND COMMUNITY PLANNING
P.O. BOX 23660, MS–10D | OAKLAND, CA 94623-0660
www.dot.ca.gov

November 9, 2023

SCH #: 2023100371
GTS #: 04-CC-2023-00728
GTS ID: 31140
Co/Rt/Pm: CC/4/24.35

Maurice Brenyah-Addow, Senior Planner
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Re: Oakstone Northern California Expansion Project – Mitigated Negative Declaration (MND)

Dear Maurice Brenyah-Addow:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Oakstone Northern California Expansion Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system.

The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the October 2023 MND.

A-1

Project Understanding

The proposed project consists of a use permit, design review and variance application for an existing facility located at 2000 Loveridge Road in Pittsburg. This will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. It is in the vicinity of State Route (SR)-4.

Construction-Related Impacts

Potential impacts to the State Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, please visit Caltrans Transportation Permits

(*link*). Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the State Transportation Network (STN).

Equitable Access
If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

Encroachment Permit
Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' Right-of-Way (ROW) requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to D4Permits@dot.ca.gov.

A-1

To obtain information about the most current encroachment permit process and to download the permit application, please visit Caltrans Encroachment Permits (*link*).

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Llisel Ayon, Associate Transportation Planner, via LDR-D4@dot.ca.gov. For future early coordination opportunities or project referrals, please contact LDR-D4@dot.ca.gov.

Sincerely,

YUNSHENG LUO
Branch Chief, Local Development Review
Office of Regional and Community Planning

c: State Clearinghouse

Response to Comment A-1

Comment Noted. The comment provides an overview of the project and general permit and equitable access requirements.

Letter B

Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Yana Garcia
Secretary for
Environmental Protection

Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

November 13, 2023

Maurice Brenyah-Addow
Senior Planner, City of Pittsburg Planning Division
65 Civic Avenue
Pittsburg, CA 94565
mbrenyah-addow@pittsburgca.gov

RE: MITIGATED NEGATIVE DECLARATION (MND) FOR THE OAKSTONE NORTHERN CALIFORNIA EXPANSION PROJECT, DATED OCTOBER 13, 2023 STATE CLEARINGHOUSE # 2023100371

Dear Maurice Brenyah-Addow:

B-1

The Department of Toxic Substances Control (DTSC) received a MND for the Oakstone Northern California Expansion Project. The proposed project consists of a Use Permit, Design Review and Variance application at Linde's existing facility located at 2000 Loveridge Road, Pittsburg, California 94565. The proposed development project will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. The new facility will expand current production of liquid nitrogen, oxygen, and argon. The property is located in the Industrial General Plan Land Use classification and General Industrial Zoning District (IG). The project also includes on-site circulation improvements to provide a 25-foot drive aisle through the parcel to the project site and expansion of the existing substation on the parcel near the entry/exit to Loveridge Road. The project location is on the DTSC site Union Carbide, Pittsburg. Although the cleanup

B-1 status was certified in 1984, concentrations of contaminants were still elevated. Based on our project review, DTSC requests consideration of the following comments:

B-2 1. There may be unidentified environmental concerns at the site. DTSC recommends additional investigation and sampling (if necessary) before any groundbreaking activities commence.

B-3 2. DTSC recommends the preparation of a Soil Management Plan so there is a procedure in place if and when unforeseen contaminations are discovered.

B-4 3. If any work initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to *DTSC's 2001 Information Advisory Clean Imported Fill Material* webpage.

B-5 DTSC believes the City of Pittsburg must address these comments to determine if any significant impacts under the California Environmental Quality Act (CEQA) will occur and, if necessary, avoid significant impacts under CEQA. DTSC recommends the City of Pittsburg connect with our unit if any hazardous waste projects managed or overseen by DTSC are discovered.

DTSC appreciates the opportunity to comment on the Oakstone Northern California Expansion Project. Thank you for your assistance in protecting California's people and environment from the harmful effects of toxic substances. If you have any questions or would like any clarification on DTSC's comments, please respond to this letter or via email for additional guidance.

Sincerely,

Dave Kereazis

Dave Kereazis
Associate Environmental Planner
HWMP - Permitting Division – CEQA Unit
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and
Research State Clearinghouse
State.Clearinghouse@opr.ca.gov

Ms. Tamara Purvis
Associate Environmental Planner
HWMP – Permitting Division - CEQA Unit
Department of Toxic Substances Control
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Scott Wiley
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Isabella Roman
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Isabella.Roman@dtsc.ca.gov

Marikka Hughes, PG
Branch Chief, Berkeley
SMRP – Cleanup Program
Department of Toxic Substances Control
Marikka.Hughes@dtsc.ca.gov

Response to Comment B-1

Comment Noted. The comment provides introductory information.

Response to Comment B-2

Subsequent to the October 13, 2023 publication of the Mitigated Negative Declaration (MND) for the Oakstone Northern California Expansion Project (proposed Project), the City of Pittsburg Planning Division (City) received a report for a limited soil sampling and analytical testing assessment at the Project site prepared by Baez Geotechnical Group (BGG), dated July 26, 2023.[1] The environmental assessment, consisting of soil sampling and laboratory testing for chemical constituents, was conducted in March 2023 in conjunction with BGG's geotechnical investigation of the Project site. During the geotechnical drilling program, BGG field staff observed hydrocarbon odors in samples collected from (soil) Borings B2 and B5 at depths ranging from 0 to 3 feet below ground surface (bgs). Odors in Borings B6 and B7 were observed in the general drilling area and not in collected soil samples. BGG submitted the soil samples containing odors to a certified testing laboratory for analysis of Total Petroleum Hydrocarbons (TPH) (gasoline, diesel, and motor oil), Volatile Organic Compounds (VOCs), Semi-Volatile Organic Compounds (SVOCs) and 17 California Title 22 metals including arsenic, chromium, lead, and vanadium. Laboratory results of the five odoriferous soil samples did not detect VOCs, SVOC's, or gasoline. However, low concentrations [below California Regional Water Quality Control Board – San Francisco Region (RWQCB) Tier 1 Environmental Screening Levels (ESLs)] of diesel and motor oil were detected in nearly all soils samples [(maximum concentration of motor oil was 440 parts per million (ppm) and diesel was 12 ppm]. BGG concluded these compounds produced the odor that field staff observed in the soil samples. Arsenic was detected above the RWQCB Tier 1 ESLs and Commercial Land Use ESLs (2.8 and 5.8 ppm), but BGG reported that the concentrations are considered on the very low end of background concentrations occurring in regional parent bedrock and thus, were not a concern. Vanadium was detected above the RWQCB Tier 1 ESLs but well below the 5,800 ppm Commercial Land Use threshold. BGG concluded that the reported concentration of hydrocarbons and metals would not be a concern for the proposed site improvements.

BGG's soil testing results indicate that low levels of metals, diesel, and motor oil may be present in shallow soils within certain areas of the Project site. The soil samples containing diesel and motor oil were collected in an area of a previous stockpile observed on historical photographs. Therefore, it is possible that grading for the proposed Project could encounter surface soils containing low levels of residual petroleum hydrocarbons and elevated metals. However, given the low concentrations detected, these soils would not represent a substantial hazard to site workers and, considering the proposed industrial land use and that the Project site would be covered with asphalt or cement, the risk of future human and environmental exposure is low. BGG's assessment did not provide evidence of a different or more severe site contamination condition compared with those identified in the Draft IS. No evidence was identified indicating a new or substantially more severe potentially significant impact. While no additional soil sampling is warranted, prior to project commencement, a Soil Management Plan, (SMP) as requested by DTSC and discussed below in Response to Comment B-3, would be implemented to address and remedy potentially contaminated soils encountered during Project site grading.

Other than the findings of the BGG limited environmental assessment, discussed above, there is no additional evidence of unidentified environmental concerns at the Project Site. While the CEC Phase I did identify Recognizable Environmental Conditions (RECs) at 2000 Loveridge Road, they were associated

[1] Baez Geotechnical Group (BGG), Limited Soil Sampling and Analytical Testing of Soil with Detected Odor, Proposed Linde Air Separation Unit Facility Expansion, 2000 Loveridge Road, Pittsburg, California. Letter-report to Manuel Gonzales, Linde Engineering Americas. BGG Project No. G333.01. July 26, 2023.

with the ditch dredging four decades ago and past removal of USTs, which evidence suggests did not occur on the Project site, but rather on other parts of the 2000 Loveridge Road property. The Draft IS/MND explains that while 2000 Loveridge Road is listed as having previous environmental concerns, the contaminated areas did not involve the Project site (page 58 of the Draft IS/MND). The soils excavated during the 1983 ditch dredging were removed, tested, and landfilled and thus, are not considered a potential source of contamination. The identified REC associated with offsite contaminants entering the Project site via the Caltrans runoff is an existing condition and any contaminants in the runoff would be confined to the ditch, which would not be disturbed by the Project and is not part of the Project.

Response to Comment B-3

The development of a Soil Management Plan (SMP) would not be a Mitigation Measure because the MND did not identify a significant impact associated with soils contamination; however, as was suggested by DTSC, the City will require an SMP as a Condition of Approval for the Project. As discussed in Response to Comment B-2, above, there is a possibility that low levels of residual hydrocarbon compounds such as diesel and motor oil could be present in shallow soils in localized areas of the Project site and could be encountered during Project site grading. The response also notes that an SMP would be prepared for the Project. An SMP can be a standard practice for construction projects involving excavations and soil removal, especially for industrial infill development such as the proposed Project. The Project SMP would outline the procedures contractors are to follow if unanticipated soil contamination is encountered during construction grading and excavation activities. The Project SMP also would specify protocols and notifications necessary to address discovery of contaminated soil, health and safety, sampling and analysis, monitoring, soil removal, stockpiling, water quality, and transportation.

Response to Comment B-4

Sampling incoming fill material to identify potential contamination is likely unnecessary given the current environmental and regulatory climate in the San Francisco Bay Area. DTSC's 2001 Information Advisory regarding Clean Imported Fill Material (referenced by the commenter), while providing reasonable recommendations, may not reflect the best practices and safeguards that have been established over the past two decades. Nevertheless, the SMP discussed in the Response to Comment B-3, above, would include a Soil Importation Plan section that outlines contractor requirements and responsibilities for fill source verification and, if necessary, soil sampling and analysis if it cannot be confirmed that imported fill originated from an uncontaminated source area. The Soil Importation Plan would include soil source verification guidelines and protocols as well as soil sampling frequency and recommended laboratory analyses. As discussed above, preparation and adherence to a Soil Management Plan/Soil Importation Plan is being included as a Condition of Approval.

Response to Comment B-5

Comment Noted.

Letter C

ADAMS BROADWELL JOSEPH & CARDOZO
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AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

December 12, 2023

VIA U.S. Mail, Email, and Hand Delivery

Chair Ivelina Popova
Planning Commission
City of Pittsburg
City Hall Council Chamber
65 Civic Avenue
Pittsburg, California 94565
PlanningCommissioner@pittsburgca.gov

Alice E. Evenson
City Clerk
City of Pittsburg
City Hall Council Chamber
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Pittsburg, California 94565
aevenson@pittsburgca.gov

VIA Email Only
Maurice Brenyah-Addow, Senior Planner
Mbrenyah-addow@pittsburgca.gov

Re: **Agenda Item No. 2: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study / Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Reporting Program (MMRP) for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)**

Dear Chair Popova, Planning Commissioners and Mr. Brenyah-Addow:

We write on behalf of Safe Fuel and Energy Resources California ("SAFER CA") regarding Agenda Item No. 2, the Oakstone Northern California Expansion Project ("Project") proposed by Linde, Inc. ("Applicant"). SAFER CA objects to the Planning Commission's proposed approval of the Project due to the City of Pittsburg's ("City") failure to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21100 *et seq*. Specifically, the Initial Study / Mitigated Negative Declaration[1] ("IS/MND") fails as an informational document under CEQA and lacks substantial evidence to conclude that the Project's potentially significant impacts would be adequately mitigated. Moreover, substantial evidence supports a fair argument that the proposed Project may cause

C-1

[1] City of Pittsburg, Oakstone Northern California Expansion Project: Draft Initial Study / Mitigated Negative Declaration (Oct. 2023), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15486/638328001708630000.

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potentially significant, unmitigated impacts on public health, air quality, wetlands, and from hazardous materials which require an environmental impact report ("EIR").

Given the deficiencies with the IS/MND as described below, SAFER CA respectfully requests that the Planning Commission continue the public hearing and direct City staff to prepare an EIR that fully discloses, analyzes, and mitigates the Project's potentially significant environmental impacts before considering Project approval.

I. INTRODUCTION

The Applicant proposes to expand their existing industrial gas facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035).[2] The expanded facility would increase current production of liquid nitrogen, oxygen, and argon to be distributed via truck to the Bay Area, Central Valley, and nearby states by installing a new air separation unit system.[3] The proposed expansion includes construction and operation of a second centralized atmospheric separation plant, which would include air compressors, pre-purifier vessels, an industrial class chiller, a distillation tower containing heat exchangers, booster compressor/turbine sets, and cryogenic distillation columns, three individual storage tanks, interconnecting piping, and a cooling tower.[4] The expansion would also require electric substation upgrades to distribute the large amount electricity needed to operate the facility.[5]

C-1

The entire plant is outdoors, and no buildings are included with the Project.[6] Construction of the Project would occur over approximately 13 months, including site preparation, grading, onsite utilities, paving, and equipment installation.[7] The Applicant is seeking approval of the IS/MND, a use permit, design review, and variance from the Planning Commission.[8]

Based on our review of the IS/MND and available documents, we conclude the document fails to comply with CEQA. Specifically, the IS/MND does not adequately describe the current environmental setting and fails to disclose, analyze, and mitigate all potentially significant adverse impacts to air quality, hazards, and

[2] IS/MND at p. 1.
[3] IS/MND at p. 1.
[4] IS/MND at p. 2.
[5] IS/MND at p. 8.
[6] IS/MND at p. 2.
[7] IS/MND at p. 9.
[8] IS/MND at p. 9.

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biological resources that could result from construction and operation of the Project. There is substantial evidence supporting a fair argument that the Project may result in potentially significant, unmitigated impacts. To correct these flaws, the City must prepare an EIR that fully discloses, analyzes and mitigates the Project's potentially significant impacts and considers alternatives to the Project.

These comments were prepared with the assistance of Phyllis Fox, PhD, PE, whose comments and qualifications are attached as Attachment A.[9] The City must respond to Dr. Fox's comments separately and fully.

I. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California's industrial facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's industrial projects. Failure to adequately address the environmental impacts of such projects poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

C-1

The members represented by the participants in SAFER CA live, work, recreate and raise their families in Contra Costa County. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating labor organizations could also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

SAFER CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits while minimizing adverse environmental and other impacts on local communities. SAFER CA and its members are concerned about projects like this one that risk serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[10] It is in this spirit we offer these comments.

---

[9] **Attachment A**, Letter to Andrew J. Graf, Adams Broadwell Joseph & Cardozo from Phyllis Fox, Environmental Management re: Linde Oakstone NorCal Expansion Project Initial Study / Mitigated Negative Declaration (Dec. 12, 2023) (hereinafter "Fox Comments").

[10] Pub. Res. Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

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II. THE CITY MUST PREPARE AN EIR

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR, except in limited circumstances.[11] The purpose of an EIR "is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government."[12]

The presumption in favor of preparing an EIR, rather than a mitigated negative declaration, is reflected in the "fair argument" standard. Under that standard, the lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that the project may have a significant effect on the environment.[13] The fair argument standard creates a "low threshold" of favoring environmental review through an EIR, rather than through a mitigated negative declaration.

C-1

"Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[14] "[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR."[15]

As detailed below, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to air quality, hazards, and biological resources. The City must prepare an EIR that analyzes, discloses, and mitigates these impacts and considers less environmentally damaging alternatives.

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[11] Pub. Res. Code § 21000; CEQA Guidelines § 15002.
[12] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).
[13] Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 1501-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.Appl.4th 1597, 1601-02.
[14] CEQA Guidelines § 15384(a).
[15] CEQA Guidelines § 15064(g).

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A. Substantial Evidence Supports a Fair Argument that Construction Health Risk Impacts Are Potentially Significant and Unmitigated

The IS/MND conducted a quantified health risk analysis ("HRA") which evaluated cancer and chronic health impacts to offsite receptors from construction and operational emissions.[16] However, the IS/MND fails to evaluate the acute health impacts from diesel particulate matter ("DPM") to on-site and off-site construction workers.[17]

DPM is a potent human carcinogen that is chronically and acutely toxic.[18] In fact, the California Office of Environmental Health Hazard Assessment ("OEHHA") concludes that "[e]posure to diesel exhaust can have immediate health effects immediate health effects."[19] Construction workers have the greatest risk when it comes to acute DPM exposure because they operate and maintain the equipment that emits DPM.[20]

C-2

Here, the IS/MND acknowledges DPM emissions would occur during Project construction, but the HRA does analyze the acute impacts to construction workers and workers at the adjacent business as sensitive receptors.[21] Short-term exposures of 1-hour, known as acute exposures, are routinely evaluated in health risk assessments using Reference Exposure Levels ("RELs").[22] Dr. Fox recommends that the IS/MND utilize a significance threshold of 10 $\mu g/m^3$ to protect against adverse effects on the respiratory system.[23] Based on her experience with other projects that have similar construction activities, Dr. Fox concludes health impacts to on-site construction workers from exposure to acute DPM emissions are potentially significant.[24] Therefore, substantial evidence supports a fair argument the proposed Project would result in potentially significant air quality impacts.

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[16] IS/MND at pp. 22-23; see also *id*., appen. A.
[17] Fox Comments at pp. 4-6.
[18] Fox Comments at p. 4.
[19] Fox Comments at pp. 4-5; California Office of Environmental Health Hazard Assessment, Health Effects of Diesel Exhaust, https://oehha.ca.gov/air/health-effects-diesel-exhaust (last updated May 21, 2001); *see also* Cal/EPA Office of Environmental Health Hazard Assessment and The American Lung Association of California, Health Effects of Diesel Exhaust (undated), *available at* https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.
[20] Fox Comments at p. 5.
[21] Fox Comments at p. 5.
[22] Fox Comments at pp. 5-6.
[23] Fox Comments at p. 6.
[24] Fox Comments at p. 6.

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B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Unmitigated Hazards Impacts

C-3

The IS/MND incorrectly concludes that the proposed Project would not create a significant hazard to the public or environment based on a Phase 1 Environmental Site Assessment ("ESA").[25] As a threshold matter, the Phase 1 ESA was not attached to the IS/MND, not available on the City's website or CEQAnet, and not included as part of the Planning Commission's agenda packet. It is well settled that a CEQA document may not rely on hidden studies or documents that are not available to the public.[26] Courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process, and that such failure must be remedied by permitting additional public comment.[27]

C-4

SAFER CA received a copy of the Phase I ESA in response to a Public Records Act Request. Based on SAFER CA's review of the Phase 1 ESA and available evidence, the record demonstrates that it does not support the IS/MND's conclusion that hazard impacts are less than significant. To the contrary, the Phase 1 ESA provides substantial evidence supporting a fair argument that the Project may cause potentially significant impacts due to disturbance of contaminated soils or other hazardous conditions that may be present at the Project site. These impacts are not adequately mitigated by the mitigation measures in the IS/MND and require preparation of an EIR.

The purpose of the Phase 1 ESA is to identify recognized environmental conditions ("RECs") in connection with the Project site.[28] RECs include "the presence or likely presence of any hazardous substance or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of future release to the environment. De minimis conditions are not recognized environmental conditions."[29]

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[25] IS/MND at pp. 57-58.
[26] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("[W]hatever is required to be considered in an EIR must be in that formal report. . .") (internal citations omitted).
[27] *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.
[28] Civil & Environmental Consultants, Inc., Phase 1 Environmental Site Assessment Report: North Portion of Linde Inc Property 2000 Loveridge Road Pittsburg, California 94565 (Mar. 2023) p. 1 (hereinafter "Phase 1 ESA").
[29] *Id.* at p. 1, fn. 2.

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The Project's Phase 1 ESA identifies several hazards that potentially exist within the greater parcel. For example, soil samples that were excavated from a ditch displayed high concentrations for zinc, chromium, copper, lead, and nickel.[30] The Phase 1 ESA also identified two leaking underground storage tanks (USTs) which were removed in the late 1980s.[31] Finally, the Phase 1 ESA identified approximately nine petroleum USTs with tank capacities ranging from 500 to 20,000 gallons containing waste oil, diesel, or gasoline as present within the parcel.[32] However, the exact locations of the ditch cleanup and USTs are unknown based on the available records.[33]

C-4

Given these significant data gaps, the Phase 1 ESA concludes the Project site contains a REC given the likelihood of residual impacts to soil and/or groundwater from the document ditch cleanup and former UST releases from the upgradient facility.[34] Despite this, the IS/MND misleadingly claims that there is no evidence indicating that the Project site has been involved in the storage, accidental release, or production of hazardous materials.[35] Because the Phase 1 ESA finds that the soil at the Project site is likely contaminated and does not rule out the existence of USTs or other hazardous conditions on the Project site, the IS/MND cannot conclude that the Project's impacts are less than significant without additional site-specific soil investigation and mitigation.

C-5

The IS/MND also fails to adequately address issues raised by the Department of Toxic Substances Control ("DTSC"). Based on its review of the IS/MND, DTSC recommended additional investigation and sampling (if necessary) before any groundbreaking activities commenced because "[t]here may be unidentified environmental concerns at the site."[36] DTSC also recommended preparation of a Soil Management Plan ("SMP") in case unforeseen contaminants were discovered.[37] Lastly, DTSC recommended sampling be conducted on any imported soil to ensure it is free of contamination.[38]

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[30] *Id*. at p. 27.
[31] *Id*. at p. 27 (a 1997 letter indicates that the two USTs contained 10,000-gallon diesel and 300-gallon waste oil).
[32] *Id*. at pp. 27-28.
[33] *Ibid*.
[34] *Id*. at pp. 29-30.
[35] IS/MND at p. 58.
[36] Letter to Maurice Brenyah-Addow, City of Pittsburg from Dave Kereazis, Department of Toxic Substances Control re: Mitigated Negative Declaration (MND) for the Oakstone Northern California Expansion Project, Dated October 13, 2023 State Clearinghouse # 2023100371 (Nov. 13, 2023) p. 2.
[37] *Ibid*.
[38] *Ibid*.

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In response to DTSC's comments, City staff did not revise the IS/MND or include additional mitigation measures addressing potential soil and/or groundwater contamination. Instead, the Staff Report included DTSC's three recommendations as conditions of approval.[39] This response does not alleviate the City from its obligations to disclose, analyze and mitigate potentially significant impacts in the IS/MND.

DTSC's comments demonstrate that the IS/MNDs fails to meaningfully analyze whether the proposed Project would create a significant hazard to the public or the environment through a reasonably foreseeable upset and accident conditions involving the release of hazardous materials to the environment. Moreover, inclusion of the DTSC's recommendations as conditions of approval further demonstrates that the Project could result in potentially significant hazard impacts requiring mitigation. Yet, the IS/MND lacks the requisite analysis, and as a result lacks substantial evidence to support the conclusion that the Project's hazard impacts are less than significant.

C-5

Moreover, neither the IS/MND, nor the Staff Report, address additional evidence produced after the release of the CEQA document that further supports the conclusion that there may be potentially significant hazard impacts resulting from the disturbance of existing soil contamination. Specifically, soil sampling at the Project site revealed hydrocarbon odors in several samples.[40] Testing of the soil detected low concentrations of diesel and motor oil in nearly all soil samples, and concentrations of arsenic and vanadium at levels above the San Francisco Regional Water Quality Control Board Tier 1 environmental screening levels ("ESLs") and commercial land use ESLs.[41] These findings, coupled with the Phase 1 ESA's conclusion that contaminated soils are likely present at the Project site and DTSC's comments that additional investigation of the Project site is needed, provide substantial evidence to support a fair argument that Project's impacts are potentially significant.

C-6

Finally, Dr. Fox's comments constitute substantial evidence supporting a fair argument that the Project would result in potentially significant health impacts from the on-site soil contamination. Dr. Fox concludes that Project construction would disturb contaminated soils, releasing hazardous air pollutants, including

[39] Staff Report at p. 12.
[40] Letter to Manual Gonzalez, Linde Engineering Americas from Stefanie Parman-Ribeiro, Baez Geotechnical Group re: Limited Soil Sampling and Analytical Testing of Soil with Detected Odor: Proposed Linde Air Separation Unit Facility Expansion 2000 Loveridge Road Pittsburg, California (July 26, 2023) p. 1.
[41] *Id*. at p. 2.

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arsenic.[42] As a result, the Project could cause potentially significant health hazard to on-site construction workers as well as nearby residents.[43] Dr. Fox bases her conclusion on the many inconsistencies between the IS/MND's summary of the Phase 1 ESA and the findings and conclusions contained in the Phase 1 ESA and findings from the soil analytical testing.[44]

C-6

In sum, the IS/MND ignores evidence showing that the Project site may contain hazardous conditions which could be disturbed by construction and operation activities. As a result, the IS/MND fails to meaningfully disclose, analyze, and mitigate the Project's potentially significant hazard impacts. Furthermore, substantial evidence supports a fair argument that the proposed Project would result in potentially significant health impacts from disturbance of on-site soil contamination.

C. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate Potentially Significant Impacts to Wetlands and Riparian Habitat

The proposed Project intends to receive take authorization coverage under the state and federal East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("HCP/NCCP").[45] The HCP/NCCP provides a framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts on endangered species.[46] If wetlands or other waters are present on the project site, the HCP/NCCP requires that a delineation of jurisdictional wetlands and waters be conducted to document the expected impacts that would result from the project.[47] A project will not receive coverage under the HCP/NCCP until it has properly mitigated the impacts on jurisdictional waters according to the terms of the HCP/NCCP, including compliance with Conservation Measure 2.12.[48]

C-7

[42] Fox Comments at p. 3.
[43] Fox Comments at p. 4.
[44] Fox Comments at pp. 3-4.
[45] IS/MND at pp. 25-26.
[46] IS/MND at p. 25; *see also* East Contra Costa County Habitat Conservation Plan Association, Final East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (Oct. 10, 2007) (hereinafter "HCP/NCCP") p. ES-1, *available at* https://www.cocohcp.org/DocumentCenter/View/1411/ECCC-HCP-NCCP---Vol-1-PDF-565-MB?bidId=.
[47] HCP/NCCP at p. 6-12.
[48] HCP/NCCP at p. 6-12.

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Conservation Measure 2.12 requires that all projects implement the following measures to avoid and minimize impacts of land disturbing activities on wetlands, ponds, streams, and riparian woodland/scrub:[49]

1. Applicants with streams on site must follow the stream setback requirements in Conservation Measure 1.7.
2. Applicants for coverage under the HCP/NCCP must follow the guidelines in Conservation Measure 1.10 to minimize the effects of urban development on downstream hydrology, streams, and wetlands.
3. All wetlands, ponds, streams and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by qualified biologists.
4. Buffer zones should be established where feasible between the aquatic resource and development. Required setbacks for streams are described in Conservation Measure 1.7. Credit for preservation of aquatic habitat will be given only if these features meet minimum distances from dense urban development.
5. Fencing will be erected between the outer edge of the buffer zone and the project area. The type of fencing will match the activity and impact types. For example, projects that have the potential to cause erosion will require erosion control barriers, and projects that may bring more household pets to a site should be fenced to keep the pets out. The temporal requirements for fencing also depend on the activity and impact type. For example, fencing for permanent impacts should be permanent, and fencing for short term impacts should be removed after the activity is completed.
6. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and permit obligations of the project proponents working under this HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
7. Trash generated by covered activities will promptly and properly be removed from the site.
8. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
9. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff

C-7

[49] HCP/NCCP at pp. 6-33 to 6-35.

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of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site.

10. Fiber rolls used for erosion control will be certified as free of noxious weed seed.
11. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
12. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures).
13. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

C-7

The HCP/NCCP explains that these avoidance and minimization measures are required to meet the biological objectives of the HCP/NCCP to avoid and minimize effects on wetlands, ponds, streams, and riparian woodland/scrub.[50] Because of the sensitivity of these aquatic land cover types, special avoidance and minimization measures are necessary.[51]

C-8

The IS/MND acknowledges that seasonal and perennial wetlands, drainage features, and riparian woodland are within the property lines, but claims the proposed Project would avoid impacts to these sensitive areas because they occur outside the permanent and temporary impact areas.[52] The IS/MND's discussion and analysis suffers from several fatal flaws.

[50] HCP/NCCP at p. 6-35.
[51] HCP/NCCP at p. 6-35.
[52] IS/MND at p. 31 ("No formal delineation covers the area west of the railroad tracks, which includes potential temporary impact area (staging area).").

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First, the IS/MND relies on an outdated delineation study that does not accurately define all potential jurisdictional wetlands in and around the Project site. An initial study must include a description of the project's environmental setting.[53] The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.[54] "The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts."[55]

C-8

While preparing an IS/MND necessarily involves some degree of forecasting, an agency must use its best efforts to find out and disclose all that it reasonably can.[56] If a lead finds that a particular impact is too speculative for evaluation after a thorough investigation, the agency should note its conclusion and terminate discussion of the impact.[57] But an agency is not allowed to hide behind its own failure to gather relevant data.[58]

Here, the City failed to perform a jurisdictional delineation survey for the entire Project site as required by the HCP/NCCP. While a jurisdictional delineation survey was performed in 2018 for portions of the site, a 2023 reconnaissance-level survey and habitat assessment acknowledge that the previously documented wetlands have likely increased over time.[59] Moreover, the IS/MND admits that no formal delineation survey covers the western portion of the Project site, which includes a proposed staging area, despite potential wetlands identified adjacent to the staging area.[60] Without a detailed inventory of current wetland boundaries, the IS/MND lacks substantial evidence to conclude that the Project entirely avoids impacts on wetlands.

C-9

Second, the IS/MND's impact analysis is misleading because it fails to identify and describe potential indirect impacts to wetlands and riparian habitat. When evaluating the significance of the environmental effect of a project, the lead agency must consider reasonably foreseeable indirect physical changes in the

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[53] CEQA Guidelines § 15063(d)(2).
[54] *Id.* § 15125(a); *see also Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 38 Cal. 4th 310, 320-21 (CEQA Guidelines § 15125(a) applies to an initial study).
[55] CEQA Guidelines § 15125(a).
[56] *Id.* § 15144 (emphasis added).
[57] *Id.* § 15145 (emphasis added).
[58] *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 408.
[59] IS/MND, appen. C, Application Form and Planning Survey Report: Oakstone Northern California Expansion Project (undated) p. 6.
[60] IS/MND at p. 31.

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environment which may be caused by the project.[61] An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project.[62] If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment.[63]

C-9

For example, construction activities such as grading, land clearing, or installation of drainage systems can alter water flow patterns, potentially affecting the natural water supply to wetlands. Construction sites also generate increased sedimentation and runoff, which can be carried into nearby wetlands and degrade water quality. Excessive sedimentation can smother aquatic habitats and negatively impact wetland vegetation. Increased truck traffic can also result in altered hydrology and increased potential for pollution runoff. Finally, excessive noise and vibrations from plant equipment may disrupt wildlife behavior and stress sensitive species in and around wetlands.

The IS/MND does not include any discussion or analysis of these potential indirect impacts despite construction and operational activities anticipated to occur only feet from protected wetlands and riparian habitat.[64] The lack of analysis is especially concerning given the Phase 1 ESA's conclusion that the Project site may contain contaminated soils or other hazards (such as USTs),[65] which could negatively impact nearby wetlands and riparian habitat if disturbed during Project construction and operation.

C-10

Third, the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands to less than significant. Unlike other HCP/NCCP measures which were incorporated into the IS/MND as mitigation,[66] none of the measures listed in Conservation Measure 2.12 were included as mitigation for the proposed Project. While the Planning Commission Staff Report identifies some (but not all) of the conservation measures,[67] none of the measures are included as conditions of approval or in the Mitigation Monitoring Reporting Program.

Instead, the IS/MND concludes that impacts to riparian habitat and protected wetlands are less than significant with Mitigation Measure ("MM") BIO-

[61] CEQA Guidelines § 15064(d).
[62] CEQA Guidelines § 15064(d)(2).
[63] CEQA Guidelines § 15064(d)(2).
[64] See IS/MND, appen. C, fig. 3 (Land Cover Map) (Agenda Packet, p. 368).
[65] Phase 1 ESA at pp. 27-28.
[66] *Compare* IS/ND at pp. 27-28 (Mitigation Measure BIO-1) *with* HCP/NCCP at pp. 6-40 to 6-41.
[67] *See* Staff Report at pp. 7-8.

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6.[68] MM BIO-6 states: "Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features.[69] MM BIO-6 constitutes improperly deferred mitigation.

Generally, it is inappropriate to defer formulation of mitigation measures to the future.[70] Deferred mitigation is only acceptable when the measure commits to implement the mitigation, adopts specific performance standards, and identifies the types of actions that may achieve compliance with the performance standards.[71] MM BIO-6 does not include any performance standards, nor does it identify the types of actions that may achieve compliance.

C-10

Moreover, future studies are only permissible when coupled with mitigation measures designed to address impacts identified by the study.[72] However, MM BIO-6 does not specify the conditions that would trigger the need for further mitigation should the aquatic resources delineation survey identify wetlands within permanent and temporary impact areas. Nor does the measure describe the steps that will be taken if further mitigation is required. As a result, the IS/MND lacks substantial evidence to conclude impacts to wetlands and riparian habitat are less than significant.

In sum, the IS/MND lacks substantial evidence to support the conclusion that the Project's impacts on riparian habitat and protected wetlands are less than significant and that the proposed Project does not conflict with the HCP/NCCP given the inadequate discussion of the existing environmental setting. Moreover, the IS/MND fails as an informational document because it fails to disclose potentially significant indirect impacts to wetlands and riparian habitat. Finally, the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands and riparian habitats to less than significant.

C-11

III. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in significant, unmitigated impacts to public health, on air quality and wetlands, and from hazardous materials. The Planning Commission should

C-12

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[68] IS/MND at p. 31.
[69] IS/MND at p. 31.
[70] CEQA Guidelines § 15126.4(a)(1)(B).
[71] CEQA Guidelines § 15126.4(a)(1)(B).
[72] *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 524.

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C-12 continue the public hearing and direct City staff to prepare an EIR that discloses, analyzes, and mitigates the Project's potentially significant environmental impacts.

Thank you for consideration of these comments.

Sincerely,

Andrew J. Graf

AJG:acp

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ATTACHMENT A

Phyllis Fox, PhD, PE
Environmental Management
745 White Pine Avenue
Rockledge, FL 32955

December 12, 2023

Andrew J. Graf
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

RE: Linde Oakstone NorCal Expansion Project Initial Study / Mitigated Negative Declaration

Dear Mr. Graf:

As you requested, I have reviewed the Linde Oakstone NorCal Expansion Project Initial Study/Mitigated Negative Declaration (IS/MND).[1] Linde, Inc., the Applicant, is proposing to expand their existing facility at 2000 Loveridge Road in Pittsburg, CA. The expanded facility would increase production of liquid nitrogen, oxygen, and argon and distribute the products by truck to the Bay Area, the Central Valley, and into nearby states. The products will be stored in three large tanks, transferred into bulk trucks, and then delivered into smaller tanks at customer locations.

The IS/MND concludes that all impacts are less than significant with incorporation of proposed mitigation measures, thus asserting an environmental impact report is not required for the Project. My review of the IS/MND and supporting documents indicates that the IS/MND fails to analyze impacts that are potentially significant and underestimates other impacts that are highly significant. The IS/MND does not include any analysis of most of the Project's major impacts, including risk of upset and construction worker health impacts. My review identifies the following impacts:

[1] Initial Study/Mitigated Negative Declaration for the Oakstone Northern California Expansion Project (IS/MND), October 2023, pdf 38-554; https://onbaseweb.pittsburgca.gov/OnBaseAgendaOnline/Documents/DownloadFileBytes/Planning_Commission_1092_Agenda_Packet_12_12_2023_7_00_00_PM.pdf?documentType=5&meetingId=1092&isAttachment=True.

- Construction worker health impacts from hazardous chemicals in Project soils that will be disturbed during construction were not evaluated and are potentially significant;
- Acute health impacts to on-site construction workers, off-site workers, and nearby residents during construction were not evaluated and are potentially significant; and
- Risk of upset impacts were not addressed and are potentially significant.

My resume is included in Exhibit 1 to these Comments. I have over 50 years of experience in the field of environmental engineering, including air emissions and air pollution control; greenhouse gas (GHG) emission inventory and control; water quality and water supply investigations; hazardous waste investigations; hazard investigations; risk of upset modeling; environmental permitting; nuisance investigations (odor, noise); health risk assessments; EIRs; and litigation support. I have reviewed and commented on hundreds of CEQA documents and air permit applications, including for tank farms, refineries, solar and wind facilities, geothermal facilities, ethanol plants, oil and gas production, quarries, terminals, ports, battery energy storage systems, and many other industrial facilities. I have MS and PhD degrees in environmental engineering from the University of California at Berkeley. I am a licensed professional engineer (chemical) in California. My work has been cited in two published CEQA opinions: (1) *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (2001) 111 Cal. Rptr. 2d 598 and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310 and has supported the record in many other CEQA cases.

HEALTH RISKS ARE SIGNIFICANT

The IS/MND failed to evaluate health impacts to on-site construction workers and off-site workers and residents from on-site soil contamination. While the IS/MND conducted a health risk assessment (HRA) for Project construction and operation, which evaluated cancer and chronic health impacts to off-site receptors from construction and operational emissions,[2] the HRA fails to address all of the health impacts of Project construction because it failed to evaluate acute health impacts from diesel particulate matter (DPM) to on-site and off-site construction workers, the nearest sensitive receptors. Finally, the IS/MND failed to disclose and analyze the risks of potential upset on construction workers, off-site workers, and nearby residents.

[2] IS/MND, Section 2.0, Health Risk Assessment, pdf 237-274.

Health Impacts from On-Site Soil Contamination

The IS/MND concludes that the Project would not create a significant hazard to the public or the environment based on the Phase 1 Environmental Site Assessment Report (ESA). The IS/MND summarizes the conclusion from the ESA as follows:[3]

> A Phase 1 Environmental Site Assessment (Phase 1) was prepared for the Project site in March 2023 and identified three data gaps that were considered recognized environmental conditions (REC) associated with the Project site (CEC, 2023). First, the Phase 1 identified a data gap regarding insufficient information on a Linde facility ditch cleanup that was conducted in 1984. Second, the Phase 1 found insufficient information detailing the removal of former underground storage tanks from the Linde Inc. plant and LG&E facilities to the south and east. Third, the Phase 1 noted the potential for offsite contaminants from the Caltrans surface water/highway runoff that flows into a drainage ditch that traverses the Project site. Stormwater discharge from the Caltrans lift station flows into the ditch and could convey contaminated water and sediment (i.e., residual metals and petroleum) across the Project site. Therefore, the Phase 1 identified this as a potential source for onsite deposition of contaminants. The Phase 1 did not identify RECs originating from the Project site based on the absence of available evidence (i.e., staining, stressed vegetation, odors, or a reported release) confirming an onsite release of contaminants.

Specifically, on page 58 of the IS/MND the IS/MND states: "Furthermore, it is very likely that, despite the contradictory information in the databases, the nine petroleum underground storage tanks are located on the developed Linde Inc. properties to the east and south of the Project site. There is no evidence presented in the Phase 1 indicating that the vacant portion of the parcel that is considered the Project site has been involved in the storage, accidental release, or production of hazardous waste or materials and that it could create a significant hazard to the public or environment."[4]

However, in contrast, the Phase 1 ESA (at page 30), states: "As no maps or other related details were available from the Linde Facility former UST [underground storage tank] removals or early 1980s ditch cleanups, it remains unclear where in relation to the Subject Property these former USTs and ditches were, and if any new samples collected would meet the current regulatory requirements. Given these concerns, and the fact that the Subject Property is likely downgradient from the Linde Facility, CEC considers these data gaps as significant, and a REC identified given the likelihood of some residual impacts to soil and/or groundwater."

The Phase 1 ESA goes on to conclude: "CEC identified a significant data gap (i.e., lack of information/details regarding the Linde Facility ditch cleanup and former Linde Facility UST removals), as a REC given the likelihood of some residual impacts to soil and/or groundwater from the documented 1980s Linde facility ditch cleanup and the documented former UST releases from the likely upgradient Linde Facility."

Moreover, in soil analytic testing (see attached), odor was observed in some soil samples that were taken from the Project site. Some of the samples were reported to

[3] IS/MND, pdf 97-98.
[4] IS/MND, pdf 99.

have detectable concentrations of some heavy metals, TPH Diesel, and TPH Motor Oil; however, nearly all the detected constituents were reported at levels below the SFBRWQCB Tier 1 ESLs, with the exception of Arsenic and Vanadium. The report concludes that the reported detections of TPH Diesel and Motor Oil are the likely source of the odor observed by the sampling technicians.

Given these contradictions, Project construction, which would disturb contaminated soils, releasing hazardous air pollutants (HAPs), could cause a potentially significant health hazard to on-site construction workers and off-site parties, including residents of at the Edgewater Apartment Complex 800 feet from the Project and workers at the Linde Welding Gas & Equipment Center property.[5] Arsenic, for example, is a confirmed carcinogen. Immediate symptoms of acute arsenic poisoning include vomiting, abdominal pain and diarrhea, followed by numbness and tingling of the extremities, muscle cramping and death, in extreme cases.[6] This is a potentially significant impact that was not addressed in the IS/MND, which thus fails as an informational document under CEQA.

Worker Acute Health Impacts from Diesel Particulate Matter

Construction equipment emits diesel particulate matter (DPM), which is a HAP. DPM is a potent human carcinogen.[7,8] It is also chronically[9] and acutely[10] toxic. OEHHA has concluded that "[e]xposure to diesel exhaust can have immediate health effects," which include "inflammation in the lungs, which may aggravate chronic

[5] IS/MND, pdf 247.
[6] World Health Organization, Arsenic: Key Facts, December 7, 2022; https://www.who.int/news-room/fact-sheets/detail/arsenic#:~:text=Long%2Dterm%20exposure%20to%20arsenic,increased%20deaths%20in%20young%20adults.
[7] Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); https://oehha.ca.gov/media/CPFs042909.pdf and OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[8] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also: OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.
[9] OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, June 28, 2016; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.
[10] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

respiratory symptoms and increase the frequency or intensity of asthma attacks."[11] The emission of DPM during construction should have triggered a construction health risk assessment that included construction workers and workers at the adjacent businesses as sensitive receptors. A health risk assessment was conducted, but it excluded these nearby sensitive receptors, thus failing as an informational document under CEQA.

Construction workers have the greatest risk. Construction workers are the nearest sensitive receptors. They are adjacent to DPM emissions because they operate and maintain the equipment that emits DPM. Further, there are nearby sensitive receptors that would be exposed to construction emissions, including workers at adjacent facilities.

Short-term exposures of 1–hour, known as acute exposures, are routinely evaluated in health risk assessments using Reference Exposure Levels or RELs. An acute REL "is an exposure that is not likely to cause adverse health effects in a human population, including sensitive subgroups, exposed to that concentration (in units of micrograms per cubic meter or $\mu g/m^3$) for the specified exposure duration on an intermittent basis."[12]

There are three types of health impacts – cancer, chronic, and acute. The IS/MND evaluated the chronic and cancer health impacts of construction and operational emissions only to off-site receptors, located at the Edgewater Apartment Complex 800 feet from the Project and workers at the Linde Welding Gas & Equipment Center property.[13] However, the most impacted sensitive receptors are construction workers and workers at the facility itself. On-site workers are not exempt from CEQA.

There are two noncancer hazard indices: chronic (long-term) and acute (1-hour). The most likely health impacts would be acute health impacts to on-site construction and operational workers due to their proximity to the source of emissions. The IS/MND failed to evaluate acute health impacts to any receptor and failed to evaluate any health impacts to construction workers and on-site operational workers, thus failing as an informational document under CEQA.

The California Office of Environmental Health Hazard Assessment (OEHHA) has established a chronic reference exposure level (REL) for DPM but not an acute REL. Acute health impacts occur over a 1-hour exposure time. The OEHHA and BAAQMD have not established an acute REL for DPM, but other agencies have. The BAAQMD significance threshold for acute impacts from "…new sources and receptors (individual

[11] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.
[12] OEHHA, Risk Assessment Guidelines. Guidance Manual for Preparation of Health Risk Assessments, February 2015, p. 6-3; https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.
[13] IS/MND, pdf 247.

project)…Increased Non-cancer>1.0 Hazard Index (chronic or acute")".[14] The BAAQMD and OEHHA risk guidance do not require the use of an OEHHA acute hazard index. The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks.

In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since OEHHA last evaluated health impacts of DPM in 1998,[15] substantial additional research has been conducted on acute health impacts of DPM.[16] Based on this more current research, Canada recently established an acute REL for DPM of 10 $\mu g/m^3$ to protect against adverse effects on the respiratory system.[17] There is no regulation or guidance requiring that only OEHHA RELs be used in California health risk assessments. The Initial Study should have evaluated acute impacts of DPM to construction and operational workers. Based on my experience in many other projects with similar construction activities, equipment and timeline, acute health impacts to on-site construction workers from exposure to DPM emissions during Project construction are typically significant and unmitigated.

Risk of Upset Impacts Were Not Evaluated

The IS/MND discloses that "…the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the Contra Costa County Fire Protection District (CCCFPD) for training and tours of their existing facility and will continue to do so for the proposed expansion."[18] Elsewhere, the IS/MND asserts, with no support, as follows:

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[14] BAAQMD, Bay Area Air Quality Management District California Environmental Quality Act Air Quality Guidelines (2022 CEQA Guidelines); https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-3-thresholds_final_v2-pdf.pdf?rev=a976830cce0c4a6bb624b020f72d25b3&sc_lang=en.

[15] Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf.

[16] See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/.

[17] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

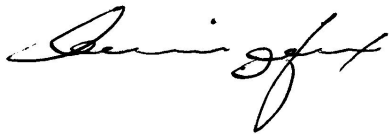
[18] IS/MND, pdf 50, 120.

> **Less-than-Significant Impact.** Once developed, the Project site would be served by the CCCFPD. The existing facility is already served by the CCCFPD and the Project is not expected to result in an increase in calls for fire and emergency protection services that would warrant changes to fire protection service ratios and/or response times. Though the products created are not poisonous and are nontoxic and nonflammable, the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the CCCFPD for training and tours of the existing facility and would continue to do so for the Project. Therefore, the Project would result in a less-than-significant impact.

The IS/MND fails to disclose the nature of these "hazards" and fails to evaluate their impact on construction workers, operational workers at the facility, and off-site sensitive receptors, failing as an informational document under CEQA.

In sum, the Project described in the IS/MND will result in significant impacts that were not disclosed in the IS/MND, which thus fails as an informational document under CEQA.

Sincerely,



Phyllis Fox, Ph.D., PE

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Dr. Fox has over 40 years of experience in the field of environmental engineering, including air pollution control (BACT, BART, MACT, LAER, RACT), greenhouse gas emissions and control, cost effectiveness analyses, water quality and water supply investigations, hydrology, hazardous waste investigations, environmental permitting, nuisance investigations (odor, noise), environmental impact reports, CEQA/NEPA documentation, risk assessments, and litigation support.

EDUCATION

Ph.D. Environmental/Civil Engineering, University of California, Berkeley, 1980.
M.S. Environmental/Civil Engineering, University of California, Berkeley, 1975.
B.S. Physics (with high honors), University of Florida, Gainesville, 1971.

REGISTRATION

Registered Professional Engineer: Arizona (2001-2014: #36701; retired), California (2002-present; CH 6058), Florida (2001-2016; #57886; retired), Georgia (2002-2014; #PE027643; retired), Washington (2002-2014; #38692; retired), Wisconsin (2005-2014; #37595-006; retired)
Board Certified Environmental Engineer, American Academy of Environmental Engineers,
Certified in Air Pollution Control (DEE #01-20014), 2002-2014; retired)
Qualified Environmental Professional (QEP), Institute of Professional Environmental Practice (QEP #02-010007, 2001-2015: retired).

PROFESSIONAL HISTORY

Environmental Management, Principal, 1981-present
Lawrence Berkeley National Laboratory, Principal Investigator, 1977-1981
University of California, Berkeley, Program Manager, 1976-1977
Bechtel, Inc., Engineer, 1971-1976, 1964-1966

PROFESSIONAL AFFILIATIONS

American Chemical Society (1981-2010)
Phi Beta Kappa (1970-present)
Sigma Pi Sigma (1970-present)
Who's Who Environmental Registry, PH Publishing, Fort Collins, CO, 1992.
Who's Who in the World, Marquis Who's Who, Inc., Chicago, IL, 11th Ed., p. 371, 1993-present.

Who's Who of American Women, Marquis Who's Who, Inc., Chicago, IL, 13th Ed., p. 264, 1984-present.
Who's Who in Science and Engineering, Marquis Who's Who, Inc., New Providence, NJ, 5th Ed., p. 414, 1999-present.
Who's Who in America, Marquis Who's Who, Inc., 59th Ed., 2005.
Guide to Specialists on Toxic Substances, World Environment Center, New York, NY, p. 80, 1980.
National Research Council Committee on Irrigation-Induced Water Quality Problems (Selenium), Subcommittee on Quality Control/Quality Assurance (1985-1990).
National Research Council Committee on Surface Mining and Reclamation, Subcommittee on Oil Shale (1978-80)

REPRESENTATIVE EXPERIENCE

Performed environmental and engineering investigations, as outlined below, for a wide range of industrial and commercial facilities including: biomass, gas, and oil-fire boilers; petroleum refineries and upgrades thereto; reformulated fuels projects; refinery upgrades to process heavy sour crudes, including tar sands and light sweet crudes from the Eagle Ford and Bakken Formations; petroleum, gasoline and ethanol distribution terminals; coal, coke, and ore/mineral export terminals; LNG export, import, and storage terminals; crude-by-rail projects; shale oil plants; crude oil/condensate marine and rail terminals; coal gasification and liquefaction plants; oil and gas production, including conventional, thermally enhanced, hydraulic fracking, and acid stimulation techniques; underground storage tanks; pipelines; compressor stations; gasoline stations; landfills; railyards; hazardous waste treatment facilities; nuclear, hydroelectric, geothermal, wood, biomass, waste, tire-derived fuel, gas, oil, coke and coal-fired power plants; wind farms; solar energy facilities; battery energy storage systems (BESS); transmission lines; airports; hydrogen plants, including waste to hydrogen plants; petroleum coke calcining plants; coke plants; activated carbon manufacturing facilities; asphalt plants; cement plants; incinerators; flares; manufacturing facilities (e.g., semiconductors, electronic assembly, aerospace components, printed circuit boards, amusement park rides); lanthanide processing plants; lithium extraction from mining wastes and geothermal fluids; ammonia plants; nitric acid plants; urea plants; food processing plants; wineries; almond hulling facilities; composting facilities; grain processing facilities; grain elevators; ethanol production facilities; soy bean oil extraction plants; biodiesel plants; paint formulation plants; wastewater treatment plants; marine terminals and ports; gas processing plants; steel mills; iron nugget production facilities; pig iron plant, based on blast furnace technology; direct reduced iron plant; acid regeneration facilities; railcar refinishing facility; battery manufacturing plants; pesticide manufacturing and repackaging facilities; pulp and paper mills; olefin plants; methanol plants; ethylene crackers; alumina plants, desalination plants; data centers; covered lagoon anaerobic digesters with biogas generators and upgrading equipment to produce renewable natural gas and electricity; selective catalytic reduction (SCR)

systems; selective noncatalytic reduction (SNCR) systems; halogen acid furnaces; contaminated property redevelopment projects (e.g., Mission Bay, Southern Pacific Railyards, Moscone Center expansion, San Diego Padres Ballpark); residential developments; commercial office parks, campuses, and shopping centers; server farms; transportation plans; and a wide range of mines including sand and gravel, hard rock, limestone, nacholite, coal, molybdenum, gold, zinc, and oil shale.

EXPERT WITNESS/LITIGATION SUPPORT

- For plaintiffs-intervenors (Sierra Club), in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications at Rush Island Units 1 and 2 and Labadie Energy Center, assist counsel in evaluating best available control technology (BACT) to reduce SO2 emissions, including wet and dry scrubbing, sorbent injection, and offsets. Case settled. *U.S. and Sierra Club vs. Ameren Missouri*, Case No. 4-11 CV 77 RWS, U.S. District Court, Eastern District of Missouri, Eastern Division, September 30, 2019.
- For the California Attorney General, assist in determining compliance with probation terms in the matter of People v. Chevron USA.
- For plaintiffs, assist in developing Petitioners' proof brief for National Parks Conservation Association et al v. U.S. EPA, Petition for Review of Final Administrative Action of the U.S. EPA, In the U.S. Court of Appeals for the Third Circuit, Docket No. 14-3147.
- For plaintiffs, expert witness in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1997-2000) at the Cemex cement plant in Lyons, Colorado. Reviewed produced documents, prepared expert and rebuttal reports on PSD applicability based on NOx emission calculations for a collection of changes considered both individually and collectively. Deposed August 2011. *United States v. Cemex, Inc.*, In U.S. District Court for the District of Colorado (Civil Action No. 09-cv-00019-MSK-MEH). Case settled June 13, 2013.
- For plaintiffs, in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1988 – 2000) at James De Young Units 3, 4, and 5. Reviewed produced documents, analyzed CEMS and EIA data, and prepared netting and BACT analyses for NOx, SO2, and PM10 (PSD case). Expert report February 24, 2010 and affidavit February 20, 2010. *Sierra Club v. City of Holland, et al.*, U.S. District Court, Western District of Michigan (Civil Action 1:08-cv-1183). Case settled. Consent Decree 1/19/14.
- For plaintiffs, in civil action alleging failure to obtain MACT permit, expert on potential to emit hydrogen chloride (HCl) from a new coal-fired boiler. Reviewed record, estimated HCl emissions, wrote expert report June 2010 and March 2013 (Cost to Install a Scrubber at the Lamar Repowering Project Pursuant to Case-by-Case MACT), deposed August 2010 and

March 2013. *Wildearth Guardian et al. v. Lamar Utilities Board*, Civil Action No. 09-cv-02974, U.S. District Court, District of Colorado. Case settled August 2013.

- For plaintiffs, expert witness on permitting, emission calculations, and wastewater treatment for coal-to-gasoline plant. Reviewed produced documents. Assisted in preparation of comments on draft minor source permit. Wrote two affidavits on key issues in case. Presented direct and rebuttal testimony 10/27 - 10/28/10 on permit enforceability and failure to properly calculate potential to emit, including underestimate of flaring emissions and omission of VOC and CO emissions from wastewater treatment, cooling tower, tank roof landings, and malfunctions. *Sierra Club, Ohio Valley Environmental Coalition, Coal River Mountain Watch, West Virginia Highlands Conservancy v. John Benedict, Director, Division of Air Quality, West Virginia Department of Environmental Protection and TransGas Development System, LLC*, Appeal No. 10-01-AQB. Virginia Air Quality Board remanded the permit on March 28, 2011 ordering reconsideration of potential to emit calculations, including: (1) support for assumed flare efficiency; (2) inclusion of startup, shutdown and malfunction emissions; and (3) inclusion of wastewater treatment emissions in potential to emit calculations.
- For plaintiffs, expert on BACT emission limits for gas-fired combined cycle power plant. Prepared declaration in support of CBE's Opposition to the United States' Motion for Entry of Proposed Amended Consent Decree. Assisted in settlement discussions. *U.S. EPA, Plaintiff, Communities for a Better Environment, Intervenor Plaintiff, v. Pacific Gas & Electric Company, et al.*, U.S. District Court, Northern District of California, San Francisco Division, Case No. C-09-4503 SI.
- Technical expert in confidential settlement discussions with large coal-fired utility on BACT control technology and emission limits for NOx, SO2, PM, PM2.5, and CO for new natural gas fired combined cycle and simple cycle turbines with oil backup. (July 2010). Case settled.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1998-99) at Gallagher Units 1 and 3. Reviewed produced documents, prepared expert and rebuttal reports on historic and current-day BACT for SO2, control costs, and excess emissions of SO2. Deposed 11/18/09. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Settled 12/22/09.
- For plaintiffs, expert witness on MACT, BACT for NOx, and enforceability in an administrative appeal of draft state air permit issued for four 300-MW pet-coke-fired CFBs. Reviewed produced documents and prepared prefiled testimony. Deposed 10/8/09 and 11/9/09. Testified 11/10/09. *Application of Las Brisas Energy Center, LLC for State Air Quality Permit*; before the State Office of Administrative Hearings, Texas. Permit remanded 3/29/10 as LBEC failed to meet burden of proof on a number of issues including MACT.

Texas Court of Appeals dismissed an appeal to reinstate the permit. The Texas Commission on Environmental Quality and Las Brisas Energy Center, LLC sought to overturn the Court of Appeals decision but moved to have their appeal dismissed in August 2013.

- For defense, expert witness in unlawful detainer case involving a gasoline station, minimart, and residential property with contamination from leaking underground storage tanks. Reviewed agency files and inspected site. Presented expert testimony on July 6, 2009, on causes of, nature and extent of subsurface contamination. *A. Singh v. S. Assaedi,* in Contra Costa County Superior Court, CA. Settled August 2009.
- For plaintiffs, expert witness on netting and enforceability for refinery being upgraded to process tar sands crude. Reviewed produced documents. Prepared expert and rebuttal reports addressing use of emission factors for baseline, omitted sources including coker, flares, tank landings and cleaning, and enforceability. Deposed. *In the Matter of Objection to the Issuance of Significant Source Modification Permit No. 089-25484-00453 to BP Products North America Inc., Whiting Business Unit, Save the Dunes Council, Inc., Sierra Club., Inc., Hoosier Environmental Council et al., Petitioners, B. P. Products North American, Respondents/Permittee,* before the Indiana Office of Environmental Adjudication. Case settled.
- For plaintiffs, expert witness on BACT, MACT, and enforceability in appeal of Title V permit issued to 600 MW coal-fired power plant burning Powder River Basin coal. Prepared technical comments on draft air permit. Reviewed record on appeal, drafted BACT, MACT, and enforceability pre-filed testimony. Drafted MACT and enforceability pre-filed rebuttal testimony. Deposed March 24, 2009. Testified June 10, 2009. *In Re: Southwestern Electric Power Company*, Arkansas Pollution Control and Ecology Commission, Consolidated Docket No. 08-006-P. Recommended Decision issued December 9, 2009 upholding issued permit. Commission adopted Recommended Decision January 22, 2010.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1989-1992) at Wabash Units 2, 3 and 5. Reviewed produced documents, prepared expert and rebuttal report on historic and current-day BACT for NOx and SO2, control costs, and excess emissions of NOx, SO2, and mercury. Deposed 10/21/08. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Testified 2/3/09. Memorandum Opinion & Order 5-29-09 requiring shutdown of Wabash River Units 2, 3, 5 by September 30, 2009, run at baseline until shutdown, and permanently surrender SO2 emission allowances.
- For plaintiffs, expert witness in liability phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for three historic modifications (1997-2001) at two portland cement plants involving three cement kilns. Reviewed produced documents, analyzed CEMS data covering subject period, prepared netting analysis for NOx, SO_2 and CO, and prepared expert and rebuttal reports. *United States v. Cemex California*

Cement, In U.S. District Court for the Central District of California, Eastern Division, Case No. ED CV 07-00223-GW (JCRx). Settled 1/15/09.

- For intervenors Clean Wisconsin and Citizens Utility Board, prepared data requests, reviewed discovery and expert report. Prepared prefiled direct, rebuttal and surrebuttal testimony on cost to extend life of existing Oak Creek Units 5-8 and cost to address future regulatory requirements to determine whether to control or shutdown one or more of the units. Oral testimony 2/5/08. Application for a Certificate of Authority to Install Wet Flue Gas Desulfurization and Selective Catalytic Reduction Facilities and Associated Equipment for Control of Sulfur Dioxide and Nitrogen Oxide Emissions at Oak Creek Power Plant Units 5, 6, 7 and 8, WPSC Docket No. 6630-CE-299.
- For plaintiffs, expert witness on alternatives analysis and BACT for NOx, SO2, total PM10, and sulfuric acid mist in appeal of PSD permit issued to 1200 MW coal fired power plant burning Powder River Basin and/or Central Appalachian coal (Longleaf). Assisted in drafting technical comments on NOx on draft permit. Prepared expert disclosure. Presented 8+ days of direct and rebuttal expert testimony. Attended all 21 days of evidentiary hearing from 9/5/07 – 10/30/07 assisting in all aspects of hearing. *Friends of the Chatahooche and Sierra Club v. Dr. Carol Couch, Director, Environmental Protection Division of Natural Resources Department, Respondent, and Longleaf Energy Associates, Intervener*. ALJ Final Decision 1/11/08 denying petition. ALJ Order vacated & remanded for further proceedings, Fulton County Superior Court, 6/30/08. Court of Appeals of GA remanded the case with directions that the ALJ's final decision be vacated to consider the evidence under the correct standard of review, July 9, 2009. The ALJ issued an opinion April 2, 2010 in favor of the applicant. Final permit issued April 2010.
- For plaintiffs, expert witness on diesel exhaust in inverse condemnation case in which Port expanded maritime operations into residential neighborhoods, subjecting plaintiffs to noise, light, and diesel fumes. Measured real-time diesel particulate concentrations from marine vessels and tug boats on plaintiffs' property. Reviewed documents, depositions, DVDs, and photographs provided by counsel. Deposed. Testified October 24, 2006. *Ann Chargin, Richard Hackett, Carolyn Hackett, et al. v. Stockton Port District*, Superior Court of California, County of San Joaquin, Stockton Branch, No. CV021015. Judge ruled for plaintiffs.
- For plaintiffs, expert witness on NOx emissions and BACT in case alleging failure to obtain necessary permits and install controls on gas-fired combined-cycle turbines. Prepared and reviewed (applicant analyses) of NOx emissions, BACT analyses (water injection, SCR, ultra low NOx burners), and cost-effectiveness analyses based on site visit, plant operating records, stack tests, CEMS data, and turbine and catalyst vendor design information. Participated in negotiations to scope out consent order. *United States v. Nevada Power.* Case settled June 2007, resulting in installation of dry low NOx burners (5 ppm NOx averaged over 1 hr) on four units and a separate solar array at a local business.

- For plaintiffs, expert witness in appeal of PSD permit issued to 850 MW coal fired boiler burning Powder River Basin coal (Iatan Unit 2) on BACT for particulate matter, sulfuric acid mist and opacity and emission calculations for alleged historic violations of PSD. Assisted in drafting technical comments, petition for review, discovery requests, and responses to discovery requests. Reviewed produced documents. Prepared expert report on BACT for particulate matter. Assisted with expert depositions. Deposed February 7, 8, 27, and 28, 2007. *In Re PSD Construction Permit Issued to Great Plains Energy, Kansas City Power & Light – Iatan Generating Station, Sierra Club v. Missouri Department of Natural Resources, Great Plains Energy, and Kansas City Power & Light.* Case settled March 27, 2007, providing offsets for over 6 million ton/yr of CO2 and lower NOx and SO_2 emission limits.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications of coal-fired boilers and associated equipment. Reviewed produced documents, prepared expert report on cost to retrofit 24 coal-fired power plants with scrubbers designed to remove 99% of the sulfur dioxide from flue gases. Prepared supplemental and expert report on cost estimates and BACT for SO2 for these 24 complaint units. Deposed 1/30/07 and 3/14/07. *United States and State of New York et al. v. American Electric Power*, In U.S. District Court for the Southern District of Ohio, Eastern Division, Consolidated Civil Action Nos. C2-99-1182 and C2-99-1250. Settlement announced 10/9/07.
- For plaintiffs, expert witness on BACT, enforceability, and alternatives analysis in appeal of PSD permit issued for a 270-MW pulverized coal fired boiler burning Powder River Basin coal (City Utilities Springfield Unit 2). Reviewed permitting file and assisted counsel draft petition and prepare and respond to interrogatories and document requests. Reviewed interrogatory responses and produced documents. Assisted with expert depositions. Deposed August 2005. Evidentiary hearings October 2005. *In the Matter of Linda Chipperfield and Sierra Club v. Missouri Department of Natural Resources.* Missouri Supreme Court denied review of adverse lower court rulings August 2007.
- For plaintiffs, expert witness in civil action relating to plume touchdowns at AEP's Gavin coal-fired power plant. Assisted counsel draft interrogatories and document requests. Reviewed responses to interrogatories and produced documents. Prepared expert report "Releases of Sulfuric Acid Mist from the Gavin Power Station." The report evaluates sulfuric acid mist releases to determine if AEP complied with the requirements of CERCLA Section 103(a) and EPCRA Section 304. This report also discusses the formation, chemistry, release characteristics, and abatement of sulfuric acid mist in support of the claim that these releases present an imminent and substantial endangerment to public health under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"). *Citizens Against Pollution v. Ohio Power Company*, In the U.S. District Court for the Southern District of Ohio, Eastern Division, Civil Action No. 2-04-cv-371. Case settled 12-8-06.

- For petitioners, expert witness in contested case hearing on BACT, enforceability, and emission estimates for an air permit issued to a 500-MW supercritical Power River Basin coal-fired boiler (Weston Unit 4). Assisted counsel prepare comments on draft air permit and respond to and draft discovery. Reviewed produced file, deposed (7/05), and prepared expert report on BACT and enforceability. Evidentiary hearings September 2005. *In the Matter of an Air Pollution Control Construction Permit Issued to Wisconsin Public Service Corporation for the Construction and Operation of a 500 MW Pulverized Coal-fired Power Plant Known as Weston Unit 4 in Marathon County, Wisconsin*, Case No. IH-04-21. The Final Order, issued 2/10/06, lowered the NOx BACT limit from 0.07 lb/MMBtu to 0.06 lb/MMBtu based on a 30-day average, added a BACT SO2 control efficiency, and required a 0.0005% high efficiency drift eliminator as BACT for the cooling tower. The modified permit, including these provisions, was issued 3/28/07. Additional appeals in progress.
- For plaintiffs, adviser on technical issues related to Citizen Suit against U.S. EPA regarding failure to update New Source Performance Standards for petroleum refineries, 40 CFR 60, Subparts J, VV, and GGG. *Our Children's Earth Foundation and Sierra Club v. U.S. EPA et al.* Case settled July 2005. CD No. C 05-00094 CW, U.S. District Court, Northern District of California – Oakland Division. Proposed revisions to standards of performance for petroleum refineries published 72 FR 27178 (5/14/07).
- For interveners, reviewed proposed Consent Decree settling Clean Air Act violations due to historic modifications of boilers and associated equipment at two coal-fired power plants. In response to stay order, reviewed the record, selected one representative activity at each of seven generating units, and analyzed to identify CAA violations. Identified NSPS and NSR violations for NOx, SO_2, PM/PM10, and sulfuric acid mist. Summarized results in an expert report. *United States of America, and Michael A. Cox, Attorney General of the State of Michigan, ex rel. Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors, v. Wisconsin Electric Power Company, Defendant*, U.S. District Court for the Eastern District of Wisconsin, Civil Action No. 2:03-CV-00371-CNC. Order issued 10-1-07 denying petition.
- For a coalition of Nevada labor organizations (ACE), reviewed preliminary determination to issue a Class I Air Quality Operating Permit to Construct and supporting files for a 250-MW pulverized coal-fired boiler (Newmont). Prepared about 100 pages of technical analyses and comments on BACT, MACT, emission calculations, and enforceability. Assisted counsel draft petition and reply brief appealing PSD permit to U.S. EPA Environmental Appeals Board (EAB). Order denying review issued 12/21/05. *In re Newmont Nevada Energy Investment, LLC, TS Power Plant*, PSD Appeal No. 05-04 (EAB 2005).
- For petitioners and plaintiffs, reviewed and prepared comments on air quality and hazardous waste based on negative declaration for refinery ultra low sulfur diesel project located in SCAQMD. Reviewed responses to comments and prepared responses. Prepared declaration and presented oral testimony before SCAQMD Hearing Board on exempt sources (cooling towers) and calculation of potential to emit under NSR. Petition for writ of mandate filed

March 2005. Case remanded by Court of Appeals to trial court to direct SCAQMD to re-evaluate the potential environmental significance of NOx emissions resulting from the project in accordance with court's opinion. California Court of Appeals, Second Appellate Division, on December 18, 2007, affirmed in part (as to baseline) and denied in part. *Communities for a Better Environment v. South Coast Air Quality Management District and ConocoPhillips and Carlos Valdez et al v. South Coast Air Quality Management District and ConocoPhillips.* Certified for partial publication 1/16/08. Appellate Court opinion upheld by CA Supreme Court 3/15/10. *(2010) 48 Cal.4th 310*.

- For amici seeking to amend a proposed Consent Decree to settle alleged NSR violations at Chevron refineries, reviewed proposed settlement, related files, subject modifications, and emission calculations. Prepared declaration on emission reductions, identification of NSR and NSPS violations, and BACT/LAER for FCCUs, heaters and boilers, flares, and sulfur recovery plants. *U.S. et al. v. Chevron U.S.A.*, Northern District of California, Case No. C 03-04650. Memorandum and Order Entering Consent Decree issued June 2005. Case No. C 03-4650 CRB.
- For petitioners, prepared declaration on enforceability of periodic monitoring requirements, in response to EPA's revised interpretation of 40 CFR 70.6(c)(1). This revision limited additional monitoring required in Title V permits. 69 FR 3203 (Jan. 22, 2004). *Environmental Integrity Project et al. v. EPA* (U.S. Court of Appeals for the District of Columbia). Court ruled the Act requires all Title V permits to contain monitoring requirements to assure compliance. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).
- For interveners in application for authority to construct a 500 MW supercritical coal-fired generating unit before the Wisconsin Public Service Commission, prepared pre-filed written direct and rebuttal testimony with oral cross examination and rebuttal on BACT and MACT (Weston 4). Prepared written comments on BACT, MACT, and enforceability on draft air permit for same facility.
- For property owners in Nevada, evaluated the environmental impacts of a 1,450-MW coal-fired power plant proposed in a rural area adjacent to the Black Rock Desert and Granite Range, including emission calculations, air quality modeling, comments on proposed use permit to collect preconstruction monitoring data, and coordination with agencies and other interested parties. Project cancelled.
- For environmental organizations, reviewed draft PSD permit for a 600-MW coal-fired power plant in West Virginia (Longview). Prepared comments on permit enforceability; coal washing; BACT for SO_2 and PM10; Hg MACT; and MACT for HCl, HF, non-Hg metallic HAPs, and enforceability. Assist plaintiffs draft petition appealing air permit. Retained as expert to develop testimony on MACT, BACT, offsets, enforceability. Participate in settlement discussions. Case settled July 2004.
- For petitioners, reviewed record produced in discovery and prepared affidavit on emissions of carbon monoxide and volatile organic compounds during startup of GE 7FA combustion

turbines to successfully establish plaintiff standing. *Sierra Club et al. v. Georgia Power Company* (Northern District of Georgia).

- For building trades, reviewed air quality permitting action for 1500-MW coal-fired power plant before the Kentucky Department for Environmental Protection (Thoroughbred).
- For petitioners, expert witness in administrative appeal of the PSD/Title V permit issued to a 1500-MW coal-fired power plant. Reviewed over 60,000 pages of produced documents, prepared discovery index, identified and assembled plaintiff exhibits. Deposed. Assisted counsel in drafting discovery requests, with over 30 depositions, witness cross examination, and brief drafting. Presented over 20 days of direct testimony, rebuttal and sur-rebuttal, with cross examination on BACT for NOx, SO_2, and PM/PM10; MACT for Hg and non-Hg metallic HAPs; emission estimates for purposes of Class I and II air modeling; risk assessment; and enforceability of permit limits. Evidentiary hearings from November 2003 to June 2004. *Sierra Club et al. v. Natural Resources & Environmental Protection Cabinet, Division of Air Quality and Thoroughbred Generating Company et al.* Hearing Officer Decision issued August 9, 2005 finding in favor of plaintiffs on counts as to risk, BACT (IGCC/CFB, NOx, SO_2, Hg, Be), single source, enforceability, and errors and omissions. Assist counsel draft exceptions. Cabinet Secretary issued Order April 11, 2006 denying Hearing Offer's report, except as to NOx BACT, Hg, 99% SO2 control and certain errors and omissions.
- For citizens group in Massachusetts, reviewed, commented on, and participated in permitting of pollution control retrofits of coal-fired power plant (Salem Harbor).
- Assisted citizens group and labor union challenge issuance of conditional use permit for a 317,000 ft^2 discount store in Honolulu without any environmental review. In support of a motion for preliminary injunction, prepared 7-page declaration addressing public health impacts of diesel exhaust from vehicles serving the Project. In preparation for trial, prepared 20-page preliminary expert report summarizing results of diesel exhaust and noise measurements at two big box retail stores in Honolulu, estimated diesel PM10 concentrations for Project using ISCST, prepared a cancer health risk assessment based on these analyses, and evaluated noise impacts.
- Assisted environmental organizations to challenge the DOE Finding of No Significant Impact (FONSI) for the Baja California Power and Sempra Energy Resources Cross-Border Transmissions Lines in the U.S. and four associated power plants located in Mexico (DOE EA-1391). Prepared 20-page declaration in support of motion for summary judgment addressing emissions, including CO_2 and NH_3, offsets, BACT, cumulative air quality impacts, alternative cooling systems, and water use and water quality impacts. Plaintiff's motion for summary judgment granted in part. U.S. District Court, Southern District decision concluded that the Environmental Assessment and FONSI violated NEPA and the APA due to their inadequate analysis of the potential controversy surrounding the project, water impacts, impacts from NH_3 and CO_2, alternatives, and cumulative impacts. *Border Power Plant Working Group v. Department of Energy and Bureau of Land Management*, Case No. 02-CV-513-lEG (POR) (May 2, 2003).

- For Sacramento school, reviewed draft air permit issued for diesel generator located across from playfield. Prepared comments on emission estimates, enforceability, BACT, and health impacts of diesel exhaust. Case settled. BUG trap installed on the diesel generator.
- Assisted unions in appeal of Title V permit issued by BAAQMD to carbon plant that manufactured coke. Reviewed District files, identified historic modifications that should have triggered PSD review, and prepared technical comments on Title V permit. Reviewed responses to comments and assisted counsel draft appeal to BAAQMD hearing board, opening brief, motion to strike, and rebuttal brief. Case settled.
- Assisted California Central Coast city obtain controls on a proposed new city that would straddle the Ventura-Los Angeles County boundary. Reviewed several environmental impact reports, prepared an air quality analysis, a diesel exhaust health risk assessment, and detailed review comments. Governor intervened and State dedicated the land for conservation purposes April 2004.
- Assisted Central California city to obtain controls on large alluvial sand quarry and asphalt plant proposing a modernization. Prepared comments on Negative Declaration on air quality, public health, noise, and traffic. Evaluated process flow diagrams and engineering reports to determine whether proposed changes increased plant capacity or substantially modified plant operations. Prepared comments on application for categorical exemption from CEQA. Presented testimony to County Board of Supervisors. Developed controls to mitigate impacts. Assisted counsel draft Petition for Writ. Case settled June 2002. Substantial improvements in plant operations were obtained including cap on throughput, dust control measures, asphalt plant loadout enclosure, and restrictions on truck routes.
- Assisted oil companies on the California Central Coast in defending class action citizen's lawsuit alleging health effects due to emissions from gas processing plant and leaking underground storage tanks. Reviewed regulatory and other files and advised counsel on merits of case. Case settled November 2001.
- Assisted oil company on the California Central Coast in defending property damage claims arising out of a historic oil spill. Reviewed site investigation reports, pump tests, leachability studies, and health risk assessments, participated in design of additional site characterization studies to assess health impacts, and advised counsel on merits of case. Prepare health risk assessment.
- Assisted unions in appeal of Initial Study/Negative Declaration ("IS/ND") for an MTBE phaseout project at a Bay Area refinery. Reviewed IS/ND and supporting agency permitting files and prepared technical comments on air quality, groundwater, and public health impacts. Reviewed responses to comments and final IS/ND and ATC permits and assisted counsel to draft petitions and briefs appealing decision to Air District Hearing Board. Presented sworn direct and rebuttal testimony with cross examination on groundwater impacts of ethanol spills on hydrocarbon contamination at refinery. Hearing Board ruled 5 to 0 in favor of appellants, remanding ATC to district to prepare an EIR.

- Assisted Florida cities in challenging the use of diesel and proposed BACT determinations in prevention of significant deterioration (PSD) permits issued to two 510-MW simple cycle peaking electric generating facilities and one 1,080-MW simple cycle/combined cycle facility. Reviewed permit applications, draft permits, and FDEP engineering evaluations, assisted counsel in drafting petitions and responding to discovery. Participated in settlement discussions. Cases settled or applications withdrawn.
- Assisted large California city in federal lawsuit alleging peaker power plant was violating its federal permit. Reviewed permit file and applicant's engineering and cost feasibility study to reduce emissions through retrofit controls. Advised counsel on feasible and cost-effective NOx, SOx, and PM10 controls for several 1960s diesel-fired Pratt and Whitney peaker turbines. Case settled.
- Assisted coalition of Georgia environmental groups in evaluating BACT determinations and permit conditions in PSD permits issued to several large natural gas-fired simple cycle and combined-cycle power plants. Prepared technical comments on draft PSD permits on BACT, enforceability of limits, and toxic emissions. Reviewed responses to comments, advised counsel on merits of cases, participated in settlement discussions, presented oral and written testimony in adjudicatory hearings, and provided technical assistance as required. Cases settled or won at trial.
- Assisted construction unions in review of air quality permitting actions before the Indiana Department of Environmental Management ("IDEM") for several natural gas-fired simple cycle peaker and combined cycle power plants.
- Assisted coalition of towns and environmental groups in challenging air permits issued to 523 MW dual fuel (natural gas and distillate) combined-cycle power plant in Connecticut. Prepared technical comments on draft permits and 60 pages of written testimony addressing emission estimates, startup/shutdown issues, BACT/LAER analyses, and toxic air emissions. Presented testimony in adjudicatory administrative hearings before the Connecticut Department of Environmental Protection in June 2001 and December 2001.
- Assisted various coalitions of unions, citizens groups, cities, public agencies, and developers in licensing and permitting of over 110 coal, gas, oil, biomass, and pet coke-fired power plants generating over 75,000 MW of electricity. These included base-load, combined cycle, simple cycle, and peaker power plants in Alaska, Arizona, Arkansas, California, Colorado, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Oregon, Texas, West Virginia, Wisconsin, and elsewhere. Prepared analyses of and comments on applications for certification, preliminary and final staff assessments, and various air, water, wastewater, and solid waste permits issued by local agencies. Presented written and oral testimony before various administrative bodies on hazards of ammonia use and transportation, health effects of air emissions, contaminated property issues, BACT/LAER issues related to SCR and SCONOx, criteria and toxic pollutant emission estimates, MACT analyses, air quality modeling, water supply and water quality issues, and methods to reduce

water use, including dry cooling, parallel dry-wet cooling, hybrid cooling, and zero liquid discharge systems.

- Assisted unions, cities, and neighborhood associations in challenging an EIR issued for the proposed expansion of the Oakland Airport. Reviewed two draft EIRs and prepared a health risk assessment and extensive technical comments on air quality and public health impacts. The California Court of Appeals, First Appellate District, ruled in favor of appellants and plaintiffs, concluding that the EIR "2) erred in using outdated information in assessing the emission of toxic air contaminants (TACs) from jet aircraft; 3) failed to support its decision not to evaluate the health risks associated with the emission of TACs with meaningful analysis," thus accepting my technical arguments and requiring the Port to prepare a new EIR. See *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (August 30, 2001) 111 Cal.Rptr.2d 598.
- Assisted lessor of former gas station with leaking underground storage tanks and TCE contamination from adjacent property. Lessor held option to purchase, which was forfeited based on misrepresentation by remediation contractor as to nature and extent of contamination. Remediation contractor purchased property. Reviewed regulatory agency files and advised counsel on merits of case. Case not filed.
- Advised counsel on merits of several pending actions, including a Proposition 65 case involving groundwater contamination at an explosives manufacturing firm and two former gas stations with leaking underground storage tanks.
- Assisted defendant foundry in Oakland in a lawsuit brought by neighbors alleging property contamination, nuisance, trespass, smoke, and health effects from foundry operation. Inspected and sampled plaintiff's property. Advised counsel on merits of case. Case settled.
- Assisted business owner facing eminent domain eviction. Prepared technical comments on a negative declaration for soil contamination and public health risks from air emissions from a proposed redevelopment project in San Francisco in support of a CEQA lawsuit. Case settled.
- Assisted neighborhood association representing residents living downwind of a Berkeley asphalt plant in separate nuisance and CEQA lawsuits. Prepared technical comments on air quality, odor, and noise impacts, presented testimony at commission and council meetings, participated in community workshops, and participated in settlement discussions. Cases settled. Asphalt plant was upgraded to include air emission and noise controls, including vapor collection system at truck loading station, enclosures for noisy equipment, and improved housekeeping.
- Assisted a Fortune 500 residential home builder in claims alleging health effects from faulty installation of gas appliances. Conducted indoor air quality study, advised counsel on merits of case, and participated in discussions with plaintiffs. Case settled.

- Assisted property owners in Silicon Valley in lawsuit to recover remediation costs from insurer for large TCE plume originating from a manufacturing facility. Conducted investigations to demonstrate sudden and accidental release of TCE, including groundwater modeling, development of method to date spill, preparation of chemical inventory, investigation of historical waste disposal practices and standards, and on-site sewer and storm drainage inspections and sampling. Prepared declaration in opposition to motion for summary judgment. Case settled.
- Assisted residents in east Oakland downwind of a former battery plant in class action lawsuit alleging property contamination from lead emissions. Conducted historical research and dry deposition modeling that substantiated claim. Participated in mediation at JAMS. Case settled.
- Assisted property owners in West Oakland who purchased a former gas station that had leaking underground storage tanks and groundwater contamination. Reviewed agency files and advised counsel on merits of case. Prepared declaration in opposition to summary judgment. Prepared cost estimate to remediate site. Participated in settlement discussions. Case settled.
- Consultant to counsel representing plaintiffs in two Clean Water Act lawsuits involving selenium discharges into San Francisco Bay from refineries. Reviewed files and advised counsel on merits of case. Prepared interrogatory and discovery questions, assisted in deposing opposing experts, and reviewed and interpreted treatability and other technical studies. Judge ruled in favor of plaintiffs.
- Assisted oil company in a complaint filed by a resident of a small California beach community alleging that discharges of tank farm rinse water into the sanitary sewer system caused hydrogen sulfide gas to infiltrate residence, sending occupants to hospital. Inspected accident site, interviewed parties to the event, and reviewed extensive agency files related to incident. Used chemical analysis, field simulations, mass balance calculations, sewer hydraulic simulations with SWMM44, atmospheric dispersion modeling with SCREEN3, odor analyses, and risk assessment calculations to demonstrate that the incident was caused by a faulty drain trap and inadequate slope of sewer lateral on resident's property. Prepared a detailed technical report summarizing these studies. Case settled.
- Assisted large West Coast city in suit alleging that leaking underground storage tanks on city property had damaged the waterproofing on downgradient building, causing leaks in an underground parking structure. Reviewed subsurface hydrogeologic investigations and evaluated studies conducted by others documenting leakage from underground diesel and gasoline tanks. Inspected, tested, and evaluated waterproofing on subsurface parking structure. Waterproofing was substandard. Case settled.
- Assisted residents downwind of gravel mine and asphalt plant in Siskiyou County, California, in suit to obtain CEQA review of air permitting action. Prepared two declarations analyzing

air quality and public health impacts. Judge ruled in favor of plaintiffs, closing mine and asphalt plant.

- Assisted defendant oil company on the California Central Coast in class action lawsuit alleging property damage and health effects from subsurface petroleum contamination. Reviewed documents, prepared risk calculations, and advised counsel on merits of case. Participated in settlement discussions. Case settled.
- Assisted defendant oil company in class action lawsuit alleging health impacts from remediation of petroleum contaminated site on California Central Coast. Reviewed documents, designed and conducted monitoring program, and participated in settlement discussions. Case settled.
- Consultant to attorneys representing irrigation districts and municipal water districts to evaluate a potential challenge of USFWS actions under CVPIA section 3406(b)(2). Reviewed agency files and collected and analyzed hydrology, water quality, and fishery data. Advised counsel on merits of case. Case not filed.
- Assisted residents downwind of a Carson refinery in class action lawsuit involving soil and groundwater contamination, nuisance, property damage, and health effects from air emissions. Reviewed files and provided advice on contaminated soil and groundwater, toxic emissions, and health risks. Prepared declaration on refinery fugitive emissions. Prepared deposition questions and reviewed deposition transcripts on air quality, soil contamination, odors, and health impacts. Case settled.
- Assisted residents downwind of a Contra Costa refinery who were affected by an accidental release of naphtha. Characterized spilled naphtha, estimated emissions, and modeled ambient concentrations of hydrocarbons and sulfur compounds. Deposed. Presented testimony in binding arbitration at JAMS. Judge found in favor of plaintiffs.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects from several large accidents as well as routine operations. Reviewed files and prepared analyses of environmental impacts. Prepared declarations, deposed, and presented testimony before jury in one trial and judge in second. Case settled.
- Assisted business owner claiming damages from dust, noise, and vibration during a sewer construction project in San Francisco. Reviewed agency files and PM10 monitoring data and advised counsel on merits of case. Case settled.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects. Prepared declaration in opposition to summary judgment, deposed, and presented expert testimony on accidental releases, odor, and nuisance before jury. Case thrown out by judge, but reversed on appeal and not retried.

- Presented testimony in small claims court on behalf of residents claiming health effects from hydrogen sulfide from flaring emissions triggered by a power outage at a Contra Costa County refinery. Analyzed meteorological and air quality data and evaluated potential health risks of exposure to low concentrations of hydrogen sulfide. Judge awarded damages to plaintiffs.
- Assisted construction unions in challenging PSD permit for an Indiana steel mill. Prepared technical comments on draft PSD permit, drafted 70-page appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analysis for electric arc furnace and reheat furnace and faulty permit conditions, among others, and drafted briefs responding to four parties. EPA Region V and the EPA General Counsel intervened as amici, supporting petitioners. EAB ruled in favor of petitioners, remanding permit to IDEM on three key issues, including BACT for the reheat furnace and lead emissions from the EAF. Drafted motion to reconsider three issues. Prepared 69 pages of technical comments on revised draft PSD permit. Drafted second EAB appeal addressing lead emissions from the EAF and BACT for reheat furnace based on European experience with SCR/SNCR. Case settled. Permit was substantially improved. See *In re: Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5 (EAB June 22, 2000).
- Assisted defendant urea manufacturer in Alaska in negotiations with USEPA to seek relief from penalties for alleged violations of the Clean Air Act. Reviewed and evaluated regulatory files and monitoring data, prepared technical analysis demonstrating that permit limits were not violated, and participated in negotiations with EPA to dismiss action. Fines were substantially reduced and case closed.
- Assisted construction unions in challenging PSD permitting action for an Indiana grain mill. Prepared technical comments on draft PSD permit and assisted counsel draft appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analyses for heaters and boilers and faulty permit conditions, among others. Case settled.
- As part of a consent decree settling a CEQA lawsuit, assisted neighbors of a large west coast port in negotiations with port authority to secure mitigation for air quality impacts. Prepared technical comments on mobile source air quality impacts and mitigation and negotiated a $9 million CEQA mitigation package. Represented neighbors on technical advisory committee established by port to implement the air quality mitigation program. Program successfully implemented.
- Assisted construction unions in challenging permitting action for a California hazardous waste incinerator. Prepared technical comments on draft permit, assisted counsel prepare appeal of EPA permit to the Environmental Appeals Board. Participated in settlement discussions on technical issues with applicant and EPA Region 9. Case settled.

- Assisted environmental group in challenging DTSC Negative Declaration on a hazardous waste treatment facility. Prepared technical comments on risk of upset, water, and health risks. Writ of mandamus issued.
- Assisted several neighborhood associations and cities impacted by quarries, asphalt plants, and cement plants in Alameda, Shasta, Sonoma, and Mendocino counties in obtaining mitigations for dust, air quality, public health, traffic, and noise impacts from facility operations and proposed expansions.
- For over 100 industrial facilities, commercial/campus, and redevelopment projects, developed the record in preparation for CEQA and NEPA lawsuits. Prepared technical comments on hazardous materials, solid wastes, public utilities, noise, worker safety, air quality, public health, water resources, water quality, traffic, and risk of upset sections of EIRs, EISs, FONSIs, initial studies, and negative declarations. Assisted counsel in drafting petitions and briefs and prepared declarations.
- For several large commercial development projects and airports, assisted applicant and counsel prepare defensible CEQA documents, respond to comments, and identify and evaluate "all feasible" mitigation to avoid CEQA challenges. This work included developing mitigation programs to reduce traffic-related air quality impacts based on energy conservation programs, solar, low-emission vehicles, alternative fuels, exhaust treatments, and transportation management associations.

SITE INVESTIGATION/REMEDIATION/CLOSURE

- Technical manager and principal engineer for characterization, remediation, and closure of waste management units at former Colorado oil shale plant. Constituents of concern included BTEX, As, 1,1,1-TCA, and TPH. Completed groundwater monitoring programs, site assessments, work plans, and closure plans for seven process water holding ponds, a refinery sewer system, and processed shale disposal area. Managed design and construction of groundwater treatment system and removal actions and obtained clean closure.
- Principal engineer for characterization, remediation, and closure of process water ponds at a former lanthanide processing plant in Colorado. Designed and implemented groundwater monitoring program and site assessments and prepared closure plan.
- Advised the city of Sacramento on redevelopment of two former railyards. Reviewed work plans, site investigations, risk assessment, RAPS, RI/FSs, and CEQA documents. Participated in the development of mitigation strategies to protect construction and utility workers and the public during remediation, redevelopment, and use of the site, including buffer zones, subslab venting, rail berm containment structure, and an environmental oversight plan.

- Provided technical support for the investigation of a former sanitary landfill that was redeveloped as single family homes. Reviewed and/or prepared portions of numerous documents, including health risk assessments, preliminary endangerment assessments, site investigation reports, work plans, and RI/FSs. Historical research to identify historic waste disposal practices to prepare a preliminary endangerment assessment. Acquired, reviewed, and analyzed the files of 18 federal, state, and local agencies, three sets of construction field notes, analyzed 21 aerial photographs and interviewed 14 individuals associated with operation of former landfill. Assisted counsel in defending lawsuit brought by residents alleging health impacts and diminution of property value due to residual contamination. Prepared summary reports.
- Technical oversight of characterization and remediation of a nitrate plume at an explosives manufacturing facility in Lincoln, CA. Provided interface between owners and consultants. Reviewed site assessments, work plans, closure plans, and RI/FSs.
- Consultant to owner of large western molybdenum mine proposed for NPL listing. Participated in negotiations to scope out consent order and develop scope of work. Participated in studies to determine premining groundwater background to evaluate applicability of water quality standards. Served on technical committees to develop alternatives to mitigate impacts and close the facility, including resloping and grading, various thickness and types of covers, and reclamation. This work included developing and evaluating methods to control surface runoff and erosion, mitigate impacts of acid rock drainage on surface and ground waters, and stabilize nine waste rock piles containing 328 million tons of pyrite-rich, mixed volcanic waste rock (andesites, rhyolite, tuff). Evaluated stability of waste rock piles. Represented client in hearings and meetings with state and federal oversight agencies.

REGULATORY (PARTIAL LIST)

- In October 2022, researched and wrote 43 pages of comments on the Lancaster Waste to Renewable Hydrogen Project on (a) significant construction emissions; (b) construction mitigation; unenforceable operational criteria pollutant and GHG emissions; (c) significant construction and operational health impacts and mitigation; and (d) significant health risks of Valley Fever and mitigation.
- In August 2022, researched and wrote 8 pages of comments on Heliogen Holdings' Application for Authority to Contstruct and Permit to Operate for the Polaris Solar Energy Project on significant operational PM10 emissions and Valley Fever;
- In June-July, 2022, Researched and wrote 29 pages of comments on the IS/MND for the SFPP Bradshaw Terminal Renewable by Rail Project on (a) significant and underestimated locomotive emissions; (*b*) omitted operational emission sources (on-site fugitive emissions, rail car transit emissions, emissions in other air districts); (c) significant construction health

risks (acute, cancer); (*d*) significant operational cancer risks; (*e*) mitigation for significant health impacts; and (f) significant construction NOx and PM10 emissions and mitigation

- In February-March 2022, researched and wrote 19 pages of responses to comments on construction impacts, risk of upset, and cumulative impacts of the Heber 1 Geothermal Repower Project IS/MND.
- In January 2022, researched and wrote 9 pages of comments on the DEIR for the San Jose Data Center on greenhouse gas emissions and the SPPE exemption.
- In January 2022, researched and wrote 30 pages of comments on the RDEIR for the Estrella Substation and Paso Robles Area Reinforcement project on (a) EMF health risks; (b) emissions from BESS charging; (c) emissions and mitigation for heliocopter emissions; and (d) Valley Fever mitigation.
- In January 2022, research and wrote 12 pages of responses to comments on the revised IS/ND for the World Energy Terminal on: (a) construction emission impacts; (b) operational VOC emissions; (c) revised tank emissions; and (d) increase in Terminal throughput.
- In December 2021, researched and wrote 20 pages of comments on the IS/MND for the North Central Valley Battery Energy Storage Facility on: (a) greenhouse gas emissions; (b) risk of upset; and (c) cumulative impacts.
- In November 2021, researched and wrote 46 pages of comments on the IS/MND for the California Renewable Carbon Williams Production Facility on: (a) construction air quality impacts; (b) operational emissions; and (c) construction and operational health risks.
- In November 2021, researched and wrote 11 pages of comments on the Final Supplemental Impact Report for the ExxonMobil Interim Trucking Phased Restart Project on: (a) crude oil truck NOx emissions; (b) tanker transport fire impacts; and (c) impacts of and mitigation for off-site accidental spills.
- In October 2021, researched and wrote 13 pages of technical comments on the Draft Supplemental Environmental Impact Report for the Casa Diablo IV geothermal power plant on the proposed LDAR program.
- In June 2021, researched and wrote 26 pages of technical comments on IS/MND for the Regional San BioGeneration Facility on: (a) significant construction air quality impacts; (b) significant operational air quality impacts; and (d) cumulative impacts.
- In May 2021, researched and wrote 64 pages of comments on the IS/MND for the Heber 1 Geothermal Repower Project on: (a) construction air quality impacts; (b) operational air quality impacts; (c) cumulative air quality impacts; (d) health impacts; (d) Valley Fever; (e) hazard and hazardous materials; (f) geologic impacts; and (g) impacts of extended operational lifetime.

- In February 2021, researched and wrote 41 pages of technical comment on the IS/MND for the Heber 2 Geothermal Repower Project on: (a) risk of upset impacts; (b) tanker truck accidents; (c) valley fever impacts; (d) construction and operational air quality impacts; (d) water use; and (e) cumulative impacts.
- In December 2020, researched and wrote 23 pages of comments on the Draft Supplemental Recirculated Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2020 A, Focused on Oil and Gas Local Permitting on: (a) significant and unmitigated construction emissions; (b) significant and unmitigated operational emissions; (c) public health and biological impacts of criteria pollutants emissions and ozone; (d) offsets not valid CEQA mitigation.
- In October and December 2020, researched and wrote 46 pages of comments on underestimated and unsupported construction emissions, omitted construction emission sources, failure to consider unique site geotechnical conditions; revised construction emissions; significant construction and operational GHG emissions; GHG mitigation; construction and operational health risks; risk of upset; and cumulative impacts for a facility proposed to upgrade landfill gas to pipeline quality natural gas.
- In October and November 2020, researched and wrote 37 pages of comments on significant construction impacts, significant operational VOC emissions, and significant public health impacts of new internal floating roof storage tanks at a marine terminal at the Port of Long Beach.
- In September to November 2020, review proposed permit amendment to add HCN emissions from the FCCU to Title V permit for a Houston Refinery and research and write report on methods to measure HCN from FCCUs in situ and remotely.
- In September and October 2020, researched and wrote 14 pages of comments on proposed Leak Detection and Repair (LDAR) program for controlling VOC emissions from a geothermal power plant.
- In August to October 2020, researched and wrote comments on grid-based impacts of San Francisco's proposed building code mandating that new construction be all electric.
- In July and August 2020, researched and wrote comments on groundwater impacts of sea level rise for Final SEIR on crude oil trucking proposal.
- In June to August 2020, researched and wrote 69 pages of comments on inadequate project description, construction impacts, operational air quality impacts, cumulative air quality impacts, public health impacts, valley fever, hazards, geologic impacts, water use, CEC licensing, and extended lifetime impacts for the repower of a geothermal power plant in Imperial County.
- In June 2020, review revised quarry reclamation plan and draft 27 pages of comments on proposed modification.

- In June and July 2020, researched and wrote 23 pages of comments on cement terminal at Port of Stockton on construction impacts, emission baseline, operational emissions, and greenhouse gas mitigation.
- In May to June 2020, review reclamation plan amendment for quarry and research and write 17 page report on hydrology and water quality impacts of proposed amendment.
- In May 2020, researched and wrote 10 pages of comments on FEIR for a new apartment project in Contra Costa County on GHG emissions from vegetation removal, mobile sources, and water use and mitigation for same.
- In March/April 2020, researched and wrote 50 pages of comments on IS/MND for battery energy storage project in San Jose (Hummingbird) on inadequate project description, criteria pollutant and GHG emissions, significant and unmitigated energy impacts, cumulative impacts, construction impacts, public health impacts from BESS accidents, and battery handling and transportation accidents. Wrote 15 pages of responses to comments on vendor specifications, battery composition, cumulative impacts, construction impacts, fire control methods, and battery accidents.
- In April 2020, researched and wrote 47 pages of comments on IS/MND for data center in Santa Clara (SV1) on operational NOx emissions; out-of-district emissions; interbasin pollutant transport; omitted emission sources; GHG compliance with plans, policies and regulations; indirect GHG emissions; air quality impacts; construction emissions; cumulative impacts; and risk of upset from battery accidents.
- In March 2020, researched and wrote 30 pages of comments on IS/MND for data center in San Jose (Hummingbird) on operational GHG and criteria pollutant emissions, cumulative impacts, and public health risks. Research and write responses to comments.
- In February-March 2020, researched and wrote 30 pages on an IS/MND for a data center in San Jose (Stack) on operational NOx and GHG emissions, cumulative impacts, heath risks, and odor.
- In February 2020, researched and wrote 33 pages of comments on Initial Study for a battery storage facility in Ventura County (Orni) on criteria pollutant and GHG emissions, worker and public health impacts, cumulative impacts, valley fever, and consistency with general plan.
- In February 2020, researched and wrote 20 pages of comments on valley fever in response to applicant's global response to comments on Valley Fever for a wind project in San Diego County.
- In January 2020, researched and wrote 32 pages of comments on the Orni battery storage facility (BESS) on incomplete project description, cumulative GHG and NOx impacts, BESS accidents, and health impacts, including soil contamination and valley fever.

- In January 2020, research and wrote 41 pages of comments on the DEIR for the NuStar Port of Stockton Liquid Bulk Terminal on operational emission calculations, significant NOx emissions, significant GHG emissions. GHG mitigation, and cumulative impacts.
- In December 2019, researched and wrote 3 pages of comments on the Silverstrand Grid battery storage facility on greenhouse gas emissions.
- In December 2019, researched and wrote 15 pages of comments on the Initial Study for the K2 Pure – Chlorine Rail Transportation Curtailment Project, including on air quality baseline, project description, emissions, cancer risks, risk of upset.
- In November 2019, reviewed agency files and researched and wrote 42 pages of comments on the Belridge Solar Project on compliance with local zoning ordinances, water quality impacts, air quality impacts, and worker and public health impacts due to soil contamination and valley fever.
- In October 2019, researched and wrote 49 pages of comments on IS/MND for data center in Santa Clara, CA on operational criteria pollutants (mobile sources, off-site electricity generation, emergency generators), ambient air quality impacts, greenhouse gas emissions and mitigation, and cumulative impacts.
- In October 2019, researched and wrote 9 pages of comments on the Application, Statement of Basis and draft Permit to Construct and Temporary Permit to Operate for proposed changes at the Paramount Refinery to facilitate refining of biomass-based feedstock to produce renewable fuels.
- In September 2019, reviewed City of Sunnyvale's file on Google's proposed Central Utility Plant and researched and wrote 34 pages of comments on construction and operational air quality impacts, cumulative impacts, and battery fire and explosion impacts. In October 2019, researched and wrote 15 pages of responses to comments.
- In August 2019, research and wrote 37 pages of comments on the DSEIR for the Le Conte Battery Energy Storage System on GHG emissions, hazards and hazardous material impacts, and health impacts.
- In August 2019, researched and wrote 38 pages of comments on IS/MND for the Hanford-Lakeside Dairy digester Project, Kings County, on project description (piecemealing), cumulative impacts, construction impacts, air quality impacts, valley fever and risk of upset.
- In July 2019, researched and wrote 48 pages of comments on IS/MND for the Five Points Pipeline Dairy Digester Cluster Project, including on air quality, cumulative impacts, worker and public health impacts (including on pesticide-contaminated soils), Valley Fever, construction air quality impacts, and risk of upset.
- In June 2019, researched and wrote 15 pages of responses to comments on IS/MND for SV1 Data Center, including operational NOx emissions, air quality analyses, construction

emissions, battery hazards, and mitigation plans for noise, vibration, risk management, storm water pollution, and emergency response and evacuation plans.

- In June 2019, researched and wrote 30 pages of comments on DEIR for the Humboldt Wind Energy Project on fire and aesthetic impacts of transmission line, construction air quality impacts and mitigation, and greenhouse gas emissions.
- In May 2019, researched and wrote 25 pages of comments on the DEIR for the ExxonMobil Interim Trucking for Santa Ynez Phased Restart Project on project description, baseline, and mitigation.
- In April 2019, researched and wrote a 16 page letter critiquing the adequacy of the FEIR for CalAm Desalination Project to support a Monterey County Combined Development Permit, consisting of a Use Permit, an Administrative Permit, and Design Approval for the Desalination Plant and Carmel Valley Pump Station.
- In April 2019, researched and wrote 22 pages of comments on DEIR for the Eco-Energy Liquid Bulk Terminal at the Port of Stockton on emissions, air quality impact mitigation, and health risk assessment.
- In March 2019, researched and wrote 43 pages of comments on DEIR for Contanda Renewable Diesel Bulk Liquid Terminal at the Port of Stockton on operational emissions, air quality impacts and mitigation and health risks.
- In February 2019, researched and wrote 36 pages of comments on general cumulative impacts, air quality, accidents, and valley fever for IS/MND for biogas cluster project in Kings County.
- In January 2019, researched and wrote 30 pages of comments on air quality and valley fever for IS/MND for energy storage facility in Kings County.
- In December 2018, researched and wrote 11 pages of comments on air quality for IS/MND for biomass gasification facility in Madera County.
- In December 2018, researched and wrote 10 pages of responses to comments on IS/MND for a wind energy project in Riverside County.
- In December 2018, researched and wrote 12 pages of responses to comments on IS/MND for a large Safeway fueling station in Petaluma. The Planning Commission voted unanimously to require an EIR.
- In November 2018, researched and wrote 30 pages of comments on IS/MND on wind energy project in Riverside County on construction health risks, odor impacts, waste disposal, transportation, construction emissions and mitigation and Valley Fever.
- In November 2018, researched and wrote 32 pages of comments on the DEIR for a solar energy generation and storage project in San Bernardino County on hazards, health risks, odor, construction emissions and mitigation, and Valley Fever.

- In September 2018, researched and wrote 36 pages of comments on the FEIR for the Newland Sierra Project including on greenhouse gas emissions, construction emissions, and cumulative impacts.
- In August 2018, researched and wrote 20 pages of comments on the health risk assessment in the IS/MND for a large Safeway fueling station in Petaluma.
- In August 2018, researched and wrote responses to comments on DEIR for the Newland Sierra Project, San Diego County on greenhouse gas emissions, construction emissions, odor, and Valley Fever.
- In July/August 2018, researched and wrote 12 pages of comments on DEIR for proposed Doheny Desal Project, on GHG, criteria pollutant, and TAC emissions and public health impacts during construction and indirect emissions during operation.
- In June 2018, researched and wrote 12 pages of technical comments rebutting NDDH responses to comments on Meridian Davis Refinery.
- In April 2018, researched and wrote 26 pages of comments on greenhouse gas emissions and mitigation as proposed in the San Diego County Climate Action Plan.
- In April 2018, researched and wrote 24 pages of comments on the FEIR for Monterey County water supply project, including GHG mitigation, air quality impacts and mitigation, and Valley Fever.
- In March-June 2018, researched and wrote 37 pages of comments on the IS/MND for the 2305 Mission College Boulevard Data Center, Santa Clara, California and responded to responses to comments.
- In March 2018, researched and wrote 40 pages of comments on the IS/MND for the Diablo Energy Storage Facility in Pittsburg, California.
- In March 2018, researched and wrote 19 pages of comments on Infill Checklist/Mitigated Negative Declaration for the Legacy@Livermore Project on CalEEMod emission calculations, including NOx and PM10 and construction health risk assessment, including Valley Fever.
- In January 2018, researched and wrote 28 pages of comments on draft Permit to Construct for the Davis Refinery Project, North Dakota, as a minor source of criteria pollutants and HAPs.
- In December 2017, researched and wrote 19 pages of comments on DEIR for the Rialto Bioenergy Facility, Rialto, California.
- In November and December 2017, researched and wrote 6 pages of comments on the Ventura County Air Pollution Control District's Preliminary Determination if Compliance (PDOC) for Mission Rock Energy Center.

- In November 2017, researched and wrote 11 pages of comments on control technology evaluation for the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Residual Risk and Technology Review.
- In September and November 2017, prepared comments on revised Negative Declaration for Delicato Winery in San Joaquin County, California.
- In October and November 2017, researched and wrote comments on North City Project Pure Water San Diego Program DEIR/DEIS to reclaim wastewater for municipal use.
- In August 2017, reviewed DEIR on a new residential community in eastern San Diego County (Newland Sierra) and research and wrote 60 pages of comments on air quality, greenhouse gas emissions and health impacts, including Valley Fever.
- In August 2017, reviewed responses to comments on Part 70 operating permit for IGP Methanol's Gulf Coast Methanol Complex, near Myrtle Grove, Louisiana, and researched and wrote comments on metallic HAP issues.
- In July 2017, reviewed the FEIS for an expansion of the Port of Gulfport and researched and wrote 10 pages of comments on air quality and public health.
- In June 2017, reviewed and prepared technical report on an Application for a synthetic minor source construction permit for a new Refinery in North Dakota.
- In June 2017, reviewed responses to NPCA and other comments on the BP Cherry Point Refinery modifications and assisted counsel in evaluating issues to appeal, including GHG BACT, coker heater SCR cost effectiveness analysis, and SO_2 BACT.
- In June 2017, reviewed Part 70 Operating Permit Renewal/Modification for the Noranda Alumina LC/Gramercy Holdings I, LLC alumina processing plant, St. James, Louisiana, and prepared comments on HAP emissions from bauxite feedstock.
- In May and June 2017, reviewed FEIR on Tesoro Integration Project and prepared responses to comments on the DEIR.
- In May 2017, prepared comments on tank VOC and HAP emissions from Tesoro Integration Project, based on real time monitoring at the Tesoro and other refineries in the SCAQMD.
- In April 2017, prepared comments on Negative Declaration for Delicato Winery in San Joaquin County, California.
- In March 2017, reviewed Negative Declaration for Ellmore geothermal facility in Imperial County, California and prepared summary of issues.
- In March 2017, prepared response to Phillips 66 Company's Appeal of the San Luis Obispo County Planning Commission's Decision Denying the Rail Spur Extension Project Proposed for the Santa Maria Refinery.

- In February 2017, researched and wrote comments on Kalama draft Title V permit for 10,000 MT/day methanol production and marine export facility in Kalama, Washington.
- In January 2017, researched and wrote 51 pages of comments on proposed Title V and PSD permits for the St. James Methanol Plant, St. James Louisiana, on BACT and enforceability of permit conditions.
- In December 2016, researched and wrote comments on draft Title V Permit for Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana, responding to EPA Order addressing enforceability issues.
- In November 2016, researched and wrote comments on Initial Study/Mitigated Negative Declaration for the AES Battery Energy Storage Facility, Long Beach, CA.
- In November 2016, researched and wrote comments on Campo Verde Battery Energy Storage System Draft Environmental Impact Report.
- In October 2016, researched and wrote comments on Title V Permit for NuStar Terminal Operations Partnership L.P, Stockton, CA.
- In October 2016, prepared expert report, Technical Assessment of Achieving the 40 CFR Part 423 Zero Discharge Standard for Bottom Ash Transport Water at the Belle River Power Plant, East China, Michigan. Reported resulted in a 2 year reduction in compliance date for elimination of bottom ash transport water. 1/30/17 DEQ Letter.
- In September 2016, researched and wrote comments on Proposed Title V Permit and Environmental Assessment Statement, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana.
- In September 2016, researched and wrote response to "Further Rebuttal in Support of Appeal of Planning Commission Resolution No. 16-1, Denying Use Permit Application 12PLN-00063 and Declining to Certify Final Environmental Impact Report for the Valero Benicia Crude-by-Rail Project.
- In August 2016, reviewed and prepared comments on manuscript: Hutton et al., Freshwater Flows to the San Francisco Bay-Delta Estuary over Nine Decades: Trends Evaluation.
- In August/September 2016, researched and wrote comments on Mitigated Negative Declaration for the Chevron Long Wharf Maintenance and Efficiency Project.
- In July 2016, researched and wrote comments on the Ventura County APCD Preliminary Determination of Compliance and the California Energy Commission Revised Preliminary Staff Assessment for the Puente Power Project.
- In June 2016, researched and wrote comments on an Ordinance (1) Amending the Oakland Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout the City of Oakland and (2) Adopting CEQA Exemption

Findings and supporting technical reports. Council approved Ordinance on an 8 to 0 vote on June 27, 2016.

- In May 2016, researched and wrote comments on Draft Title V Permit and Draft Environmental Impact Report for the Tesoro Los Angeles Refinery Integration and Compliance Project.
- In March 2016, researched and wrote comments on Valero's Appeal of Planning Commission's Denial of Valero Crude-by-Rail Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Santa Maria Rail Spur Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Valero Benicia Crude by Rail Project.
- In January 2016, researched and wrote comments on Draft Programmatic Environmental Impact Report for the Southern California Association of Government's (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy.
- In November 2015, researched and wrote comments on Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015(C) (Focused on Oil and Gas Local Permitting), November 2015.
- In October 2015, researched and wrote comments on Revised Draft Environmental Report, Valero Benicia Crude by Rail Project.
- In September 2015, prepared report, "Environmental, Health and Safety Impacts of the Proposed Oakland Bulk and Oversized Terminal, and presented oral testimony on September 21, 2015 before Oakland City Council on behalf of the Sierra Club.
- In September 2015, researched and wrote comments on revisions to two chapters of EPA's Air Pollution Control Cost Manual: Docket ID No. EPA-HQ-OAR-2015-0341.
- In June 2015, researched and wrote comments on DEIR for the CalAm Monterey Peninsula Water Supply Project.
- In April 2015, researched and wrote comments on proposed Title V Operating Permit Revision and Prevention of Significant Deterioration Permit for Arizona Public Service's Ocotillo Power Plant Modernization Project (5 GE LMS100 105-MW simple cycle turbines operated as peakers), in Tempe, Arizona; Final permit appealed to EAB.
- In March 2015, researched and wrote "Comments on Proposed Title V Air Permit, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana". Client filed petition objecting to the permit. EPA granted majority of issues. In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana, Permit No. 2560-00295-V0, Issued by the Louisiana Department of Environmental Quality, Petition No. VI-2015-03, Order Responding to the

Petitioners' Request for Objection to the Issuance of a Title V Operating Permit, September 1, 2016.

- In February 2015, prepared compilation of BACT cost effectiveness values in support of comments on draft PSD Permit for Bonanza Power Project.
- In January 2015, prepared cost effectiveness analysis for SCR for a 500-MW coal fire power plant, to address unpermitted upgrades in 2000.
- In January 2015, researched and wrote comments on Revised Final Environmental Impact Report for the Phillips 66 Propane Recovery Project. *Communities for a Better Environment et al. v. Contra Costa County et al. Contra Costa County (Superior Court, Contra Costa County, Case No. MSN15-0301, December 1, 2016).*
- In December 2014, researched and wrote "Report on Bakersfield Crude Terminal Permits to Operate." In response, the U.S. EPA cited the Terminal for 10 violations of the Clean Air Act. The Fifth Appellate District Court upheld the finding in this report in CBE et al v. San Joaquin Valley Unified Air Pollution Control District and Bakersfield Crude Terminal LLC et al, Super. Ct. No. 284013, June 23, 2017.
- In December 2014, researched and wrote comments on Revised Draft Environmental Impact Report for the Phillips 66 Propane Recovery Project.
- In November 2014, researched and wrote comments on Revised Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project and Crude Unloading Project, Santa Maria, CA to allow the import of tar sands crudes.
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for Phillips 66 Ultra Low Sulfur Diesel Project, responding to the California Supreme Court Decision, *Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310.*
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for the Tesoro Avon Marine Oil Terminal Lease Consideration.
- In October 2014, prepared: "Report on Hydrogen Cyanide Emissions from Fluid Catalytic Cracking Units", pursuant to the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 79 FR 36880.
- In October 2014, researched and wrote technical comments on Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In October 2014, researched and wrote technical comments on the Title V Permit Renewal and three De Minimus Significant Revisions for the Tesoro Logistics Marine Terminal in the SCAQMD.

- In September 2014, researched and wrote technical comments on the Draft Environmental Impact Report for the Valero Crude by Rail Project.
- In August 2014, for EPA Region 6, prepared technical report on costing methods for upgrades to existing scrubbers at coal-fired power plants.
- In July 2014, researched and wrote technical comments on Draft Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In June 2014, researched and wrote technical report on Initial Study and Draft Negative Declaration for the Tesoro Logistics Storage Tank Replacement and Modification Project.
- In May 2014, researched and wrote technical comments on Intent to Approve a new refinery and petroleum transloading operation in Utah.
- In March and April 2014, prepared declarations on air permits issued for two crude-by-rail terminals in California, modified to switch from importing ethanol to importing Bakken crude oils by rail and transferring to tanker cars. Permits were issued without undergoing CEQA review. One permit was upheld by the San Francisco Superior Court as statute of limitations had run. The Sacramento Air Quality Management District withdrew the second one due to failure to require BACT and conduct CEQA review.
- In March 2014, researched and wrote technical report on Negative Declaration for a proposed modification of the air permit for a bulk petroleum and storage terminal to the allow the import of tar sands and Bakken crude oil by rail and its export by barge, under the New York State Environmental Quality Review Act (SEQRA).
- In February 2014, researched and wrote technical report on proposed modification of air permit for midwest refinery upgrade/expansion to process tar sands crudes.
- In January 2014, prepared cost estimates to capture, transport, and use CO2 in enhanced oil recovery, from the Freeport LNG project based on both Selexol and Amine systems.
- In January 2014, researched and wrote technical report on Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project, Santa Maria, CA. Comments addressed project description (piecemealing, crude slate), risk of upset analyses, mitigation measures, alternative analyses and cumulative impacts.
- In November 2013, researched and wrote technical report on the Phillips 66 Propane Recovery Project, Rodeo, CA. Comments addressed project description (piecemealing, crude slate) and air quality impacts.
- In September 2013, researched and wrote technical report on the Draft Authority to Construct Permit for the Casa Diablo IV Geothermal Development Project Environmental Impact Report and Declaration in Support of Appeal and Petition for Stay, U.S. Department of the

Interior, Board of Land Appeals, Appeal of Decision Record for the Casa Diablo IV Geothermal Development Project.

- In September 2013, researched and wrote technical report on Effluent Limitation Guidelines for Best Available Technology Economically Available (BAT) for Bottom Ash Transport Waters from Coal-Fired Power Plants in the Steam Electric Power Generating Point Source Category.
- In July 2013, researched and wrote technical report on Initial Study/Mitigated Negative Declaration for the Valero Crude by Rail Project, Benicia, California, Use Permit Application 12PLN-00063.
- In July 2013, researched and wrote technical report on fugitive particulate matter emissions from coal train staging at the proposed Coyote Island Terminal, Oregon, for draft Permit No. 25-0015-ST-01.
- In July 2013, researched and wrote technical comments on air quality impacts of the Finger Lakes LPG Storage Facility as reported in various Environmental Impact Statements.
- In July 2013, researched and wrote technical comments on proposed Greenhouse Gas PSD Permit for the Celanese Clear Lake Plant, including cost analysis of CO2 capture, transport, and sequestration.
- In June/July 2013, researched and wrote technical comments on proposed Draft PSD Preconstruction Permit for Greenhouse Gas Emission for the ExxonMobil Chemical Company Baytown Olefins Plant, including cost analysis of CO2 capture, transport, and sequestration.
- In June 2013, researched and wrote technical report on a Mitigated Negative Declaration for a new rail terminal at the Valero Benicia Refinery to import increased amounts of "North American" crudes. Comments addressed air quality impacts of refining increased amounts of tar sands crudes.
- In June 2013, researched and wrote technical report on Draft Environmental Impact Report for the California Ethanol and Power Imperial Valley 1 Project.
- In May 2013, researched and wrote comments on draft PSD permit for major expansion of midwest refinery to process 100% tar sands crudes, including a complex netting analysis involving debottlenecking, piecemealing, and BACT analyses.
- In April 2013, researched and wrote technical report on the Draft Supplemental Environmental Impact Statement (DSEIS) for the Keystone XL Pipeline on air quality impacts from refining increased amount of tar sands crudes at Refineries in PADD 3.
- In October 2012, researched and wrote technical report on the Environmental Review for the Coyote Island Terminal Dock at the Port of Morrow on fugitive particulate matter emissions.

- In October 2012-October 2014, review and evaluate Flint Hills West Application for an expansion/modification for increased (Texas, Eagle Ford Shale) crude processing and related modification, including netting and BACT analysis. Assist in settlement discussions.
- In February 2012, researched and wrote comments on BART analysis in PA Regional Haze SIP, 77 FR 3984 (Jan. 26, 2012). On Sept. 29, 2015, a federal appeals court overturned the U.S. EPA's approval of this plan, based in part on my comments, concluding "..we will vacate the 2014 Final Rule to the extent it approved Pennsylvania's source-specific BART analysis and remand to the EPA for further proceedings consistent with this Opinion." Nat'l Parks Conservation Assoc. v. EPA, 3d Cir., No. 14-3147, 9/19/15.
- Prepared cost analyses and comments on New York's proposed BART determinations for NOx, SO2, and PM and EPA's proposed approval of BART determinations for Danskammer Generating Station under New York Regional Haze State Implementation Plan and Federal Implementation Plan, 77 FR 51915 (August 28, 2012).
- Prepared cost analyses and comments on NOx BART determinations for Regional Haze State Implementation Plan for State of Nevada, 77 FR 23191 (April 18, 2012) and 77 FR 25660 (May 1, 2012).
- Prepared analyses of and comments on New Source Performance Standards for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 FR 22392 (April 13, 2012).
- Researched and wrote comments on CASPR-BART emission equivalency and NOx and PM BART determinations in EPA proposed approval of State Implementation Plan for Pennsylvania Regional Haze Implementation Plan, 77 FR 3984 (January 26, 2012).
- Researched and wrote comments and statistical analyses on hazardous air pollutants (HAPs) emission controls, monitoring, compliance methods, and the use of surrogates for acid gases, organic HAPs, and metallic HAPs for proposed National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 76 FR 24976 (May 3, 2011).
- Prepared cost analyses and comments on NOx BART determinations and emission reductions for proposed Federal Implementation Plan for Four Corners Power Plant, 75 FR 64221 (October 19, 2010).
- Prepared cost analyses and comments on NOx BART determinations for Colstrip Units 1- 4 for Montana State Implementation Plan and Regional Haze Federal Implementation Plan, 77 FR 23988 (April 20, 2010).
- For EPA Region 8, prepared report: Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative Leland Olds Station Unit 2 Final Report, March 2011, in support of 76 FR 58570 (Sept. 21, 2011).

- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, in support of 76 FR 52388 (Aug. 22, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Flue Gas Desulfurization at Coal-Fired Electric Generating Units in Oklahoma: Sooner Units 1 & 2, Muskogee Units 4 & 5, Northeastern Units 3 &4, October 2010, in support of 76 FR 16168 (March 26, 2011). My work was upheld in: *State of Oklahoma v. EPA*, App. Case 12-9526 (10th Cri. July 19, 2013).
- Identified errors in N_2O emission factors in the Mandatory Greenhouse Gas Reporting Rule, 40 CFR 98, and prepared technical analysis to support Petition for Rulemaking to Correct Emissions Factors in the Mandatory Greenhouse Gas Reporting Rule, filed with EPA on 10/28/10.
- Assisted interested parties develop input for and prepare comments on the Information Collection Request for Petroleum Refinery Sector NSPS and NESHAP Residual Risk and Technology Review, 75 FR 60107 (9/29/10).
- Technical reviewer of EPA's "Emission Estimation Protocol for Petroleum Refineries," posted for public comments on CHIEF on 12/23/09, prepared in response to the City of Houston's petition under the Data Quality Act (March 2010).
- Researched and wrote comments on SCR cost effectiveness for EPA's Advanced Notice of Proposed Rulemaking, Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station, 74 FR 44313 (August 28, 2009).
- Researched and wrote comments on Proposed Rule for Standards of Performance for Coal Preparation and Processing Plants, 74 FR 25304 (May 27, 2009).
- Prepared comments on draft PSD permit for major expansion of midwest refinery to process up to 100% tar sands crudes. Participated in development of monitoring and controls to mitigate impacts and in negotiating a Consent Decree to settle claims in 2008.
- Reviewed and assisted interested parties prepare comments on proposed Kentucky air toxic regulations at 401 KAR 64:005, 64:010, 64:020, and 64:030 (June 2007).
- Prepared comments on proposed Standards of Performance for Electric Utility Steam Generating Units and Small Industrial-Commercial-Industrial Steam Generating Units, 70 FR 9706 (February 28, 2005).
- Prepared comments on Louisville Air Pollution Control District proposed Strategic Toxic Air Reduction regulations.
- Prepared comments and analysis of BAAQMD Regulation, Rule 11, Flare Monitoring at Petroleum Refineries.

- Prepared comments on Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electricity Utility Steam Generating Units (MACT standards for coal-fired power plants).
- Prepared Authority to Construct Permit for remediation of a large petroleum-contaminated site on the California Central Coast. Negotiated conditions with agencies and secured permits.
- Prepared Authority to Construct Permit for remediation of a former oil field on the California Central Coast. Participated in negotiations with agencies and secured permits.
- Prepared and/or reviewed hundreds of environmental permits, including NPDES, UIC, Stormwater, Authority to Construct, Prevention of Significant Deterioration, Nonattainment New Source Review, Title V, and RCRA, among others.
- Participated in the development of the CARB document, *Guidance for Power Plant Siting and Best Available Control Technology*, including attending public workshops and filing technical comments.
- Performed data analyses in support of adoption of emergency power restoration standards by the California Public Utilities Commission for "major" power outages, where major is an outage that simultaneously affects 10% of the customer base.
- Drafted portions of the Good Neighbor Ordinance to grant Contra Costa County greater authority over safety of local industry, particularly chemical plants and refineries.
- Participated in drafting BAAQMD Regulation 8, Rule 28, Pressure Relief Devices, including participation in public workshops, review of staff reports, draft rules and other technical materials, preparation of technical comments on staff proposals, research on availability and costs of methods to control PRV releases, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and cost of low-leak technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pumps and Compressors, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak and seal-less technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 5, Storage of Organic Liquids, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research

on availability and costs of controlling tank emissions, and presentation of testimony before the Board.

- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors at Petroleum Refinery Complexes, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 22, Valves and Flanges at Chemical Plants, etc, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pump and Compressor Seals, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability of low-leak technology, and presentation of testimony before the Board.
- Participated in the development of the BAAQMD Regulation 2, Rule 5, Toxics, including participation in public workshops, review of staff proposals, and preparation of technical comments.
- Participated in the development of SCAQMD Rule 1402, Control of Toxic Air Contaminants from Existing Sources, and proposed amendments to Rule 1401, New Source Review of Toxic Air Contaminants, in 1993, including review of staff proposals and preparation of technical comments on same.
- Participated in the development of the Sunnyvale Ordinance to Regulate the Storage, Use and Handling of Toxic Gas, which was designed to provide engineering controls for gases that are not otherwise regulated by the Uniform Fire Code.
- Participated in the drafting of the Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries, including participation in workshops, review of draft plans, preparation of technical comments on draft plans, and presentation of testimony before the SWRCB.
- Participated in developing Se permit effluent limitations for the five Bay Area refineries, including review of staff proposals, statistical analyses of Se effluent data, review of literature on aquatic toxicity of Se, preparation of technical comments on several staff proposals, and presentation of testimony before the Bay Area RWQCB.
- Represented the California Department of Water Resources in the 1991 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with

cross examination and rebuttal on a striped bass model developed by the California Department of Fish and Game.

- Represented the State Water Contractors in the 1987 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on natural flows, historical salinity trends in San Francisco Bay, Delta outflow, and hydrodynamics of the South Bay.
- Represented interveners in the licensing of over 20 natural-gas-fired power plants and one coal gasification plant at the California Energy Commission and elsewhere. Reviewed and prepared technical comments on applications for certification, preliminary staff assessments, final staff assessments, preliminary determinations of compliance, final determinations of compliance, and prevention of significant deterioration permits in the areas of air quality, water supply, water quality, biology, public health, worker safety, transportation, site contamination, cooling systems, and hazardous materials. Presented written and oral testimony in evidentiary hearings with cross examination and rebuttal. Participated in technical workshops.
- Represented several parties in the proposed merger of San Diego Gas & Electric and Southern California Edison. Prepared independent technical analyses on health risks, air quality, and water quality. Presented written and oral testimony before the Public Utilities Commission administrative law judge with cross examination and rebuttal.
- Represented a PRP in negotiations with local health and other agencies to establish impact of subsurface contamination on overlying residential properties. Reviewed health studies prepared by agency consultants and worked with agencies and their consultants to evaluate health risks.

WATER QUALITY/RESOURCES

- Directed and participated in research on environmental impacts of energy development in the Colorado River Basin, including contamination of surface and subsurface waters and modeling of flow and chemical transport through fractured aquifers.
- Played a major role in Northern California water resource planning studies since the early 1970s. Prepared portions of the Basin Plans for the Sacramento, San Joaquin, and Delta basins including sections on water supply, water quality, beneficial uses, waste load allocation, and agricultural drainage. Developed water quality models for the Sacramento and San Joaquin Rivers.
- Conducted hundreds of studies over the past 40 years on Delta water supplies and the impacts of exports from the Delta on water quality and biological resources of the Central Valley, Sacramento-San Joaquin Delta, and San Francisco Bay. Typical examples include:

    1. Evaluate historical trends in salinity, temperature, and flow in San Francisco Bay and upstream rivers to determine impacts of water exports on the estuary;

2. Evaluate the role of exports and natural factors on the food web by exploring the relationship between salinity and primary productivity in San Francisco Bay, upstream rivers, and ocean;
3. Evaluate the effects of exports, other in-Delta, and upstream factors on the abundance of salmon and striped bass;
4. Review and critique agency fishery models that link water exports with the abundance of striped bass and salmon;
5. Develop a model based on GLMs to estimate the relative impact of exports, water facility operating variables, tidal phase, salinity, temperature, and other variables on the survival of salmon smolts as they migrate through the Delta;
6. Reconstruct the natural hydrology of the Central Valley using water balances, vegetation mapping, reservoir operation models to simulate flood basins, precipitation records, tree ring research, and historical research;
7. Evaluate the relationship between biological indicators of estuary health and down-estuary position of a salinity surrogate (X2);
8. Use real-time fisheries monitoring data to quantify impact of exports on fish migration;
9. Refine/develop statistical theory of autocorrelation and use to assess strength of relationships between biological and flow variables;
10. Collect, compile, and analyze water quality and toxicity data for surface waters in the Central Valley to assess the role of water quality in fishery declines;
11. Assess mitigation measures, including habitat restoration and changes in water project operation, to minimize fishery impacts;
12. Evaluate the impact of unscreened agricultural water diversions on abundance of larval fish;
13. Prepare and present testimony on the impacts of water resources development on Bay hydrodynamics, salinity, and temperature in water rights hearings;
14. Evaluate the impact of boat wakes on shallow water habitat, including interpretation of historical aerial photographs;
15. Evaluate the hydrodynamic and water quality impacts of converting Delta islands into reservoirs;
16. Use a hydrodynamic model to simulate the distribution of larval fish in a tidally influenced estuary;
17. Identify and evaluate non-export factors that may have contributed to fishery declines, including predation, shifts in oceanic conditions, aquatic toxicity from

pesticides and mining wastes, salinity intrusion from channel dredging, loss of riparian and marsh habitat, sedimentation from upstream land alternations, and changes in dissolved oxygen, flow, and temperature below dams.

- Developed, directed, and participated in a broad-based research program on environmental issues and control technology for energy industries including petroleum, oil shale, coal mining, and coal slurry transport. Research included evaluation of air and water pollution, development of novel, low-cost technology to treat and dispose of wastes, and development and application of geohydrologic models to evaluate subsurface contamination from in-situ retorting. The program consisted of government and industry contracts and employed 45 technical and administrative personnel.
- Coordinated an industry task force established to investigate the occurrence, causes, and solutions for corrosion/erosion and mechanical/engineering failures in the waterside systems (e.g., condensers, steam generation equipment) of power plants. Corrosion/erosion failures caused by water and steam contamination that were investigated included waterside corrosion caused by poor microbiological treatment of cooling water, steam-side corrosion caused by ammonia-oxygen attack of copper alloys, stress-corrosion cracking of copper alloys in the air cooling sections of condensers, tube sheet leaks, oxygen in-leakage through condensers, volatilization of silica in boilers and carry over and deposition on turbine blades, and iron corrosion on boiler tube walls. Mechanical/engineering failures investigated included: steam impingement attack on the steam side of condenser tubes, tube-to-tube-sheet joint leakage, flow-induced vibration, structural design problems, and mechanical failures due to stresses induced by shutdown, startup and cycling duty, among others. Worked with electric utility plant owners/operators, condenser and boiler vendors, and architect/engineers to collect data to document the occurrence of and causes for these problems, prepared reports summarizing the investigations, and presented the results and participated on a committee of industry experts tasked with identifying solutions to prevent condenser failures.
- Evaluated the cost effectiveness and technical feasibility of using dry cooling and parallel dry-wet cooling to reduce water demands of several large natural-gas fired power plants in California and Arizona.
- Designed and prepared cost estimates for several dry cooling systems (e.g., fin fan heat exchangers) used in chemical plants and refineries.
- Designed, evaluated, and costed several zero liquid discharge systems for power plants.
- Evaluated the impact of agricultural and mining practices on surface water quality of Central Valley steams. Represented municipal water agencies on several federal and state advisory committees tasked with gathering and assessing relevant technical information, developing work plans, and providing oversight of technical work to investigate toxicity issues in the watershed.

AIR QUALITY/PUBLIC HEALTH

- Prepared or reviewed the air quality and public health sections of hundreds of EIRs and EISs on a wide range of industrial, commercial and residential projects.
- Prepared or reviewed hundreds of NSR and PSD permits for a wide range of industrial facilities.
- Designed, implemented, and directed a 2-year-long community air quality monitoring program to assure that residents downwind of a petroleum-contaminated site were not impacted during remediation of petroleum-contaminated soils. The program included real-time monitoring of particulates, diesel exhaust, and BTEX and time integrated monitoring for over 100 chemicals.
- Designed, implemented, and directed a 5-year long source, industrial hygiene, and ambient monitoring program to characterize air emissions, employee exposure, and downwind environmental impacts of a first-generation shale oil plant. The program included stack monitoring of heaters, boilers, incinerators, sulfur recovery units, rock crushers, API separator vents, and wastewater pond fugitives for arsenic, cadmium, chlorine, chromium, mercury, 15 organic indicators (e.g., quinoline, pyrrole, benzo(a)pyrene, thiophene, benzene), sulfur gases, hydrogen cyanide, and ammonia. In many cases, new methods had to be developed or existing methods modified to accommodate the complex matrices of shale plant gases.
- Conducted investigations on the impact of diesel exhaust from truck traffic from a wide range of facilities including mines, large retail centers, light industrial uses, and sports facilities. Conducted traffic surveys, continuously monitored diesel exhaust using an aethalometer, and prepared health risk assessments using resulting data.
- Conducted indoor air quality investigations to assess exposure to natural gas leaks, pesticides, molds and fungi, soil gas from subsurface contamination, and outgasing of carpets, drapes, furniture and construction materials. Prepared health risk assessments using collected data.
- Prepared health risk assessments, emission inventories, air quality analyses, and assisted in the permitting of over 70 1 to 2 MW emergency diesel generators.
- Prepare over 100 health risk assessments, endangerment assessments, and other health-based studies for a wide range of industrial facilities.
- Developed methods to monitor trace elements in gas streams, including a continuous real-time monitor based on the Zeeman atomic absorption spectrometer, to continuously measure mercury and other elements.
- Performed nuisance investigations (odor, noise, dust, smoke, indoor air quality, soil contamination) for businesses, industrial facilities, and residences located proximate to and downwind of pollution sources.

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Assessment, Control and Remediation of LNAPL Contaminated Sites, API and USEPA, 9/94
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Design of Gas Turbine Combined Cycle and Cogeneration Systems, Thermoflow, 12/00
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Mechanics Liens, PDHOnline, 2/24/13.
Understanding Concerns with Dry Sorbent Injection as a Coal Plant Pollution Control, Webinar #874-567-839 by Cleanenergy.Org, March 4, 2013
Webinar: Coal-to-Gas Switching: What You Need to Know to Make the Investment, sponsored by PennWell Power Engineering Magazine, March 14, 2013. Available at: https://event.webcasts.com/viewer/event.jsp?ei=1013472.

Response to Comment C-1

Comment Noted. The comment provides Project and introductory information.

Response to Comment C-2

For the purposes of responding to this comment it is assumed that there is a typo in the first sentence of the last paragraph on page 5 of the Comment Letter and it was supposed to say "but the HRA does **not** analyze acute impacts to construction workers…" The Office of Environmental Health Hazard Assessment (OEHHA) has developed reference exposure levels (RELs) to determine potential non-cancer health impacts from toxic air contaminants (TACs). An REL is used as an indicator of potential non-cancer health impacts and is defined as the concentration at which no adverse non-cancer health effects are anticipated. RELs incorporate uncertainty factors to help ensure that the REL is protective for nearly all individuals, including sensitive populations.[2] RELs (acute and chronic) have been developed for a number of TACs, exposure pathways, and exposure durations. However, OEHHA has not developed an acute REL for diesel particulate matter (DPM); therefore, acute DPM impacts were not evaluated in the Health Risk Assessment and IS/MND. This is consistent with OEHHA Guidance and the California Air Resources Board (CARB) HARP2 Air Dispersion Modeling Program that was used in development of the proposed Project's Health Risk Assessment summarized in the air quality section of the Draft IS/MND and found in Appendix B of the IS/MND.

Furthermore, it is not standard practice in CEQA documents or Health Risk Assessments to analyze air quality health risk impacts to future construction workers developing a proposed project. On-site construction worker exposure to DPM and associated risk is the responsibility of the Occupation Safety and Health Administration (OSHA). OSHA strategies include engineering and administrative controls that minimize emissions and change the way work tasks are performed to reduce or eliminate hazards.[3] The Bay Area Air Quality Management District (BAAQMD) local risk and hazards significance thresholds apply to sensitive receptors only. BAAQMD defines sensitive receptors as "Certain community members are more susceptible to poor air quality. These individuals, referred to as sensitive receptors, are typically children, the elderly, and those with preexisting serious health problems. Land uses where sensitive receptors are most likely to spend time include schools and schoolyards, parks and playgrounds, daycare centers and preschools, hospices, dormitories, prisons, nursing homes, hospitals, and residential communities. The risk and hazards thresholds of significance apply in determining whether a new source of pollution will result in unacceptable risks to the community."[4] The Project's Health Risk Assessment analyzed potential health impacts from construction and operation of the Project on nearby residents and off-site workers.

Health risk (cancer and non-cancer) impacts from DPM emissions resulting from construction of the proposed Project were evaluated in accordance with BAAQMD, OEHHA, and CARB Guidance. As shown on page 23 and 24 (Tables 6 and 7) of the Draft IS/MND, the Project would not expose nearby sensitive receptors or off-site workers to significant health risks as the Project would be below all BAAQMD health risk significance thresholds. Therefore, the Project would have a less-than-significant impact.

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[2] OEHHA, Air Toxics Hot Spots, Program Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments, February 2015, Accessed at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf

3 OSHA, Diesel Exhaust/Diesel Particulate Matter, January 2013, Accessed at: https://www.osha.gov/sites/default/files/publications/OSHA-3590.pdf

[4] BAAQMD, 2022 CEQA Guidelines, April 20, 2023, Accessed at: https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines

Response to Comment C-3

The Phase I Environmental Site Assessment (ESA) was available to the public during the full 30-day public review period. As stated on page 2 of the Notice of Intent to Consider Adoption of a Mitigated Negative Declaration for the proposed Project, "Background and reference materials related to the IS/MND can be reviewed upon request to the City of Pittsburg's Planning Division." The Notice of Intent was posted on the City's website, at the County Clerk and on CEQAnet and the Phase I ESA was available as of the date of the Notice of Intent (October 13, 2023).

Response to Comment C-4

See Response to Comment B-2 regarding recent soil testing that occurred on Project site.

The CEC Phase I ESA identified Recognizable Environmental Conditions (RECs) within the greater parcel, but they were associated with the ditch dredging four decades ago, and past removal of USTs, which evidence suggests did not occur on the Project site (page 27-29 of the Phase I ESA). The Draft IS/MND explains that while 2000 Loveridge Road may be listed as having previous environmental concerns, they did not involve the proposed Project site portion of that property. The soils excavated during the 1983 ditch dredging were removed, tested, and landfilled and thus, are not considered a source of contamination. The identified REC associated with offsite contaminants entering the Project site via the Caltrans surface water/highway runoff is an existing condition and if there were contaminants in the surface/highway runoff, they would be confined to the ditch, which would not be disturbed or otherwise affected by the Project. Similar to the other RECs noted above, the nine petroleum USTs are present within the greater 2000 Loveridge Road parcel and are not within the Project site (As noted on page 58 of the Draft IS/MND). As stated on page 58 of the Draft IS/MND, there is no evidence presented in the Phase I indicating that the vacant portion of the parcel that is considered the Project site has been involved in the storage, accidental release, or production of hazardous waste or materials and that it could create a significant hazard to the public or environment. Therefore, this impact is less than significant.

Response to Comment C-5

The City of Pittsburg Planning Division provided responses to DTSC's comments on November 30, 2023 (reiterated in Responses to Comment Letter B above). DTSC concluded that the responses to the DTSC comment letter were adequate and useful in addressing soil remediation.[5]

See Responses to Comments B-2, B-3, B-4, and C-4.

The Draft IS/MND did not identify a potentially significant impact, thus the DTSC's recommendation for additional soil sampling and to prepare an SMP would not be appropriate as mitigation measures. However, the City will include DTSC's recommendations as Conditions of Approval. DTSC's comments are fully disclosed and responded to in Responses to Comment Letter B, above.

Response to Comment C-6

See Response to Comment B-2, B-3, B-4, C-4, and C-5, above.

As noted in Response to Comment B-2, the soil testing by BGG indicates that low levels of metals, diesel, and motor oil may be present in shallow soils within certain areas of the Project site. The soil samples containing diesel and motor oil were collected in an area of a previous stockpile observed on historical photographs. Therefore, it is possible that site grading for the proposed Project could encounter surface soils containing low levels of residual petroleum hydrocarbons and elevated metals. However, given the low concentrations detected, these soils would not represent a substantial hazard to site workers and, considering the proposed industrial land use and that the Project site would be covered with asphalt or

[5] Kereazis, Dave. Department of Toxic Substances Control HWWP-Permitting (CEQA Unit), Email Communication, Friday December 15, 2023 8:31 AM.

cement, the risk of future human and environmental exposure is low. BGG's assessment did not provide evidence of a different or more severe site contamination condition compared with those identified in the Draft IS. No evidence was identified indicating a new or substantially more severe potentially significant impact. While no additional soils sampling is warranted, prior to project commencement, a Soil Management Plan, as requested by DTSC and discussed in Response to Comment B-3, would be in place to address and remedy contaminated soils if encountered during Project site grading.

Furthermore, BAAQMD's basic BMPs for construction-related fugitive dust would be implemented through **Mitigation Measure AQ-1** (see page 21 and 22 of the Draft IS/MND). These BMPs would prevent dust from contaminated soils, if encountered, from becoming airborne and leaving the Project site. On-site construction worker exposure to potentially contaminated soil and associated risk is the responsibility of the OSHA. As noted on page 9 of the IS/MND, the nearest sensitive land use (residents) are roughly 800 feet southwest of the project site. Based on the low concentrations detected, the application of BAAQMD's BMPs, and the distance between the nearest sensitive receptors and the Project site (800 feet), the Project would not pose significant health impacts to the public from the disturbance of on-site soils.

Based on the above, there is no substantial evidence that supports a fair argument that the proposed Project would result in potentially significant health impacts from disturbance of on-site soil contamination.

Response to Comment C-7

Comment noted. The comment provides information related to wetlands from the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP).

Response to Comment C-8

A jurisdictional delineation survey is not a CEQA requirement. The Project's environmental setting (baseline physical conditions) was established through a reconnaissance-level site assessment of the Project site and surrounding property by Vollmar Natural Lands Consulting (ecologist Roxanne Foss) in June 2023, which followed previous surveys of the site in 2018 and 2019. While the Project is required to conduct all assessments necessary to comply with the HCP/NCCP, it is not required to do so during the CEQA process. The Project would avoid all wetlands and aquatic features identified in the reconnaissance-level site assessment conducted in June 2023 (this is illustrated in Figure 3 of Planning Survey Report found in Appendix C of the Draft IS/MND). As shown in Figure 3 of the Planning Survey Report, wetlands are just outside the permanent site footprint to west and the proposed temporary staging area west of the existing facility. Thus, to further ensure that the Project avoids all wetlands and aquatic features, Mitigation Measure BIO-6 (page 31 of the Draft IS/MND) requires an aquatic delineation survey prior to ground disturbing activities to ensure avoidance of these features. Note, this is already a requirement of the HCP/NCCP but was included as a mitigation measure to ensure implementation through the Mitigation Monitoring and Reporting Program for the Project.

In response to this comment, Mitigation Measure BIO-6 has been enhanced to contain specific performance standards and identify the types of actions that may achieve compliance with the performance standards (redesign of the Project site plan and/or temporary staging areas or obtain the necessary permits including wetlands compensatory mitigation). Incorporation of the enhanced mitigation measure into the Project will be required prior to adoption of the MND pursuant to CEQA Guidelines. The enhanced mitigation measure is equivalent or more effective than Mitigation Measure BIO-6 as it appeared in the Draft IS/MND and does not affect the impact conclusions in the IS/MND or require recirculation.

Mitigation Measure BIO-6 is revised as follows:

> Mitigation Measure BIO-6: Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features. <u>If the aquatic resources delineation concludes that</u>

development of the Project will not avoid the aquatic features present onsite, the Applicant shall do one of the following:

1) Redesign the Project site plan and/or temporary staging areas to avoid the aquatic features onsite; or
2) Obtain the applicable permit of the U.S. Army Corps of Engineers and the Regional Water Quality Control Board to fill the aquatic features necessary to develop the Project if redesigning the Project site plan is not feasible.

In addition, the Project Applicant shall implement the following avoidance measures described in the HCP/NCCP to avoid and minimize impacts on wetlands and riparian woodland/scrub during construction activities:

a. All wetlands, ponds, streams, and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by a qualified biologist.
b. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
c. Trash generated by covered activities will be promptly and properly removed from the site.
d. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
e. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site.
f. Fiber rolls used for erosion control will be certified as free of noxious weed seed.
g. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
h. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures).
i. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

Response to Comment C-9

As described in Response to Comment C-8. Mitigation Measure BIO-6 has been enhanced to contain the applicable measures listed in Conservation Measure 2.12 of the HCP/NCCP. These measures would reduce/prevent direct and indirect impacts to wetlands and aquatic features. Note, these measures are a

requirement of the HCP/NCCP but have been added to the mitigation measure to ensure implementation through the Mitigation Monitoring and Reporting Program for the Project.

As detailed on page 64 of the Draft IS/MND, implementation of the Project would not substantially alter the existing drainage pattern of the Project site. The Project applicant would be required to prepare a SWPPP, which would assure that no significant sedimentation occurs from project construction. The SWPPP must include site-specific erosion and sedimentation control practices and would limit the amount of runoff that may be directed offsite during construction (page 62-65 of the Draft IS/MND). Once the Project is developed, stormwater would be retained onsite through a drainage trough beginning in the northeast corner of the site and ending in the southeast corner where it would connect to existing underground stormwater piping and enter existing catch basins associated with the other uses present on the parcel. A retaining wall would be developed along the perimeter of the site, which would further prevent indirect impacts to wetlands from runoff and sedimentation. Adherence to the Contra Costa Clean Water Program (CCCWP) and General Industrial Permit provisions and requirements would ensure post-construction stormwater discharges would not be increased and that pollutants would not be transported offsite in a manner that would degrade the water quality of receiving waters.

The Project site is on an industrial parcel that is already subject to noise from the existing facility. As noted on page 8 of the Planning Survey Report (Appendix C of the Draft IS/MND), the drainage features and seasonal wetlands on the parcel do not provide suitable breeding or migration habitat for the aquatic species that could be present in the study area. Potential noise effects were considered in the HCP/NCCP and necessary noise considerations were developed within the specific avoidance measures required by the HCP/NCCP, which were included as mitigation measures in the Draft IS/MND (See Mitigation Measures BIO-3 and BIO-4).

See Responses to Comments B-2, B-3, B-4, and C-4 regarding the Phase I ESA and contaminated soils or other hazards such as USTs.

Response to Comment C-10

See Responses to Comments C-8 and C-9. As described above in Responses to Comments C-8 and C-9, above, Mitigation Measure BIO-6 has been enhanced and now includes the applicable measures listed in Conservation Measure 2.12 of the HCP/NCCP, including required erosion/sediment control measures.

Response to Comment C-11

See Responses to Comments C-7 through C-10.

Response to Comment C-12

See Responses to Comments C-1 through C-11.

Attachment 3

CONSTRUCTION NOTES

1. GENERAL CONSIDERATIONS

A. ALL WORK SHALL BE PERFORMED IN COMPLIANCE WITH THE PRINCIPLES OF GOOD CONSTRUCTION PRACTICE.

B. ALL WORK SHALL BE PERFORMED IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF THE LOCAL, STATE, AND NATIONAL CODES, AS WELL AS WITH THE PRINCIPLES OF GOOD CONSTRUCTION PRACTICE.

C. DURING THE CONSTRUCTION PERIOD THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY (INCLUDING FIRE SAFETY) OF THE NEW, AS WELL AS EXISTING, STRUCTURES. THE CONTRACTOR SHALL PROVIDE ADEQUATE SHORING, BRACING, AND GUYS IN ACCORDANCE WITH ALL NATIONAL, STATE AND LOCAL SAFETY ORDINANCES. THAT RESPONSIBILITY SHALL APPLY CONTINUOUSLY AND SHALL NOT BE LIMITED TO NORMAL WORKING HOURS. ANY DEVIATION FROM SUCH ORDINANCES MUST BE REVIEWED AND APPROVED BY SGE PRIOR TO CONSTRUCTION.

D. THE CONTRACTOR SHALL THOROUGHLY REVIEW THE PLANS AND CHECK ALL DIMENSIONS PRIOR TO COMMENCING THE WORK. ALL DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF SGE AND RESOLVED BEFORE PROCEEDING WITH THE WORK.

E. THE CONTRACTOR SHOULD NOT PROCEED WITH CONSTRUCTION IN CASE OF CONFLICT(S) BETWEEN THE DETAILS, AND/OR BETWEEN THE DETAILS AND PLANS, AND/OR BETWEEN THE PLANS AND SCHEDULES. THE CONSTRUCTION SHALL RESUME ONLY UPON THE FULL RESOLUTION OF SUCH CONFLICT BY SGE.

F. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE RESTORATION OF WORKING CONDITION OF ALL EXISTING COMPONENTS AND STRUCTURES AFFECTED BY THIS CONSTRUCTION. THE CONTRACTOR SHALL CONSTANTLY KEEP THE AREA OF CONSTRUCTION FROM ACCUMULATION OF WASTE MATERIALS AND DEBRIS.

G. AT THE END OF EACH DAY OF CONSTRUCTION ACTIVITY, ALL CONSTRUCTION DEBRIS AND WASTE MATERIALS SHALL BE COLLECTED AND PROPERLY DISPOSED IN TRASH OR RECYCLE BINS. AT THE END OF WORK, THE CONTRACTOR SHALL REMOVE ALL WASTE, SURPLUS MATERIAL, TOOLS, AND EQUIPMENT.

H. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONJUNCTION WITH THIS PROJECT EXCEPT FOR LIABILITY RISING FROM THE SOLE NEGLIGENCE OF THE ENGINEER.

I. DO NOT SCALE THESE DRAWINGS. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER ASSUMED OR SCALED DIMENSIONS.

J. ALL DIMENSIONS ARE TO FACE OF FINISHED SURFACES. LAYOUT OF STRUCTURES AND FOUNDATIONS MUST BE DETERMINED BY EXAMINATION OF PLANS AND FINISH MATERIALS SELECTED AND SHALL NOT BE ASSUMED AS BEING EXPRESSED BY THE WRITTEN FINISHED SURFACE DIMENSIONS.

K. SITE DRAWINGS ARE BASED UPON THE PLANS OBTAINED FROM THE AUTHORITY HOLDING JURISDICTION (AHJ), AND/OR PROVIDED BY THE PROPERTY OWNER, AND/OR AVAILABLE AERIAL IMAGES. UNLESS NOTED OTHERWISE, NO TOPOGRAPHIC, BOUNDARY, OR LAND TITLE SURVEY WAS PERFORMED FOR THE PROJECT.

L. ALL CUTSHEETS, DETAILS, AND DIMENSIONS MARKED "FOR REFERENCE ONLY" REFLECT INFORMATION BY OTHERS, ARE PRESENTED EXCLUSIVELY FOR REFERENCE PURPOSES, AND USED BY SGE AS A BASIS FOR STRUCTURAL DESIGN, UNLESS NOTED OTHERWISE. THE VERACITY OF THE INFORMATION, AS WELL AS THE ADEQUACY OF EQUIPMENT BY OTHERS, WAS NOT VERIFIED AND WAS ASSUMED BY SGE AS COMPLIANT WITH ALL APPLICABLE CODES AND STANDARDS. THE SGE STAMP AND SIGNATURE PERTAIN EXCLUSIVELY TO THE PORTIONS OF THE STRUCTURAL DRAWINGS AND CALCULATIONS DEVELOPED BY SGE.

2. STORMWATER, EROSION, AND ENVIRONMENTAL CONSIDERATIONS

ALL CONSTRUCTION WORK SHALL FULLY COMPLY WITH ALL STORMWATER, EROSION, GRADING, AND ENVIRONMENTAL REQUIREMENTS OF THE LOCAL, STATE AND FEDERAL CODES - INCLUDING (BUT NOT LIMITED TO) THE FOLLOWING:

A. ALL CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR PERSONNEL ARE TO BE MADE AWARE OF, AND COMPLY WITH, THE AUTHORITY HOLDING JURISDICTION (AHJ) BEST MANAGEMENT PRACTICES (BMP) AND GOOD HOUSEKEEPING MEASURES FOR THE PROJECT SITE AND ANY ASSOCIATED CONSTRUCTION STAGING AREAS.

B. APPROPRIATE BMP FOR CONSTRUCTION-RELATED MATERIALS, WASTES, AND SPILLS SHALL BE IMPLEMENTED TO MINIMIZE TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES, OR ADJOINING PROPERTY BY WIND OR RUNOFF.

C. CONSTRUCTION SITES SHALL BE MAINTAINED IN SUCH A CONDITION THAT AN ANTICIPATED STORM DOES NOT CARRY WASTES OR POLLUTANTS OFF THE SITE. DISCHARGES OF MATERIAL OTHER THAN STORMWATER ARE ALLOWED ONLY WHEN NECESSARY FOR PERFORMANCE AND COMPLETION OF CONSTRUCTION PRACTICES AND WHERE THEY DO NOT: (A) CAUSE OR CONTRIBUTE TO A VIOLATION OF ANY WATER QUALITY STANDARD; (B) CAUSE OR THREATEN TO CAUSE POLLUTION, CONTAMINATION, OR NUISANCE; AND/OR (C) CONTAIN A HAZARDOUS SUBSTANCE IN A QUANTITY REPORTABLE UNDER FEDERAL REGULATIONS CFR PARTS 117 AND 302.

D. RUNOFF FROM EQUIPMENT AND VEHICLE WASHING SHALL BE CONTAINED AT CONSTRUCTION SITES UNLESS TREATED TO REDUCE OR REMOVE SEDIMENT OR OTHER POLLUTANTS.

E. POTENTIAL POLLUTANTS INCLUDE, BUT ARE NOT LIMITED TO: SOLID OR LIQUID CHEMICAL SPILLS; WASTES FROM PAINTS, STAINS, SEALANTS, GLUES, LIMES, PESTICIDES, HERBICIDES, WOOD PRESERVATIVES AND SOLVENTS; ASBESTOS FIBERS, PAINT FLAKES OR STUCCO FRAGMENTS; FUELS, OILS, LUBRICANTS AND HYDRAULIC, RADIATOR OR BATTERY FLUIDS; FERTILIZERS; VEHICLE/EQUIPMENT WASH WATER AND CONCRETE WASH WATER; CONCRETE, DETERGENT, OR FLOATABLE WASTES; WASTES FROM ANY ENGINE/ EQUIPMENT STEAM CLEANING OR CHEMICAL DEGREASING AND SUPERCHLORINATED POTABLE WATER LINE FLUSHING.

F. DURING CONSTRUCTION, THE DISPOSAL OF SUCH MATERIALS SHALL OCCUR IN A SPECIFIED AND CONTROLLED TEMPORARY AREA ON-SITE PHYSICALLY SEPARATED FROM STORMWATER RUNOFF, WITH ULTIMATE DISPOSAL IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL REQUIREMENTS.

G. DEWATERING OF CONTAMINATED GROUND WATER OR DISCHARGING OF CONTAMINATED SOILS VIA SURFACE EROSION IS PROHIBITED. DEWATERING OF NON-CONTAMINATED GROUND WATER REQUIRES A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FROM THE RESPECTIVE STATE REGIONAL WATER QUALITY BOARD.

H. SEDIMENT FROM AREAS DISTURBED BY CONSTRUCTION SHALL BE RETAINED ON SITE USING STRUCTURAL CONTROLS TO THE MAXIMUM PRACTICAL EXTENT.

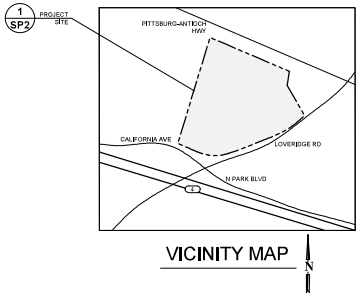
I. STOCKPILES OF SOIL SHALL BE PROPERLY CONTAINED TO MINIMIZE SEDIMENT TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES OR ADJACENT PROPERTIES VIA RUNOFF, VEHICLE TRACKING, OR WIND.

J. GRADED AREAS ON THE PERMITTED AREA PERIMETER MUST DRAIN AWAY FROM THE FACE OF THE SLOPES AND TOWARD DESILTING FACILITIES AT THE CONCLUSION OF EACH WORKING DAY.

K. THE PERMITTEE AND THE CONTRACTOR SHALL BE RESPONSIBLE AND SHALL TAKE THE NECESSARY PRECAUTIONS TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATER CREATES A HAZARDOUS CONDITION.

L. THE PERMITTEE AND THE CONTRACTOR SHALL ENSURE THAT THE EROSION CONTROL WORK IS IN ACCORDANCE WITH THE APPROVED PLANS.

PROJECT INFORMATION		
	NO CHANGE	
PROJECT DESCRIPTION		INSTALLATION OF AN AIR SEPARATION UNIT SYSTEM, INCLUDING A DISTILLATION TOWER, HEAT EXCHANGER COLD BOX, STORAGE TANKS, AIR COMPRESSOR AND AUXILIARY EQUIPMENT. NO CHANGE IN FLOOR AREA.
PROJECT ADDRESS	☑	2000 LOVERIDGE RD, PITTSBURG, CA 94565
PROJECT COORDINATES	☑	38°00'49.7"N 121°51'55.8"W
ASSESSOR PARCEL NUMBER	☑	073-190-035
CODES		2022 CALIFORNIA BUILDING CODE 2022 CALIFORNIA MECHANICAL CODE 2022 CALIFORNIA ELECTRICAL CODE
LOT SIZE	☑	31.40 ACRES ±
BUILDING AREA	☑	MULTIPLE BUILDINGS, NIC
BUILDING HEIGHT	☑	VARIES
PROJECT TEAM		
CLIENT, CIVIL, MECHANICAL, ELECTRICAL DESIGN		LINDE ENGINEERING NORTH AMERICA, LLC 175 E PARK DR. TONAWANDA, NY 14150
SITE PLAN, STRUCTURAL DESIGN & PROJECT COORDINATION		SGE CONSULTING STRUCTURAL ENGINEERS 2081 BUSINESS CENTER DR #105 IRVINE, CA 92612 (949) 553-5244



DRAWING INDEX	
DRAWING	DRAWING TITLE
SP1	NOTES & PROJECT INFORMATION
SP2	SITE PLAN
SP3	ENLARGED AREA OF WORK
SP4	2D ELEVATIONS
SP5	3D ELEVATION

CLIENT

LINDE ENGINEERING NORTH AMERICA, LLC

175 E. Park Dr.
Tonawanda, NY 14150

INSTALLATION OF AN ASU PLANT

LOCATION
Linde Pittsburg Plant
2000 Loveridge Rd, Pittsburg, CA 94565

THESE PLANS WERE DEVELOPED RESPECTIVELY FOR USE ON THE STRUCTURES AND BY PERSONS/COMPANY AS SPECIFIED IN THE TITLE BLOCK. ANY OTHER USE (INCLUDING, BUT NOT LIMITED TO, DISSEMINATION AND COPYING) OF THESE PLANS OR ANY USE OF THE PLANS BY ANY PARTY OR PARTIES OTHER THAN THE ONES SPECIFIED IN THE TITLE BLOCK ARE STRICTLY PROHIBITED UNLESS UNDER A WRITTEN PERMISSION BY SGE.

S. GORDON STRUCTURAL DESIGN & ENGINEERING SERVICES (SGE), INC.
2081 Business Ctr Dr., Ste 105, Irvine, CA 92612
TEL: (949) 553-5244 FAX: (949) 553-5243

REGISTERED PROFESSIONAL ENGINEER STEVE GORDON No. S-4311 STRUCTURAL STATE OF CALIFORNIA

October 23, 2023

SGE JOB No. 522.103.836

LINDE PITTSBURG COOLING TOWER-SITE PLAN

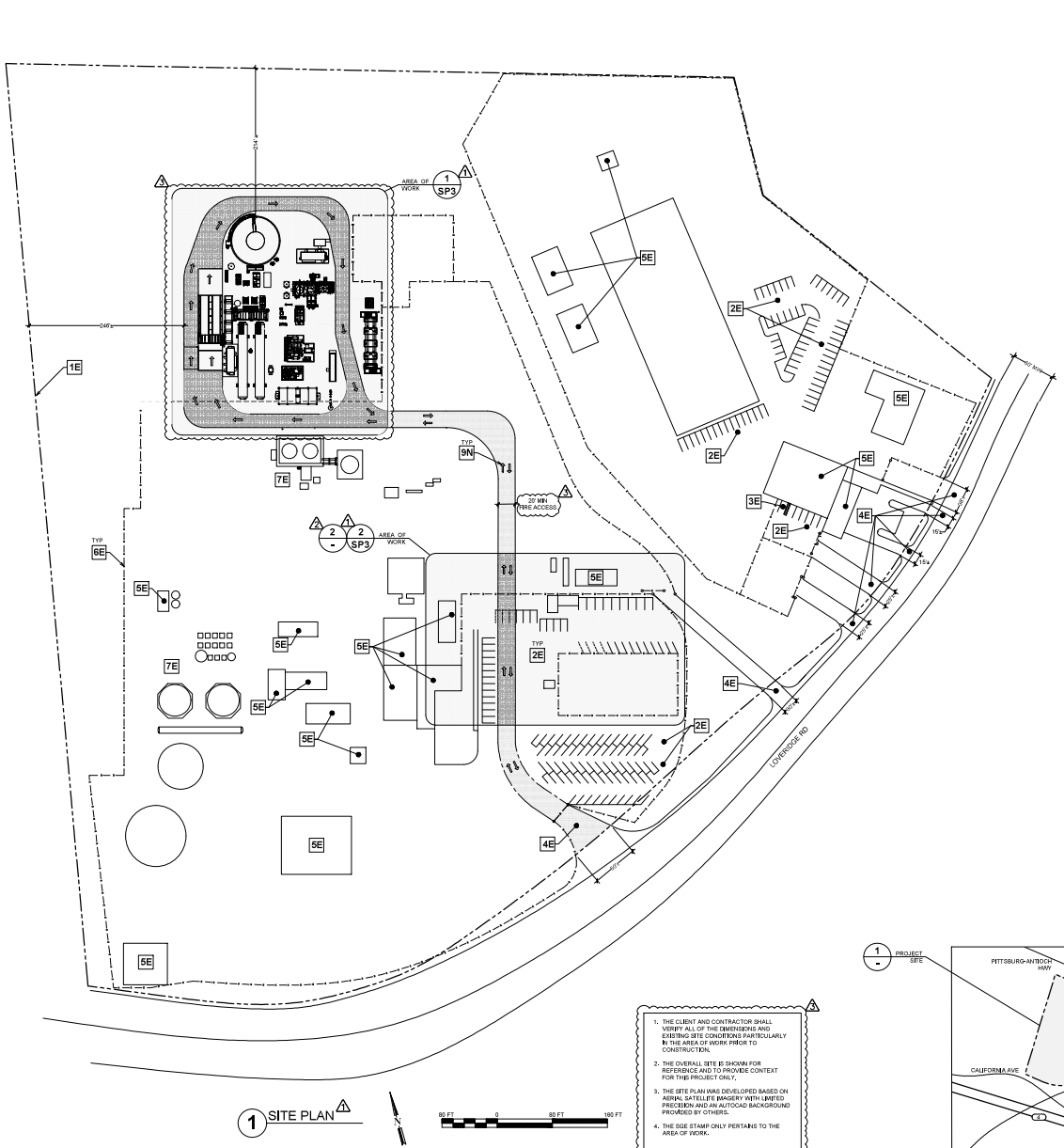
REVISIONS

REV	DATE	DESCRIPTION	BY
3	10/17/2023	CLIENT REQUESTED CHANGE NO REVISIONS THIS PAGE	JH VSG
2	05/01/2023	PLAN CHECK COMMENT NO REVISIONS THIS PAGE	JH VSG

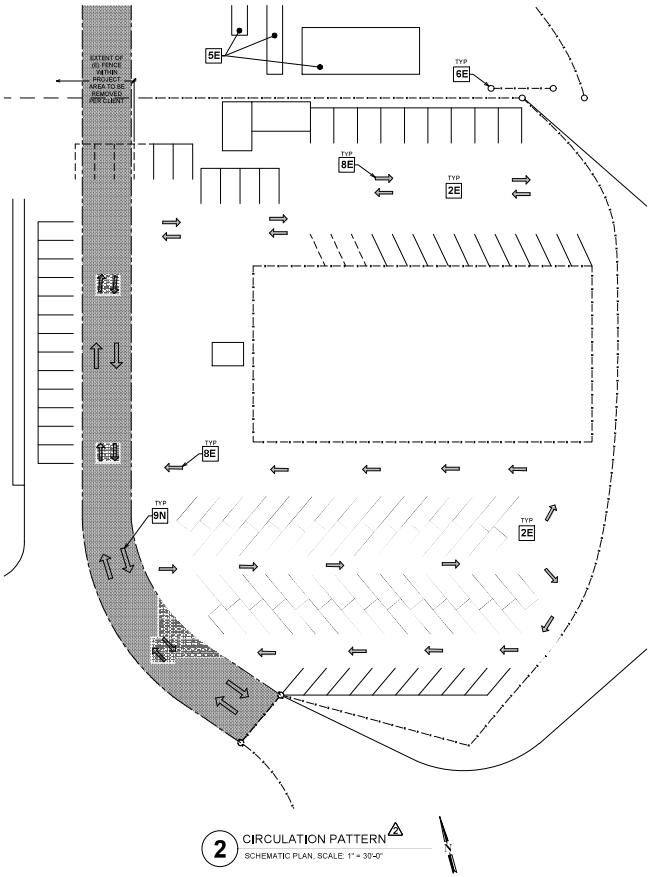
DATE: March 28, 2023
DESIGNED BY JH
APPROVED BY VSG
TOTAL SITE PLAN SHEETS - 5

NOTES & PROJECT INFORMATION

SP1

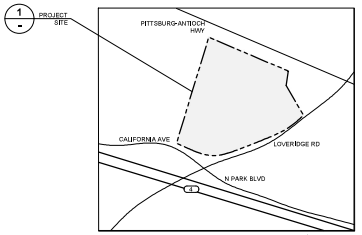


1 SITE PLAN



2 CIRCULATION PATTERN
SCHEMATIC PLAN, SCALE: 1" = 30'-0"

1. THE CLIENT AND CONTRACTOR SHALL VERIFY ALL OF THE DIMENSIONS AND EXISTING SITE CONDITIONS PARTICULARLY IN THE AREA OF WORK PRIOR TO CONSTRUCTION.
2. THE OVERALL SITE IS SHOWN FOR REFERENCE AND TO PROVIDE CONTEXT FOR THIS PROJECT ONLY.
3. THE SITE PLAN WAS DEVELOPED BASED ON AERIAL SATELLITE IMAGERY WITH LIMITED PRECISION AND AN AUTOCAD BACKGROUND PROVIDED BY OTHERS.
4. THE SGE STAMP ONLY PERTAINS TO THE AREA OF WORK.



VICINITY MAP

KEYNOTES

EXISTING (E) NO CHANGE UNLESS NOTED OTHERWISE BY OTHERS, NIC		NEW (N) REFER TO SP3	
1E	PROPERTY LINE	1N	TANK: LIQUID NITROGEN
2E	PARKING	2N	RECTIFICATION COLD BOX
3E	ACCESSIBLE PARKING	3N	HEAT EXCHANGER COLDBOX
4E	DRIVEWAY	4N	TRUCK FILL MODULES
5E	BUILDING	5N	TANK: LIQUID OXYGEN
6E	FENCE	6N	4-CELL COOLING TOWER
7E	EQUIPMENT YARD	7N	MISC EQUIPMENT
8E	CIRCULATION PATTERN	8N	FILL AREA
9E	HYDRANT	9N	CIRCULATION PATTERN
		10N	HYDRANT
		11N	GAS PIPING SKID
		12N	MOLSIEVE ABSORBER

CLIENT

LINDE ENGINEERING NORTH AMERICA, LLC

175 E. Park Dr, Tonawanda, NY 14150

INSTALLATION OF AN ASU PLANT

LOCATION
Linde Pittsburg Plant
2000 Loveridge Rd, Pittsburg, CA 94565

THESE PLANS WERE DEVELOPED RESTRICTIVELY FOR USE ON THE STRUCTURES AND BY PERSONS/COMPANY AS SPECIFIED IN THE TITLE BLOCK. ANY OTHER USE INCLUDING BUT NOT LIMITED TO, DISSEMINATION AND COPYING OF THESE PLANS OR ANY USE OF THE PLANS BY ANY PARTY OR PARTIES OTHER THAN THE ONES SPECIFIED IN THE TITLE BLOCK ARE STRICTLY PROHIBITED UNLESS UNDER A WRITTEN PERMISSION BY SGE.

S. GORDEN STRUCTURAL DESIGN & ENGINEERING SERVICES [SGE], INC.
2201 Business Ctr Dr., Ste 126, Irvine, CA 92612
TEL: (949) 852-0434 FAX: (949) 852-0435

REGISTERED PROFESSIONAL ENGINEER STEVE GORDEN No. S-4311 STRUCTURAL STATE OF CALIFORNIA

October 23, 2023

SGE JOB No. 522.103.836

LINDE PITTSBURG COOLING TOWER-SITE PLAN

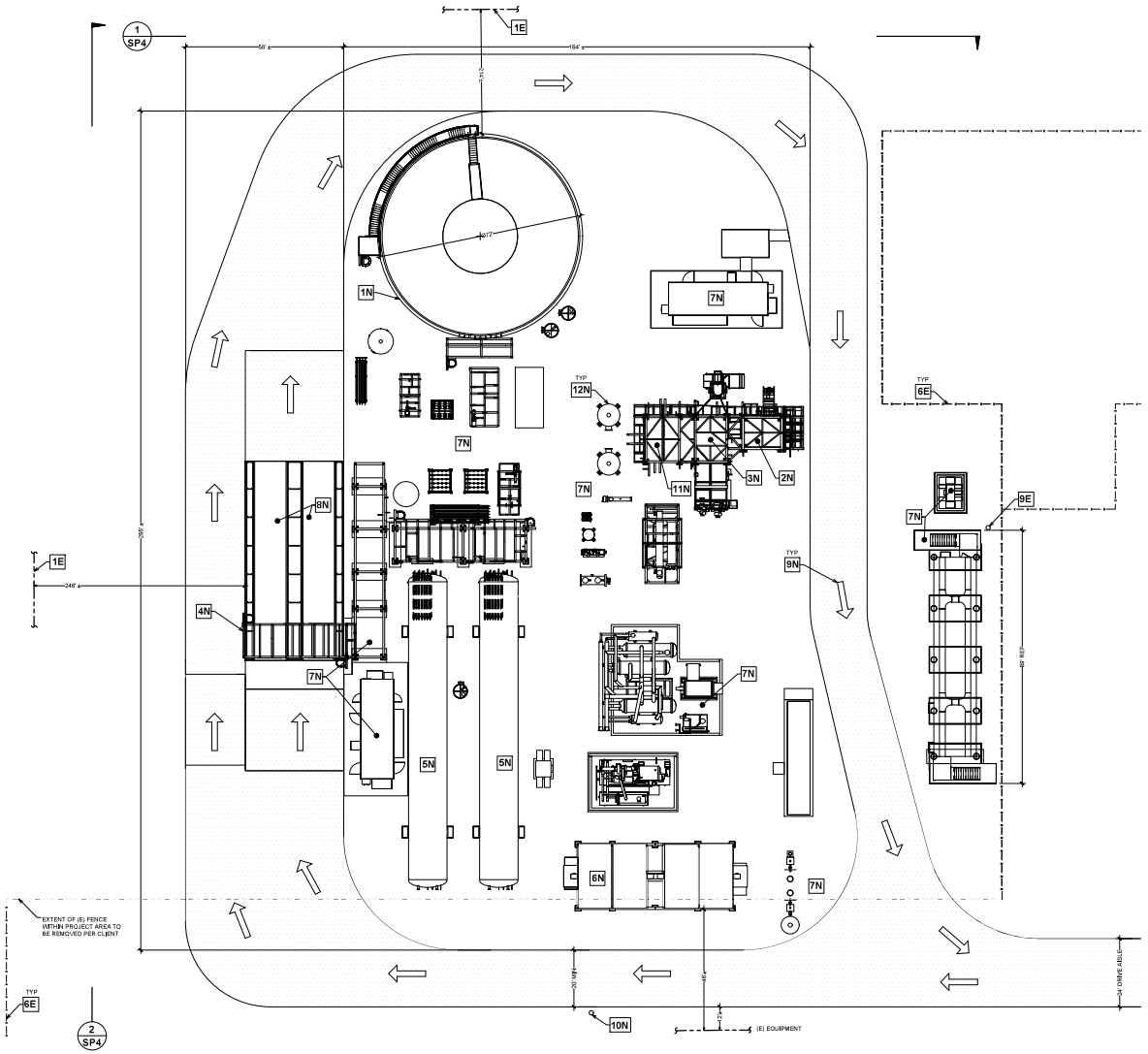
REVISIONS

REV	DATE	DESCRIPTION	BY
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2	05/01/2023	PLAN CHECK COMMENT	JH
			VSG

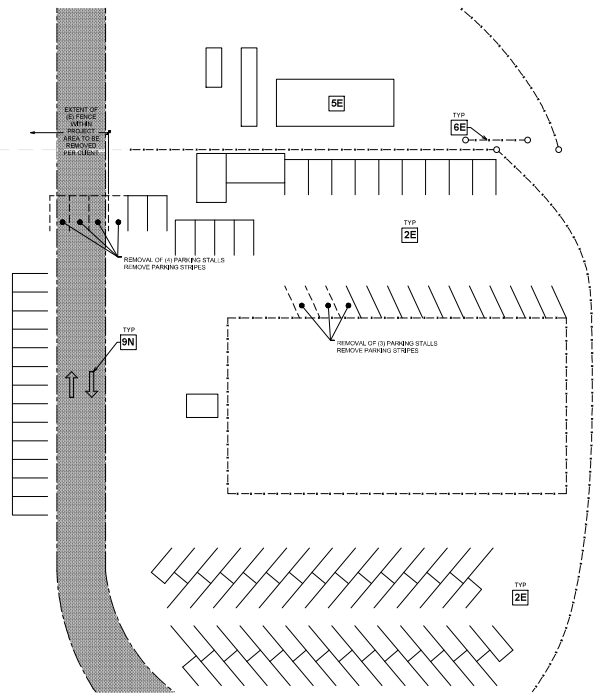
DATE: March 28, 2023
DESIGNED BY JH
APPROVED BY VSG
TOTAL SITE PLAN SHEETS - 5

SITE PLAN

SP2



1 AREA OF WORK ⚠2⚠3
SCHEMATIC PLAN, SCALE: 1" = 20'-0"



2 AREA OF WORK ⚠1
SCHEMATIC PLAN, SCALE: 1" = 30'-0"

FOR CIRCULATION PATTERN REFER TO: 2 SP2

PARKING SUMMARY TABLE ⚠1⚠2

PARKING SUMMARY	
PARKING REQUIREMENT: (USE CATEGORY: INDUSTRIAL HEAVY MANUFACTURING)	1/1000 SQ FT
TOTAL GROSS FLOOR AREA:	36,000 SQ FT
PARKING STALLS REQUIRED:	36 STALLS
EXISTING PARKING PROVIDED :	150 STALLS
TOTAL PARKING STALLS: (AFTER REMOVAL OF (7) STALLS)	143 STALLS

KEYNOTES

EXISTING (E) NO CHANGE UNLESS NOTED OTHERWISE BY OTHERS, NIC		NEW (N) REFER TO SP3	
1E	PROPERTY LINE	1N	TANK: LIQUID NITROGEN
2E	PARKING	2N	RECTIFICATION COLD BOX
3E	ACCESSIBLE PARKING	3N	HEAT EXCHANGER COLDBOX
4E	DRIVEWAY	4N	TRUCK FILL MODULES
5E	BUILDING	5N	TANK: LIQUID OXYGEN
6E	FENCE	6N	4-CELL COOLING TOWER
7E	EQUIPMENT YARD	7N	MISC EQUIPMENT
8E	CIRCULATION PATTERN	8N	FILL AREA
9E	HYDRANT	9N	CIRCULATION PATTERN
		10N	HYDRANT
		11N	GAS PIPING SKID
		12N	MOLSIEVE ABSORBER

CLIENT

LINDE ENGINEERING NORTH AMERICA, LLC

175 E. Park Dr, Tonawanda, NY 14150

INSTALLATION OF AN ASU PLANT

LOCATION
Linde Pittsburg Plant
2000 Loveridge Rd, Pittsburg, CA 94565

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SGE
S. GORDON STRUCTURAL DESIGN & ENGINEERING SERVICES (SGE), INC.
3301 Business Dr Ste 206, Irvine, CA 92612
TEL: (949) 852-0344 FAX: (949) 852-0343

REGISTERED PROFESSIONAL ENGINEER STEVE GORDON No. S-4311 STRUCTURAL STATE OF CALIFORNIA

October 23, 2023

SGE JOB No. 522.103.836

LINDE PITTSBURG COOLING TOWER-SITE PLAN

REVISIONS

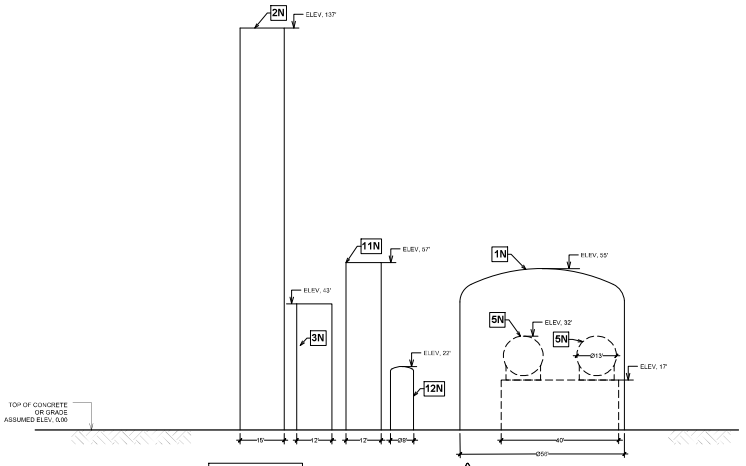
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⚠2	10/31/2023	PLAN CHECK COMMENT	JH
⚠3			VSG

DATE: March 28, 2023
DESIGNED BY JH
APPROVED BY VSG

TOTAL SITE PLAN SHEETS - 5

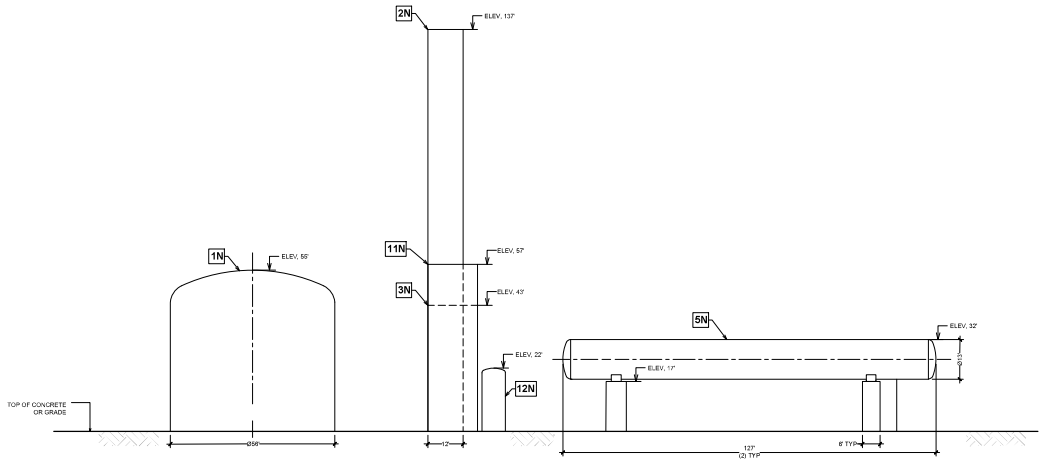
ENLARGED AREA OF WORK

SP3 ⚠3



1 LOOKING SOUTH
ELEVATION, SCALE: 1" = 20'-0"

KEYNOTES	
NEW (N) REFER TO SP3	
1N	TANK: LIQUID NITROGEN
2N	RECTIFICATION COLD BOX
3N	HEAT EXCHANGER COLDBOX
5N	TANK: LIQUID OXYGEN
11N	GAS PIPING SKID
12N	MOLSIEVE ABSORBER



2 LOOKING EAST
ELEVATION, SCALE: 1" = 20'-0"

120

CLIENT

LINDE ENGINEERING NORTH AMERICA, LLC

175 E. Park Dr,
Tonawanda, NY 14150

INSTALLATION OF AN ASU PLANT

LOCATION
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REGISTERED PROFESSIONAL ENGINEER
STEVE GORDEN
No. S-4311
STRUCTURAL
STATE OF CALIFORNIA

October 23, 2023

SGE JOB No. 522.103.836

LINDE PITTSBURG COOLING TOWER-SITE PLAN

REVISIONS

REV	DATE	DESCRIPTION	BY
3	10/17/2023	CLIENT REQUESTED CHANGE	JH
2	05/01/2023	PLAN CHECK COMMENT	JH
1			VSG

DATE: March 28, 2023
DESIGNED BY JH
APPROVED BY VSG

TOTAL SITE PLAN SHEETS - 5

2D ELEVATIONS

SP4 3



TOP OF EQUIPMENT ABOVE GRADE, FT	
1N	26 REF
2N	137 REF
5N	32 REF
6N	23 REF
7N	ASSUMED < 15

NOTE:
ELEVATION OF GRADE ASSUMED 0.00 FT

1 EXAMPLE ELEVATION
FOR ILLUSTRATION ONLY

KEYNOTES

NEW (N)
REFER TO SP3

1N	TANK: LIQUID NITROGEN
2N	RECTIFICATION COLD BOX
3N	HEAT EXCHANGER COLDBOX
5N	TANK: LIQUID OXYGEN
6N	4-CELL COOLING TOWER
7N	MISC EQUIPMENT

CLIENT

LINDE ENGINEERING NORTH AMERICA, LLC

175 E. Park Dr,
Tonawanda, NY 14150

INSTALLATION OF AN ASU PLANT

LOCATION
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TEL: (949) 852-4244 FAX: (949) 852-4245

REGISTERED PROFESSIONAL ENGINEER
STEVE GORDEN
No. S-4311
STRUCTURAL
STATE OF CALIFORNIA

October 23, 2023

SGE JOB No. 522.103.836

LINDE PITTSBURG COOLING TOWER-SITE PLAN

REVISIONS

REV	DATE	DESCRIPTION	BY
3	10/17/2023	CLIENT REQUESTED CHANGE	JH
2	09/01/2023	PLAN CHECK COMMENT	JH
1	08/11/2023		VSG

DATE: March 28, 2023
DESIGNED BY JH
APPROVED BY VSG

TOTAL SITE PLAN SHEETS - 5

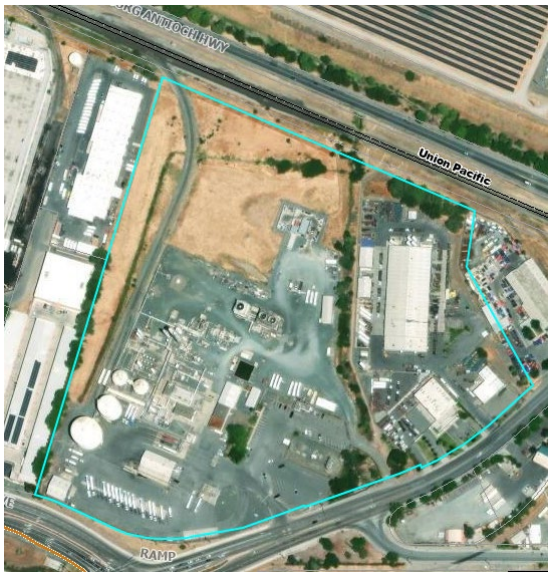
3D ELEVATION

SP5 3

ATTACHMENT 4
Surrounding Conditions Photos



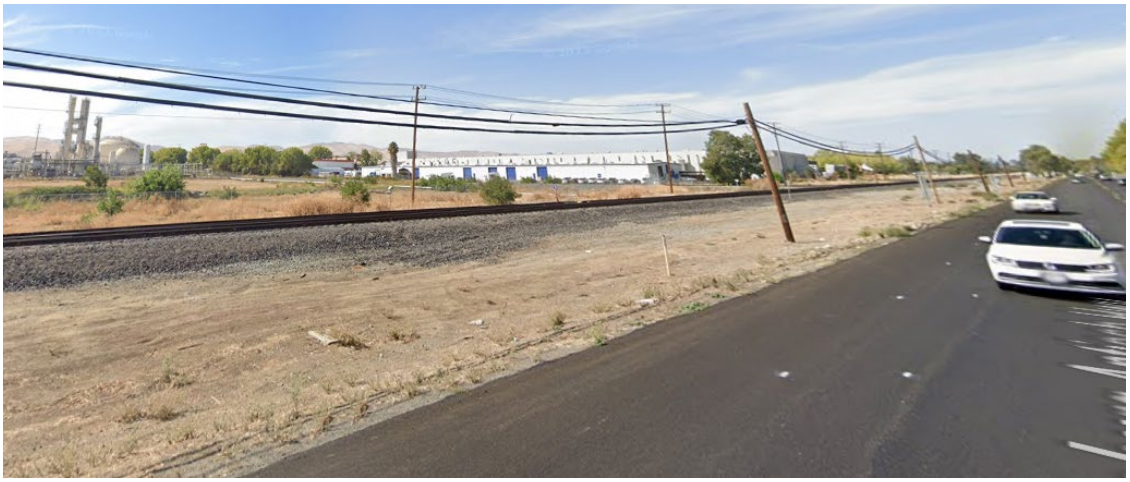
Aerial of Subject Site & surroundings



Aerial of Subject Site



View from Pittsburg Antioch Highway looking South



View from Pittsburg Antioch Highway looking West

ATTACHMENT 4
Surrounding Conditions Photos



View from California Avenue looking West



View from Loveridge Road looking East

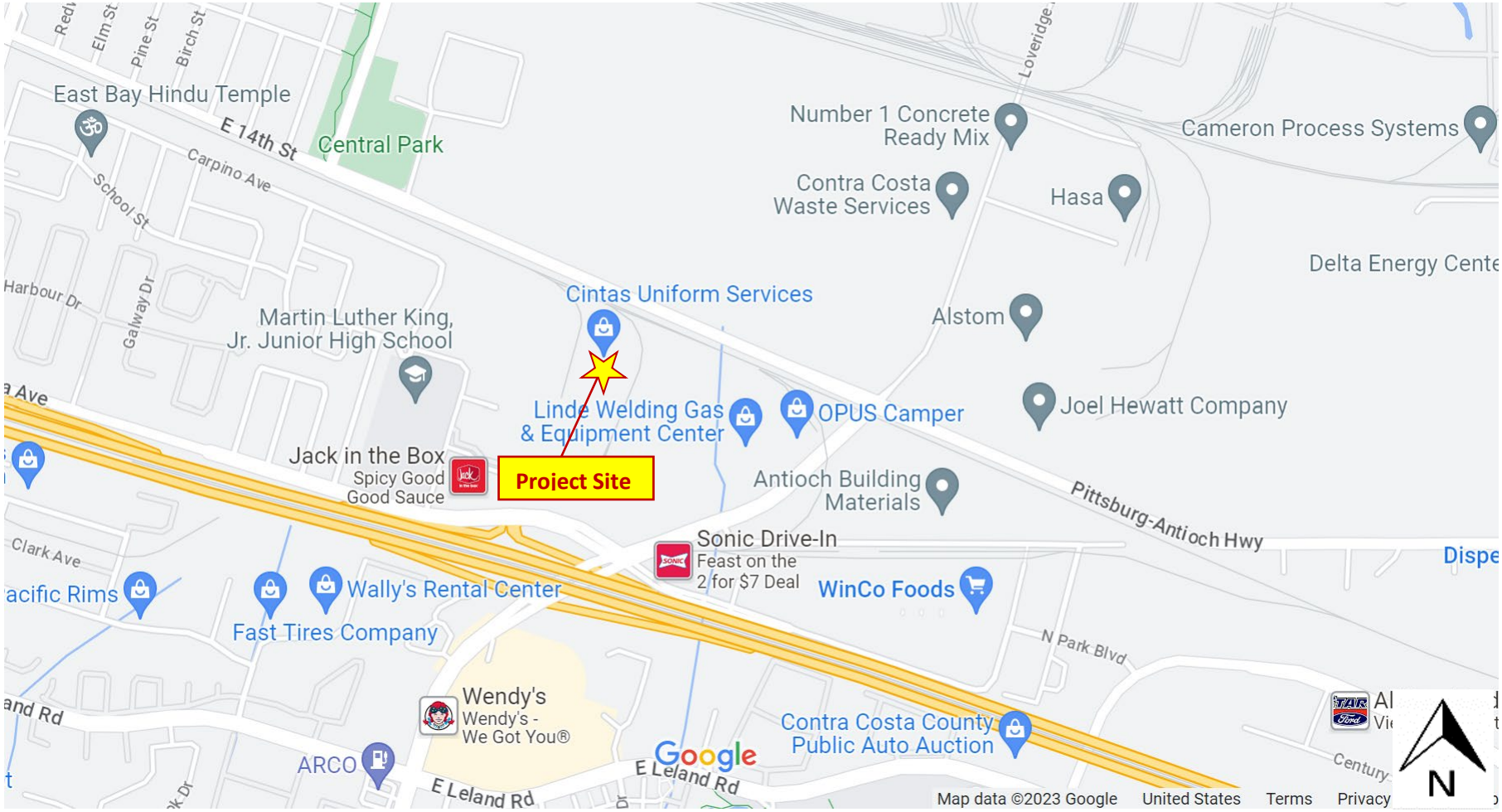


View from Loveridge& California looking North

Oakstone Northern California Expansion Project–Vicinity Map

Use Permit, Design Review, Variance (UP, DR, V)

AP-23-0046	2000 Loveridge Road, Pittsburg, California 94565
	Assessor's Parcel No. 073-190-035



Oakstone Northern California Expansion Project–Aerial Map

Use Permit, Design Review, Variance (UP, DR, V)

AP-23-0046	2000 Loveridge Road, Pittsburg, California 94565
	Assessor's Parcel No. 073-190-035



Attachment 6
Development Review Design Guidelines
Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, V)

Design Review Guideline	Meets Guideline?
IV.a: Parking areas should be screened from view from any public right-of-way (beaming or hedge-type plant material). Parking areas should be broken up (landscape islands, projections, etc.) to eliminate vast areas of parking especially along street frontages.	**Not applicable.** The proposed project does not require any new parking. Parking areas for the existing use will remain unchanged
IV.b: Provisions should be made for permanent shopping cart corrals in retail shopping centers.	**Not applicable.** This guideline is intended to apply to retail shopping centers.
IV.c: Existing trees on site should be incorporated into the project site design, unless waived by the City Planner or Planning Commission.	**Not applicable.** The existing industrial site has little or no vegetation.
IV.d: Developer should elect, at least, one of the schemes provided in Appendix #1 for screening all utility box transformers, backflow preventers, meters and junction boxes.	**Conditionally.** A COA has been added to require screening to minimize visual impacts on adjacent properties.
IV.e: Projects with many buildings (greater than three) should have a variety of building sizes and masses.	**Not applicable.** There are no new occupied buildings proposed as part of plant installation.
IV.f: Continuous horizontal roof lines should be broken up whenever possible. An expanse should not exceed 50 (fifty) feet in length unless architecture or size dictate a greater expanse.	**Not applicable.** There are no new occupied buildings proposed as part of plant installation.
IV.g: Building entries should be designed as a focal point. They should be designed to set the theme or be the primary feature of the building or commercial center.	**Not applicable.** This item is meant to apply to permanent buildings on a foundation, the proposed structures are plant equipment, and therefore not applicable.

IV.h: Building elevations (example: rear of shopping centers) visible from public right-of-ways should be addressed in design review and treated appropriately.	**Not applicable.** This item is meant to apply to permanent buildings on a foundation, the proposed structures are plant equipment, and therefore not applicable.
IV.i: A free-standing structure within an existing commercial or industrial center should be architecturally compatible with the center, including but not limited to materials, colors and architectural elements.	**Consistent.** The proposed structures are plant equipment and are in-keeping with the character of the other existing plant installations and the surrounding industrial area.
IV.j: All roof mounted equipment should be screened completely from view from all public right-of-ways. A site-line study may be necessary to determine appropriate screening method.	**Not applicable.** The proposed structure is not roof-mounted, and therefore criterion not applicable.
IV.k: All Structures, including, but not limited to, “tilt-up” type structures, should have structural reliefs and articulated entries (Encourage the creation of shadow lines).	**Not applicable.** This item is meant to apply to permanent buildings on a foundation, the proposed structures are plant equipment, and therefore not applicable.
IV.l: Exterior fire escapes, stairs and other appurtenances should be designed or treated as integral parts of the building façade.	**Not applicable.** This item is meant to apply to permanent buildings on a foundation, the proposed structure are plant equipment, and therefore not applicable.
IV.m: Downspouts should be designed into the façade of the building unless architecturally treated.	
IV.n: Add murals, lattice or some other spaceframe type treatment to blank walls visible from public view.	**Not applicable.** This item is meant to apply to permanent buildings on a foundation, the proposed structures are plant equipment, and therefore not applicable.
IV.o: Prototype or “theme” architecture is discouraged.	**Not applicable.** No themed architecture is proposed.
IV.p: New or remodeled buildings should be designed to be compatible in design, color and materials with adjacent development.	**Not applicable.**

IV.q: The street-oriented elevations shall be designed so as not to present the appearance of a rear elevation (i.e., no loading doors or large blank walls, absence of architectural features found on other elevations, and limited landscaping as typically found on interior property lines).	**Not applicable.**
IV.r: Trash enclosures should include area for collection of recyclables (example: space for two 90-gallon containers minimum, See Appendix #2 Trash Enclosure Design Standards).	**Not applicable.** No trash enclosures are proposed with this project.
Green Building Design Guideline	**Meets Guideline?**
VI.D.1: Roofs should be designed to integrate renewable energy generation systems and provide a cool urban environment.	**Not applicable.**
VI.D.2: Parking lot impacts should be minimized.	**Not applicable.** The proposed project does not include changes to the existing parking areas.
VI.D.3: Hardscapes should be constructed with permeable surfaces (e.g. pervious concrete, porous asphalt, unit pavers, and granular materials). Permeable paving consisting of porous above-ground materials, a 6- inch porous sub-base, and a base layer that is designed to ensure proper drainage away from the building and neighboring properties. Alternatively, impermeable surfaces may be used if they direct all runoff toward an appropriate permanent infiltration feature (e.g. vegetated swale, on-site rain garden, or rainwater cistern).	**Conditionally Consistent.** A proposed condition of approval requires the applicant to comply with all the requirements of the Community Development Department. The Engineering Division of the Community Development Department will provide regulations for the proposed hardscaping once the applicant submits grading and improvement plans for the project.
VI.D.4: Design choices should incorporate or prepare for electric vehicle charging or used vegetable oil fueling infrastructure.	COA requires EV charging stations

VI.D.5: Fuel cell technology should be considered for application where (1) space or cost prohibits non-emitting on-site generation (such as solar, wind or geothermal), AND either (2) the heat resulting from fuel combustion is utilized for water or space heating, and/or (3) the fuel cells would be used primarily during peak utility hours.	**Not applicable.**
VI.D.6: Reclaimed (purple pipeline) water should be used for as much non-potable water uses as feasible and practical. Landscaping water fixtures using reclaimed water should be purple, and purple and white signage should clearly mark areas that are irrigated with reclaimed water.	**Not applicable.**.
VI.D.7: Large commercial and institutional facilities that are anticipated to employ more than 50 employees, should consider providing on-site shops and services for those employees.	**Not applicable.** The proposed project will not require 50 additional employees.
VI.D.8: Street side building faces should encourage walking.	**Not applicable.**
VI.D.9: Secure bicycle parking facilities should be provided for at least 10% of expected peak hour trips. Bicycle parking structures should complementary to the surrounding structures and may be partially obscured by vegetation or painted with a mural design that is consistent with surrounding aesthetics. Shade trees should be planted if the parking facility is located in an area not shaded by surrounding structures. They should be located in an accessible and visible space to discourage misuse.	**Not Applicable**

Attachment 7
Property Development Regulations Table
Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, V)

Development Regulations: *Service Commercial District (CS) District*	**Required:**	**Proposed:**
Minimum lot area (ac.)	20,000 SF	N/A (2.5 Acre portion of existing 31.5 Acres)
Minimum lot width (ft)	100 ft	1000+ ft (existing)
Max. Lot Coverage:	75%	18% (20K/108.9K)
Minimum Yards:	-	-
Front:	25 ft	N/A (interior located)
Side:	-	Approximately 200 ft. (proposed equipment location)
Rear:	-	Approximately 215 ft. (proposed equipment location)
Maximum height of structures (ft):	75ft*	137ft (With Height Variance)
Maximum FAR	0.8	N/A (No occupied building)
Minimum site landscaping	10%	COA Added

* Per PMC Section 18.54.120 Additional height allowance.

An increase over the maximum height allowance is allowed in the IL and IG districts equal to the number of additional feet the structure is set back from each property line beyond the minimum yard requirements, up to a maximum height of 75 feet. To be entitled to additional height, the building or structure setback must exceed the minimum on all sides.

18.80.020 Height limit exceptions.
A tower, spire, cupola, chimney, elevator penthouse, water tank, flagpole, monument, theater scenery, radio and television antenna (except as provided in PMC 18.84.030), transmission tower, light standard,

fire tower, and similar structure and necessary mechanical appurtenances covering not more than 10 percent of the ground area covered by the structure to which it is accessory may exceed the maximum permitted height in a district in which the site is located subject to the following regulations:

A. In an R district, a chimney may exceed the permitted height by two feet. Any other structure may not be more than 15 feet above the district height limit.

B. In a C, I, GQ or OS district, a structure may exceed the district height limit by 20 feet.

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City of Pittsburg
California

65 Civic Avenue
Pittsburg, CA 94565
P: (925) 252-6900
F: (925) 252-4814
pittsburgca.gov

Community and Economic Development Department – Planning Division

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the **PLANNING COMMISSION** of the City of Pittsburg will conduct a public hearing on:

DATE: **August 5, 2024**
TIME: **7:00 p.m.**
PLACE: **City Council Chamber at City Hall**
65 Civic Avenue, Pittsburg, California

Concerning the following matter:

Oakstone Northern California Expansion Project, AP-24-0023

Appeal of the Planning Commission's decision to approve a Use Permit, Design Review and Variance, and adopt an Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc. Oakstone Northern California Expansion Project (AP-24-0023) at Linde's existing plant facility located at 2000 Loveridge Road, Pittsburg, California 94565. The General Plan Land Use classification is "Industrial", and the zoning is (IG) General Industrial. Assessor's Parcel No. 073-190-035.

Environmental Determination
On October 13, 2023, Staff circulated the project Mitigated Negative Declaration (MND) for a 30 day public review and comment.

PROJECT PLANNER: Maurice Brenyah-Addow, (925) 252-4261 or mbrenyah-addow@pittsburgca.gov

Why am I receiving this notice?
You are receiving this notice because you have either previously requested notifications from the Planning Division, or a project has been proposed in your neighborhood and all property owners within a minimum 300-foot radius of the project site are required to be notified under the Pittsburg Municipal Code.

Where can I get more information about this project?
The complete file for this project is available for public inspection; please contact the project planner listed above to make necessary arrangements.

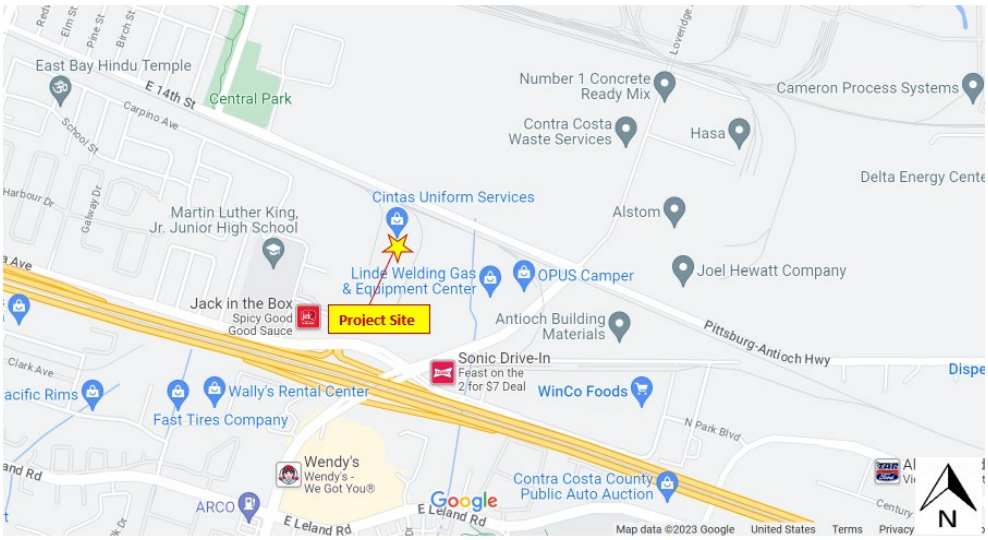
What can I do if I have comments on the project?
Comments or objections to the project can be made by writing or through e-mailed testimony prior to the meeting or provided orally during the meeting. Written comments citing the project name may be emailed to the project planner listed above or may be mailed or delivered to Pittsburg Planning Division, 65 Civic Avenue, Pittsburg, CA 94565.

Pursuant to Section 65009 of the California Government Code, if you challenge this matter in court, you may be limited to those issues you or someone else raised at the public hearing described in this notice, or in written correspondence on the matter delivered to this agency at, or prior to the public hearing. Any written correspondence delivered to the Planning Division before the hearing body's action on the matter will become a part of the administrative record.

Para información en español:
(925) 252-4920

JOHN FUNDERBURG, SECRETARY
PITTSBURG PLANNING COMMISSION

Project Title: Oakstone Northern California Expansion Project, AP-24-0023
Location: 2000 Loveridge Road, APN 073-190-035





City of Pittsburg

Community Development Department - Planning Division
65 Civic Avenue
Pittsburg, CA 94565

NOTICE OF PUBLIC HEARING

CITY OF PITTSBURG
PLANNING COMMISSION
STAFF REPORT
February 27, 2024

ITEM: Consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)

ORIGINATED BY: Eugene Gordin of SGE Consulting Engineers on behalf of Linde Inc. 2081 Business Center Dr., Ste. 105, Irvine, CA 92612

SUBJECT:

The proposed project consists of three applications a Use Permit, Design Review and Variance application for the Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road. The proposed development project will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. The new facility will expand Linde's current production of liquid nitrogen, oxygen, and argon. The property is located in the Industrial General Plan Land Use classification and General Industrial Zoning District (IG). The project also includes on-site circulation improvements to provide a 25-foot drive aisle through the parcel to the project site and expansion of the existing plant on the parcel near the entry/exit on to Loveridge Road.

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a Resolution, adopting a Mitigated Negative Declaration and approving application No. 23-0046 for a Use Permit, Design Review and Variance subject to conditions for the Oakstone Northern California Expansion Project at Linde's existing facility.

BACKGROUND:

Linde Inc., the successor company to the 2019 merger of Praxair, Inc., and Linde PLC, is an existing air gas company that operates a plant facility on a 31.55-acre parcel located at 2000 Loveridge Road. The parcel is zoned General Industrial (IG) and it is designated Industrial in the City's 2020 General Plan. Since 1959, the project site has supplied liquid oxygen to local medical facilities liquid nitrogen to local petro-chemical customers and other industrial businesses in the greater Bay Area.

PROJECT DESCRIPTION:

Existing Conditions: The proposed expansion area is an approximately 2.5-acre portion of the 31.55-acre parcel. The project site is currently undeveloped and it is in the northern

area of the parcel east of the Union Pacific Railroad line that extends south into the parcel. Union Pacific Railroad and Pittsburg-Antioch Highway are to the north and SR 4 HWY is to the south and Loveridge Road is to the east.
Refer to Attachment 8 for a map of the site and surrounding uses.

Proposed Project:

The proposed Linde Inc. Oakstone Northern California Expansion Project, is a development project that would result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility located at 2000 Loveridge Road ("Project"). The new facility will expand Linde's current production of liquid nitrogen, oxygen, and argon. No additional or new products will be produced. The liquid products will be distributed via truck to the San Francisco Bay Area market, the Central Valley, and into nearby states.

GENERAL PLAN/CODE COMPLIANCE:

General Plan: The project site is designated 'Industrial' under the Pittsburg General Plan. This designation is intended to provide sites for manufacturing, processing, and general services. The General Plan includes two goals that specifically apply to the 'Loveridge Subarea' where the project site is located. Goal 2-G-14 aims to support the development and expansion of regionally oriented commercial activities within this area, and Goal 2-G-15 calls for maintaining the industrial activities in appropriate, designated areas. The proposed project would be consistent with the General Plan designation and goals in that it expands an existing manufacturing plant that is a regionally oriented commercial establishment that serves other industries with industrial gas products and maintains the industrial activities of the area.

Zoning: The project site is zoned 'IG (General Industrial) District'. The proposed use falls under the classification of 'heavy manufacturing' as defined by Pittsburg Municipal Code (PMC) section 18.08.100(C). Any use falling under this classification requires approval of a use permit prior to its operation in the IG District. Design review is also required for projects involving the construction of buildings over 120 square feet (PMC section 18.36.200). Variance approval to exceed the permitted height limit of 75 feet in the IG zone is also required for one of the proposed structures. The Variance request is to allow for a 137-foot tall "Rectification Cold Box" tower where only 75 feet maximum is allowed.

Required Use Permit Findings: In accordance with PMC section 18.16.040, a use permit may be granted only if the Planning Commission can make findings that the proposed use:

A. Is in accord with the objective of this title, the purposes of the land use district in which it is located and is appropriate to the specific location;

B. Is not detrimental to the health, safety, and general welfare of the city;

C. Will not adversely affect the orderly development of property within the city;

D. Will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the city;

E. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan;

F. Will not create a nuisance or enforcement problem within the neighborhood;

G. Will not encourage marginal development within the neighborhood;

H. Will not create a demand for public services within the city beyond that of the ability of the city to meet in the light of taxation and spending restraints imposed by law;

I. Is consistent with the city's approved funding priorities; and

J. If located within the pedestrian commercial (CP) district, will support the goals of creating a vibrant, economically prosperous, visually interesting, and engaging pedestrian oriented atmosphere along the primary downtown corridor.

Required Findings – Design Review: In accordance with PMC Section 18.36.220(B), design review approval may be granted only if the Planning Commission can make findings that:

1. The structure conforms with good taste, good design and in general contributes to the character and image of the city as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality;

2. The structure will be protected against exterior and interior noise, vibrations and other factors which may tend to make the environment less desirable;

3. The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value;

4. The structure is in harmony with proposed developments on land in the general area; and

5. The application conforms with the criteria set forth in any applicable city-adopted design guidelines.

Required Findings - Variance Findings: In accordance with PMC Section 18.16.050 Specific findings necessary for variance. A variance may only be granted when:

A. Because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning

regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same land use district;

B. The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district;

C. The variance substantially complies with the intent and purpose of the land use district to which the property is classified; and

D. In the case of a variance from open space regulations, the grant of a variance is consistent with Government Code Section 65911 and will not conflict with general plan policies governing orderly growth and development and the preservation and conservation of open space lands.

Environmental: On October 13, 2023, Staff circulated the project Mitigated Negative Declaration (MND) (Attachment 3) for a 30-day public review and comment. Comments were received from the Department of Toxic Substances Control (DTSC) and the California Department of Transportation (Caltrans).

Public Notice: On or prior to February 16, 2024, notice of the February 27, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods.

ANALYSIS:

The proposed project would be consistent with the City's Zoning Ordinance and zoning for the site by expanding the existing heavy manufacturing operations for the air separation plant. Also, the proposed expansion promotes an orderly development of the area by utilizing a vacant portion of the existing plant site zoned for industrial use.

Variance

The proposed project involves a 137-foot tall "Rectification Cold Box" tower that would be used to separate atmospheric air into various components and requires a variance to exceed the permitted height limit of 75 feet in the General Industrial zone. As such, special circumstances concerning the project pertain to the industrial zoning and location and existing surroundings where similar installations and manufacturing uses operate. Strict application of the 75-foot height limit would deprive the property of privileges enjoyed by other industrial plants in the vicinity and in the same land use district. Further, the project is not in isolation of its surroundings; rather it is an expansion of an existing air separation plant with similar towers for venting and separating essential industrial and commercial

gases. Given that there are similar tall structures and towers at the Linde plant and surrounding plants, approving the variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district. Finally, the variance to exceed the height limit substantially complies with the intent and purpose of the General Industrial land use district to which the property is classified.

Public Comments and Responses

Caltrans
On November 9, 2023, the Local Development Review (LDR) Program, responsible for reviewing land use projects of the California Department of Transportation (Caltrans) provided comments on the (IS/MND) that would ensure that impacts to the State's multimodal transportation system and natural environment are identified and mitigated to support a safe, sustainable, integrated, and efficient transportation system. Caltrans comments are summarized as follows:

- Equitable Access: If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

- Encroachment Permit: Any permanent work or temporary traffic control that encroaches onto Caltrans' Right-of-Way (ROW) requires a Caltrans-issued encroachment permit.

Response: Although the project site is not directly adjacent to State Route Highway 4, these recommendations have been included as conditions of approval for the project to address the comments provided.

DTSC
On November 13, 2023, the Department of Toxic Substances Control (DTSC) after reviewing the project and associated (IS/MND) provided the following recommendations to ensure compliance with site grading and soil construction management.

- Soil sampling: Additional investigation and sampling (if necessary) before any groundbreaking activities commence.
- Soil Management Plan: Preparation of a Soil Management Plan so there is a procedure in place if and when unforeseen contaminations are discovered.
- Imported Soil: If any work initiated as part of the proposed project requires the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination.

These recommendations have been included as conditions of approval for the project. See additional follow-up response below regarding the DTSC comment letter.

Response: Subsequent to the October 13, 2023 publication of the Mitigated Negative Declaration (MND) for the Oakstone Northern California Expansion Project (proposed Project), the Planning Division received a report for a limited soil sampling and analytical testing assessment at the Project site prepared by Baez Geotechnical Group (BGG), dated July 26, 2023.[1] The environmental assessment, consisting of soil sampling and laboratory testing for chemical constituents, was conducted in March 2023 in conjunction with BGG's geotechnical investigation of the Project site.

BGG's soil testing results indicate that low levels of metals, diesel, and motor oil may be present in shallow soils within certain areas of the Project site. The soil samples containing diesel and motor oil were collected in an area of a previous stockpile observed on historical photographs. Therefore, it is possible that grading for the proposed Project could encounter surface soils containing low levels of residual petroleum hydrocarbons and elevated metals. However, given the low concentrations detected, these soils would not represent a substantial hazard to site workers and, considering the proposed industrial land use and that the Project site would be covered with asphalt or cement, the risk of future human and environmental exposure is low. BGG's assessment did not provide evidence of a different or more severe site contamination condition compared with those identified in the Draft IS. No evidence was identified indicating a new or substantially more severe potentially significant impact. While no additional soil sampling is warranted, prior to project commencement, a Soil Management Plan, (SMP) as requested by DTSC would be implemented to address and remedy potentially contaminated soils encountered during Project site grading.

This response also notes that an SMP is a standard practice for construction projects involving excavations and soil removal, especially for industrial infill development such as the proposed Project. The Project SMP would outline the procedures contractors are to follow if unanticipated soil contamination is encountered during construction grading and excavation activities. The Project SMP also would specify protocols and notifications necessary to address discovery of contaminated soil, health and safety, sampling and analysis, monitoring, soil removal, stockpiling, water quality, and transportation. The Soil Importation Plan would include soil source verification guidelines and protocols as well as soil sampling frequency and recommended laboratory analyses. As discussed above, preparation and adherence to a Soil Management Plan/Soil Importation Plan is being included as a Condition of Approval.

<u>Adams Broadwell, Joseph and Cardozo "Fair Argument"</u>

Pursuant to the California Environmental Quality Act (Public Resource Code Sections 20180[d]), if there is evidence that the project may have a significant effect on the environment, an EIR is required. As a result, if substantial evidence of significant impacts is presented to a lead agency, an EIR must be prepared.

[1] Baez Geotechnical Group (BGG), Limited Soil Sampling and Analytical Testing of Soil with Detected Odor, Proposed Linde Air Separation Unit Facility Expansion, 2000 Loveridge Road, Pittsburg, California. Letter-report to Manuel Gonzales, Linde Engineering Americas. BGG Project No. G333.01. July 26, 2023.

This provision, called the fair argument standard, allows for interested parties to challenge an environmental determination if new information regarding environmental impacts that was not studied through the environmental review process is presented.

On December 12, 2023, two hours before a scheduled and duly publicized public hearing for the Planning Commission to consider the proposed project, Adams Broadwell Joseph & Cardozo on behalf of Safe Fuel and Energy Resources California ("SAFER CA") submitted a comment letter that argues that a full Environmental Impact Report (EIR) is required for the project. Given the short time Staff had to review and adequately address issues raised in the comment letter, the public hearing was continued to a later date to be determined.

Staff has reviewed the comment letter dated December 12, 2023, in detail, and determined that, although the opposition provided comments with an analysis regarding the project's environmental impacts, no new environmental concerns were raised that were not originally addressed in the Initial Study. As a result, the fair argument standard does not apply to this application, and an Environmental Impact Report is not required. Staff has proposed a Mitigated Negative Declaration for adoption by the Planning Commission, as all impacts can be reduced to less than significant with the mitigation measures contained in the recommended Conditions of Approval.

The following is a summary of the key issues raised by SAFER CA's and Phyllis Fox, PhD, PE, these are followed by detailed responses and staff's assessment of the issues raised:

Comment No. 1: *"As detailed below, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to air quality, hazards, and biological resources. The City must prepare an EIR that analyzes, discloses, and mitigates these impacts and considers less environmentally damaging alternatives."*

Response No. 1: Staff has reviewed the comment letter dated December 12, 2023, in detail, and determined that, although SAFER CA provided comments with an analysis by Phyllis Fox, PhD, PE, regarding the IS/MND prepared for the subject project, no new environmental concerns were raised that were not originally addressed in the Initial Study. In specific response to the comments raised, the analysis and discussion below in the following responses supports staff's determination that the Mitigation Measures proposed for the project are sufficient to address all the potential project impacts.

Comment No. 2: "*Substantial Evidence Supports a Fair Argument that Construction Health Risk Impacts Are Potentially Significant and Unmitigated."*

Response No. 2: The Office of Environmental Health Hazard Assessment (OEHHA) has developed reference exposure levels (REL) to determine potential non-cancer health impacts from toxic air contaminants (TAC). An REL is used as an indicator of potential non-cancer health impacts and is defined as the concentration at which no adverse non-cancer health effects are anticipated.

REL's incorporate uncertainty factors to help ensure that the REL is protective for nearly all individuals, including sensitive populations.[2] However, OEHHA has not developed an acute REL for diesel particulate matter (DPM); therefore, acute DPM impacts were not evaluated in the Health Risk Assessment and IS/MND. This is consistent with OEHHA Guidance and the California Air Resources Board (CARB) HARP2 Air Dispersion Modeling Program that was used in development of the proposed Project's Health Risk Assessment summarized in the air quality section of the Draft IS/MND and found in Appendix B of the IS/MND. On-site construction worker exposure to DPM and associated risk is the responsibility of the Occupation Safety and Health Administration (OSHA). OSHA strategies include engineering and administrative controls that minimize emissions and change the way work tasks are performed to reduce or eliminate hazards.[3]

The Bay Area Air Quality Management District (BAAQMD) local risk and hazards significance thresholds apply to sensitive receptors only. The Project's Health Risk Assessment analyzed potential health impacts from construction and operation of the Project on nearby residents and off-site workers. Health risk (cancer and non-cancer) impacts from DPM emissions resulting from construction of the proposed Project were evaluated in accordance with BAAQMD, OEHHA, and CARB Guidance. As shown on page 23 and 24 (Tables 6 and 7) of the Draft IS/MND, the Project would not expose nearby sensitive receptors or off-site workers to significant health risks as the Project would be below all BAAQMD health risk significance thresholds. Therefore, the Project would have a less-than-significant impact.

Comment No. 3: *"Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Unmitigated Hazards Impacts"*

Response No. 3: The Phase I Environmental Site Assessment (ESA) was available to the public during the full 30-day public review period. As stated on page 2 of the Notice of Intent to Consider Adoption of a Mitigated Negative Declaration for the proposed Project, "Background and reference materials related to the IS/MND can be reviewed upon request to the City of Pittsburg's Planning Division." The Notice of Intent was posted on the City's website, at the County Clerk and on CEQAnet and the Phase I ESA was available as of the date of the Notice of Intent (October 13, 2023).

Comment No. 4: *"…the Phase 1 ESA provides substantial evidence supporting a fair argument that the Project may cause potentially significant impacts due to disturbance of contaminated soils or other hazardous conditions that may be present at the Project site."*

Response No. 4: The Phase I ESA identified Recognizable Environmental Conditions (RECs) within the greater parcel, but they were associated with the

[2] OEHHA, Air Toxics Hot Spots, Program Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments, February 2015, Accessed at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf
3 OSHA, Diesel Exhaust/Diesel Particulate Matter, January 2013, Accessed at: https://www.osha.gov/sites/default/files/publications/OSHA-3590.pdf

ditch dredging four decades ago, and past removal of USTs, which evidence suggests did not occur on the Project site (page 27-29 of the Phase I ESA).

The Draft IS/MND explains that while 2000 Loveridge Road may be listed as having previous environmental concerns, they did not involve the proposed Project site portion of that property. The soils excavated during the 1983 ditch dredging were removed, tested, and landfilled and thus, are not considered a source of contamination. The identified REC associated with offsite contaminants entering the Project site via the Caltrans surface water/highway runoff is an existing condition and if there were contaminants in the surface/highway runoff, they would be confined to the ditch, which would not be disturbed or otherwise affected by the Project. Similar to the other RECs noted above, the nine petroleum USTs are present within the greater 2000 Loveridge Road parcel and are not within the Project site (As noted on page 58 of the Draft IS/MND). As stated on page 58 of the Draft IS/MND, there is no evidence presented in the Phase I indicating that the vacant portion of the parcel that is considered the Project site has been involved in the storage, accidental release, or production of hazardous waste or materials and that it could create a significant hazard to the public or environment. No new environmental concerns were raised that were not originally addressed in the Initial Study. As a result, the fair argument standard does not apply as there is no evidence presented to staff that identifies new and significant information.

Comment No. 5: *"The IS/MND also fails to adequately address issues raised by the Department of Toxic Substances Control ("DTSC") … the Phase 1 ESA's conclusion that contaminated soils are likely present at the Project site and DTSC's comments that additional investigation of the Project site is needed, provide substantial evidence to support a fair argument that Project's impacts are potentially significant."*

Response No. 5: The Planning Division provided responses to DTSC's comments on November 30, 2023, which is reiterated and discussed in Response No. 4. No new environmental concerns were raised that were not originally addressed in the Initial Study. As a result, the fair argument standard does not apply as there is no evidence presented. Additionally, the City will include DTSC's recommendations as Conditions of Approval.

Comment No. 6: *"…that Project construction would disturb contaminated soils, releasing hazardous air pollutants, including arsenic… substantial evidence supports a fair argument that the proposed Project would result in potentially significant health impacts from disturbance of on-site soil contamination."*

Response No. 6: As noted in response to DTSC, the soil samples containing diesel and motor oil were collected in an area of a previous stockpile observed on historical photographs. Therefore, it is possible that site grading for the proposed Project could encounter surface soils containing low levels of residual petroleum hydrocarbons and elevated metals. However, given the low concentrations detected, these soils would not represent a substantial hazard to site workers and, considering the proposed industrial land use and that the Project site would be covered with asphalt or cement, the risk of future human and environmental

exposure is low. No evidence was identified or presented to staff indicating a new or substantially more severe potentially significant impact.

Furthermore, BAAQMD's basic BMPs for construction-related fugitive dust would be implemented through *Mitigation Measure AQ-1* (See Attachment 4 of this report). Based on the low concentrations detected, the application of BAAQMD's BMPs, and the distance between the nearest sensitive receptors and the Project site (800 feet), the Project would not pose significant health impacts to the public from the disturbance of on-site soils. Based on the above, there is no substantial evidence that supports a fair argument that the proposed Project would result in potentially significant health impacts from disturbance of on-site soil contamination.

Comment No. 7: *"The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate Potentially Significant Impacts to Wetlands and Riparian Habitat"*

Response No. 7: The Project's environmental setting (baseline physical conditions) was established through a reconnaissance-level site assessment of the Project site and surrounding property by Vollmar Natural Lands Consulting in June 2023, which followed previous surveys of the site in 2018 and 2019. However, to further ensure that the Project avoids all wetlands and aquatic features, Mitigation Measure BIO-6 (page 31 of the Draft IS/MND) requires an aquatic delineation survey prior to ground disturbing activities to ensure avoidance of these features. Note, this is already a requirement as a part of participating in the HCP/NCCP but has been included as a mitigation measure to ensure implementation through the Mitigation Monitoring and Reporting Program for the Project.

In response to this comment, Mitigation Measure BIO-6 has been enhanced to contain specific performance standards and identify the types of actions that may achieve compliance with the performance standards (redesign of the Project site plan and/or temporary staging areas or obtain the necessary permits including wetlands compensatory mitigation). Incorporation of the enhanced mitigation measure into the Project will be required prior to adoption of the MND pursuant to CEQA Guidelines. The enhanced mitigation measure is equivalent or more effective than Mitigation Measure BIO-6 as it appeared in the Draft IS/MND and does not affect the impact conclusions in the IS/MND or require recirculation.

Comment No. 8: *"the IS/MND's impact analysis is misleading because it fails to identify and describe potential indirect impacts to wetlands and riparian habitat… The IS/MND does not include any discussion or analysis of these potential indirect impacts despite construction and operational activities anticipated to occur only feet from protected wetlands and riparian habitat. The lack of analysis is especially concerning given the Phase 1 ESA's conclusion that the Project site may contain contaminated soils or other hazards (such as USTs), which could negatively impact nearby wetlands and riparian habitat if disturbed during Project construction and operation."*

Response No. 8: As described in previous responses, Mitigation Measure BIO-6 has been enhanced to contain the applicable measures to ensure impacts are reduced to less than significant. These measures would reduce/prevent direct and indirect impacts to wetlands and aquatic features.

As detailed on page 64 of the Draft IS/MND (See Attachment 3 of this report), implementation of the Project would not substantially alter the existing drainage pattern of the Project site. The Project applicant would be required to prepare a Stormwater Prevention Pollution Plan (SWPPP), which would assure that no significant sedimentation occurs from project construction. The SWPPP must include site-specific erosion and sedimentation control practices and would limit the amount of runoff that may be directed offsite during construction. . Once the Project is developed, stormwater would be retained onsite through a drainage trough beginning in the northeast corner of the site and ending in the southeast corner where it would connect to existing underground stormwater piping and enter existing catch basins associated with the other uses present on the parcel. A retaining wall would be developed along the perimeter of the site, which would further prevent indirect impacts to wetlands from runoff and sedimentation. Adherence to the Contra Costa Clean Water Program (CCCWP) and General Industrial Permit provisions and requirements would ensure post-construction stormwater discharges would not be increased and that pollutants would not be transported offsite in a manner that would degrade the water quality of receiving waters. The Project site is on an industrial parcel and the drainage features and seasonal wetlands on the parcel do not provide suitable breeding or migration habitat for the aquatic species that could be present in the study area.

Comment No. 9: *"…the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands to less than significant. Unlike other HCP/NCCP measures which were incorporated into the IS/MND as mitigation, none of the measures listed in Conservation Measure 2.12 were included as mitigation for the proposed Project. While the Planning Commission Staff Report identifies some (but not all) of the conservation measures, none of the measures are included as conditions of approval or in the Mitigation Monitoring Reporting Program."*

Response No. 9: As described in the responses above, all mitigation measures are included in the conditions of approval including Mitigation Measure BIO-6 which has been enhanced and now includes the applicable measures listed in Conservation Measure 2.12 of the HCP/NCCP, including required erosion/sediment control measures.

Comment No. 10: *"In sum, the IS/MND lacks substantial evidence to support the conclusion that the Project's impacts on riparian habitat and protected wetlands are less than significant and that the proposed Project does not conflict with the HCP/NCCP given the inadequate discussion of the existing environmental setting. Moreover, the IS/MND fails as an informational document because it fails to disclose potentially significant indirect impacts to wetlands and riparian habitat. Finally, the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands and riparian habitats to less than significant."*

Response No. 10: The fair argument standard does not apply to this application, and an Environmental Impact Report is not required. Staff has proposed a Mitigated Negative Declaration for adoption by the Planning Commission, as all impacts can be reduced to less than significant with the mitigation measures contained in the recommended Conditions of Approval.

ACTION REQUIRED:

Move to adopt a Resolution approving Use Permit, Design Review and Variance Application No. 23-0046 subject to conditions, and the Initial Study, Mitigated Negative Declaration and Mitigation Monitoring Reporting Program.

ATTACHMENTS:

1. Proposed Resolution
2. Project Plans
3. Initials Study/Mitigated Negative Declaration (Exhibit A)
4. Mitigation Monitoring Reporting Program -MMRP (Exhibit B)
5. Comment Letters and Responses (Exhibit C)
6. Development Review Design Guidelines
7. Property Development Regulation
8. Map of Surrounding Uses
9. Public Hearing Notice

Prepared by: Maurice Brenyah-Addow, Senior Planner

BEFORE THE PLANNING COMMISSION OF THE CITY OF PITTSBURG

In the Matter of:

Approval of Use Permit, Design Review)
and Variance application for the)
Oakstone Northern California Expansion) Resolution No. 10243
Project at Linde's existing facility located)
at 2000 Loveridge Road, AP-23-0046(UP))

The Planning Commission of the City of Pittsburg DOES RESOLVE as follows:

Section 1. Background

A. On March 28, 2023, Eugene Gordin of SGE Consulting Engineers on behalf of Linde Inc., filed Use Permit, Design Review and Variance application for Project Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035). The proposed development project will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. The new facility will expand current production of liquid nitrogen, oxygen, and argon. The property is located in the Industrial General Plan Land Use classification and General Industrial Zoning District (IG). The project also includes on-site circulation improvements to provide a 25-foot drive aisle through the parcel to the project site and expansion of the existing substation on the parcel near the entry/exit to Loveridge Road.

B. On October 13, 2023, Staff circulated the project Mitigated Negative Declaration (MND) for a 30-day public review and comment.

C. The proposed project is subject to the California Environmental Quality Act (Public Resources Code Section 21000, et. Seq), and the State CEQA Guidelines (Public Resources Code section 21080), 14 California Code of Regulations Section 1500, et seq., (collectively, "CEQA").

D. The proposed project is governed by the Pittsburg General Plan and Pittsburg Municipal Code (PMC) Title 18 (Zoning).

E. On December 12, 2023, the Planning Commission continued a public hearing on Application No. 23-0046, to a date to be determined.

F. On February 27, 2024, the Planning Commission held a public hearing on Application No. 23-0046, at which time oral and/or written testimony was considered and adopted Resolution No. 10243 to approve the Mitigated Negative Declaration, Use Permit, Design Review and Variance to construct a new plant involving installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, to expand Linde's current production of liquid nitrogen, oxygen, and argon.

G. On or prior to February 16, 2024, notice of the February 27, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods.

Section 2. Findings

A. Based on the Planning Commission Staff Report entitled, "Consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Reporting Program (MMRP) for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)" and based on all the information contained in the Planning Division files on the proposed project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the Planning Commission finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

2. The Mitigated Negative Declaration for the project was prepared in compliance with Government Code Section 15120, et. Seq and the Planning Commission has independently reviewed and considered the information contained therein.

Use Permit Findings PMC section 18.16.040:

A. The proposed project will be in accordance with the objectives of the Zoning Ordinance, the purpose of the land use district in which it is located and is appropriate to the specific location, in that the proposed heavy manufacturing activity is a conditionally permitted use in the IG District. It constitutes an expansion of the existing Linde air separation plant. It is in keeping with other industrial uses in the immediate surroundings.

B. The proposed project will not be detrimental to the health, safety, and general welfare of the City, in that upon compliance with applicable conditions of approval, it will meet health and safety requirements of the Pittsburg Community Development Department, the Contra Costa Fire Protection District, Contra Costa Health Services – Hazardous Materials Programs, and the Regional Water Quality Control Board as well as the habitat conservation requirements of the East Contra Costa County Habitat Conservation Plan (HCP).

C. The proposed project will not adversely affect the orderly development of property within the City, in that it is located an expansion of an existing use in a general industrial area.

D. The proposed project will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the City, in that the project will utilize the site for an industrial purpose consistent with its General Industrial zoning.

E. The proposed project will be consistent with site's 'Industrial' General Plan land use designation, in that the designation is intended to provide sites for manufacturing uses. The project is also consistent with the General Plan economic development objectives (General Plan, page 6-2) which support retention and expansion of the City's manufacturing base and encourage employment growth.

F. The proposed project will not create a nuisance or enforcement problem within the neighborhood, in that it will be required to meet performance standards, as set forth by PMC chapter 18.82, which are intended to address ongoing safety, noise, odor, and maintenance concerns.

G. The proposed project will not encourage marginal development within the neighborhood, in that the project will consist of air separation equipment similar to other equipment installations at the Linde plant.

H. The proposed project will not create a demand for public services within the City beyond that of the ability of the City to meet in light of taxation and spending restraints imposed by law, in that the project will have access to existing infrastructure, including fire, police, and water.

I. The proposed project will not be inconsistent with the City's approved funding priorities, in that it does not require any City funding.

Design Review Findings PMC section 18.36.220(A):

A. The planning commission shall consider the following aspects of each application to the extent that they are applicable to the proposal:

1. Maximum height, lot coverage and setbacks (if not covered in the zoning ordinance); The project requires a height variance to allow a 137-foot-tall tower where 75 feet maximum is required. The variance findings support granting the requested variance.

2. Overall mass and bulk of structures;
The overall mass and bulk of the proposed structures is consistent with the rest of the structures at the Linde plant and surrounding industrial plants.

3. Special features of the development, such as walls, screen, towers and signs;
The special features of the development such as towers are consistent with the Linde plant and surrounding industrial plants.

4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment; The site perimeter will be fenced to minimize public view, however the

scale of the installations are industrial in nature so some supporting structures and piping will be reasonably visible.

5. Colors and materials on the exterior face of building or structure, striving for a limited number of colors and materials for each project;
   The proposed colors are limited to white, blue and silver.

6. Avoidance of repetition of identical entities whenever possible;
   The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance.

7. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;
   The proposed new installations are sited and organized in an orderly manner and will be harmonious with the existing Linde plant installation and adjacent industrial sites.

8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Pittsburg climate and which are large enough in size to be effective.
   A condition of approval requires attractive landscaping around the perimeter of the site to minimize visual impacts on adjacent properties.

B. The standards to be used by the planning commission in reviewing an application:

1. The structure conforms with good taste, good design and in general contributes to the character and image of the City as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality, in that the proposed new installations are sited and organized in an orderly manner. The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance. The site perimeter will also be fenced to minimize public view.

2. The structure will be protected against exterior and interior noise, vibrations and other factors that may tend to make the environment less desirable, in that the project would be required to meet applicable performance standards to minimize potential noise and vibration impacts.

3. The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value in that, the proposed equipment have been designed to have sleek and less reflective finishes to minimize adverse visual impacts on the surroundings.

4. The structure is in harmony with proposed developments on land in the general area in that, the proposed equipment are similar to the other structures at the existing Linde plant site.

5. The application conforms with the criteria set forth in any applicable City adopted Development Review Design Guidelines (DRDG), in that the proposed plant

expansion has been analyzed in accordance with the applicable DRDGs and found to be conforming.

Variance Findings, PMC Section 18.16.050

A. Because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same land use district, in that the project expansion area is an approximately 2.5-acre portion of a larger 31.55-acre parcel that allows adequate setback of more than a 2:1 setback-to-height-ratio of the proposed 137-foot tall "Rectification Cold Box" tower from the property boundaries. The site is relatively flat with limited vegetation on the site fringes and some wetlands that limit the extent of the development footprint at the site. This constrains the horizontal orientation of the plant equipment, forcing them to be more vertically stacked to avoid impacts on the wetlands and vegetation.

B. The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district, in that the proposed variance request to allow for a 137-foot tall "Rectification Cold Box" tower where only 75 feet maximum is allowed not in isolation of its surroundings since it is an expansion of an existing air separation plant with similar towers for venting and separating essential industrial and commercial gases. There are similar towers with heights in excess of 75 feet at the plant and on other manufacturing plants in the IG zone in the project vicinity and therefore granting the height variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity.

C. The variance substantially complies with the intent and purpose of the land use district to which the property is classified, in that the existing and proposed use is consistent with the IG zoning it allows the proposed plant to install an important tower that is essential for operations and similar to other towers in the vicinity.

D. In the case of a variance from open space regulations, the grant of a variance is consistent with Government Code Section 65911 and will not conflict with general plan policies governing orderly growth and development and the preservation and conservation of open space lands.

Section 3. Decision

Based on the findings set forth above, the Planning Commission hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Attachment 4) of this resolution and approves Use Permit, Design Review and Variance Application No. 23-0046, subject to the following conditions listed below.

Planning Conditions

1. Conformity with Project Plans: The proposed Linde plant expansion (the "facility")

shall be established in substantial conformity with the project plans date-stamped March 28, 2023, except as may be hereinafter modified. Any major changes to the project plans shall be subject to review and approval by the Planning Commission at the City Planner's discretion.

2. Hazardous Materials Business Plan: The applicant shall submit a Hazardous Material Business Plan (HMBP) to the Contra Costa Health Services – Hazardous Materials Programs (CCHSHMP) prior to commencement of facility operations. The HMBP shall describe in detail the type and volume of all chemicals to be used at the facility and must include a reporting and monitoring process for any spills that may occur. It shall also include requirements for safety equipment, automatic shut-off valves, and other safety procedures that may be required, depending on the types and volumes of chemicals stored and used.

3. Landscaping: Around the perimeter of the site abutting the public rights-of-way, adjacent properties, and where determined feasible by the City Planner, the applicant shall install a combination of drought-tolerant plants, trees, and mulch cover in all the existing landscape areas located throughout the site. Installation shall be completed prior to commencement of facility operations.

4. Lighting: All lighting shall be arranged to reflect light away from adjoining properties and public rights-of-way. In general, lighting fixtures shall be shielded to prevent glare on adjoining properties and public rights-of-way.

5. Heat, Humidity, and Odors: The facility shall not produce an unreasonable, disturbing, or unnecessary emission of heat, humidity, or odors at the property line of the site that causes material distress, discomfort or injury to the average person (PMC sections 18.82.035 and 18.82.045).

6. Noise: The facility shall comply with PMC chapter 9.44 (Noise). Applicant shall limit generation of loud noises during construction between the hours of 8:00 am and 5:00 pm.

7. Property Maintenance: Each exterior of a building or other structure shall be kept in a good state of repair and the exterior finish shall be kept clean and well maintained. The entire site including paved, unpaved, and landscaped areas shall be kept in a neat and orderly manner, free of weeds, loose trash, debris, and other litter (PMC section 18.82.050).

8. Graffiti Removal: All graffiti shall be removed on any part of the property within 48 hours of its appearance.

9. Green Building Features: The project shall meet the Nonresidential Mandatory Measures specified under the 2019 California Green Building Standards Code, Part II. In addition to those measures, the project shall implement the following Nonresidential Voluntary Measures:

   Nonresidential Voluntary Measures:

A5.106.5.1 Designated parking for clean air vehicles
A5.405.5 Cement and concrete.
A5.508.1.3 Hydrochlorofluorocarbons (HCFCs), or
A5.508.1.4 Hydrochlorofluorocarbons (HCFCs).

Compliance with this condition shall be shown on the construction drawings submitted for building permits.

10. EV Spaces and EVSE: At least two (2) Electric Vehicle (EV) spaces with Electric Vehicle Supply Equipment (EVSE) shall be installed, consistent with Guideline IV.D.4 of the City of Pittsburg Development Review Design Guidelines (Planning Commission Resolution No. 9864). The installed EVSE shall be 'Level 2', capable of charging at 30 amperes or higher at 208 or 240 volts. The appropriate permissive and regulatory signage shall be provided immediately adjacent to each EV space in accordance with California Manual on Uniform Traffic Control Devices and Title 24 of the California Building Code. Compliance with this condition shall be shown on the construction drawings and improvement plans submitted for building and engineering permits. The applicant may incorporate more conduit for additional EVSE in the future.

11. Environmental Mitigation Measures: The applicant shall comply with the environmental impact mitigation measures identified in Resolution No. 10243 and detailed in attached Mitigation Monitoring Reporting Program (Exhibit B):

AIR QUALITY

a. **Mitigation Measure AQ-1:** The Applicant shall implement BAAQMD's basic BMPs for construction-related fugitive dust, which include:
   - All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
   - All haul trucks transporting soil, sand, or other loose material off site shall be covered.
   - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
   - All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.
   - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
   - All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
   - All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
   - Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted wood chips, mulch, or gravel.

A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Implementation Schedule: During construction activities

Monitoring Agency: City of Pittsburg Community Development Department

BIOLOGICAL RESOURCES

b. **Mitigation Measure BIO-1:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Burrowing Owl during construction:

1. Prior to any ground disturbance, a U.S. Fish and Wildlife Service (USFWS)/California Department of Fish and Wildlife (CDFW) qualified biologist shall conduct a pre-construction survey of the study area for Burrowing Owls. The pre-construction survey shall establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game, 1993).

On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership shall not be required to be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys shall document whether Burrowing Owls are nesting in or directly adjacent to disturbance areas. During the non-breeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or non-breeding) during which the survey is conducted.

2. If burrowing owls are found during the breeding season (February 1–August 31), the Project applicant shall avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1– January 31), the Project applicant shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below).

3. If occupied burrows for Burrowing Owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate

impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The Project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

c. **Mitigation Measure BIO-2:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Golden Eagles during construction:

1. Prior to implementation of construction activities, a qualified biologist shall conduct a pre-construction survey to establish whether an active golden eagle nest is present within the study area. If an occupied nest is present, minimization requirements and construction monitoring shall be required, as detailed below.

2. Construction activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the construction activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

3. Construction monitoring shall ensure that no construction activities occur within the buffer zone established around an active nest. Construction monitoring shall ensure that direct effects to Golden Eagles are avoided.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

d. **Mitigation Measure BIO-3:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Swainson's Hawks during construction:

1. Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15–September 15), a qualified biologist shall conduct a preconstruction survey no more than 1 month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the Project site are occupied. If potentially occupied nests within 1,000 feet are off the Project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging)

near the Project site. If nests are occupied, minimization measures and construction monitoring are required (see below).

2. During the nesting season (March 15–September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

3. If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the Project applicant can apply to the Implementing Entity for a waiver of this avoidance measure. Any waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place.

4. All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the Project proponent according to the requirements below in **Mitigation Measure BIO-4**.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

e. **Mitigation Measure BIO-4:** If Project-related disturbance activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the study area (typically February through August in the Project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities.

If active nests are found in areas that could be directly affected or are within 300 feet of disturbance activities and would be subject to prolonged construction-related noise, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be a minimum of 50 feet, and may be enlarged by considering factors such as the following:

- Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;
- Distance and amount of vegetation or other screening between the construction site and the nest; and

Sensitivity of individual nesting species and behaviors of the nesting birds.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

f. **Mitigation Measure BIO-5:** If Project activities take place during the Western red bat maternity roosting period between May 1 and August 31 (when pre-flight/nursing young may be present), then a qualified biologist shall conduct a roosting habitat evaluation to assess potential roosting habitat in the study area.

If potential roosting habitat is identified in the roosting habitat evaluation, then a preconstruction maternity roost survey shall be conducted within 3 days of equipment staging or initial ground disturbance. The survey will observe a 300-foot buffer around the Project footprint to determine if a maternity roost is present, and to identify and map potential maternity roost sites. If active maternity roost sites are found, then a 300-foot no-disturbance buffer shall be observed around potential maternity roost sites. The buffer shall be maintained until bats have vacated the roost and Wildlife Agencies concur that the roost is vacant.

If Project activities take place during the winter months (November 1 through March 31), then a qualified biologist shall conduct a winter hibernaculum survey. If an active winter hibernaculum is found within 300 feet of the Project footprint, then a 300-foot no disturbance buffer shall be observed around the hibernaculum until the bats have vacated and the agencies concur that the hibernaculum is vacant.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

g. **Mitigation Measure BIO-6:** Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features.

1) Redesign the Project site plan and/or temporary staging areas to avoid the aquatic features onsite; or
2) Obtain the applicable permit of the U.S. Army Corps of Engineers and the Regional Water Quality Control Board to fill the aquatic features necessary to develop the Project if redesigning the Project site plan is not feasible.

In addition, the Project Applicant shall implement the following avoidance measures described in the HCP/NCCP to avoid and minimize impacts on wetlands and riparian woodland/scrub during construction activities:

a. All wetlands, ponds, streams, and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by a qualified biologist.
b. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this

HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.

c. Trash generated by covered activities will be promptly and properly removed from the site.
d. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
e. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site.
f. Fiber rolls used for erosion control will be certified as free of noxious weed seed.
g. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
h. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures).
i. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

CULTURAL RESOURCES

h. **Mitigation Measure CUL-1:** If human remains or any associated funerary artifacts are discovered during construction, all work shall cease within the immediate vicinity of the discovery. In accordance with the California Health and Safety Code (Section 7050.5), the Contra Costa County Sheriff/Coroner must be contacted immediately. If the Coroner determines the remains to be Native American, the Coroner will notify the Native American Heritage Commission, which will in turn appoint a Most Likely Descendent (MLD) to act as a tribal representative. The MLD will work with the Applicant and a qualified

archaeologist to determine the proper treatment of the human remains and any associated funerary objects. Construction activities shall not resume until either the human remains are exhumed, or the remains are avoided via Project construction design change.

Implementation Schedule: During ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department

12. **Caltrans**:

    a. Equitable Access: If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.
    b. Encroachment Permit: Any permanent work or temporary traffic control that encroaches onto Caltrans' Right-of-Way (ROW) requires a Caltrans-issued encroachment permit.

13. **DTSC**:

    a. Soil sampling: Additional investigation and sampling (if necessary) before any groundbreaking activities commence.

    b. Soil Management Plan: Preparation of a Soil Management Plan (SMP) so there is a procedure in place if unforeseen contaminations are discovered.

    c. Imported Soil: If any work initiated as part of the proposed project require the importation of soil to backfill any excavated areas, the SMP shall include a Soil Importation Plan section that outlines contractor requirements and responsibilities for fill source verification and, if necessary, soil sampling and analysis, if it cannot be confirmed that imported fill originated from an uncontaminated source area. The Soil Importation Plan would include soil source verification guidelines and protocols as well as soil sampling frequency and recommended laboratory analyses to ensure that the imported soil is free of contamination.

14. **FAA:**

    a. Linde (Applicant) shall submit a Notice of Proposed Construction or Alteration (FAA Form 7460-1) to Federal Aviation Administration (FAA) prior to application for Building Permits, and be subject to compliance with any applicable FAA conditions of approval prior to issuance of building permits, construction, and operation of the proposed 137-foot tall "Rectification Cold Box" tower" or any equipment that could temporarily intrude into the imaginary surface, as required by the Federal Aviation Administration (FAA). This form (FAA Form 7460-1) must be submitted at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest. *See 14 CFR Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace, for reference*.

15. Excavation: During excavation, applicant shall employ a qualified archaeologist onsite to monitor and sample soil excavation for unanticipated discovery of paleontological or cultural resources. The resume of the qualified archaeologist will be provided to the City prior to excavation. Excavation shall occur outside of a rain event.

16. Safety Plan: Prior to construction, a Site Specific Safety Plan shall be prepared to address safety issues specific to construction and operations of the facility.

17. Soil Analysis: Applicant shall maintain records of soil analysis completed on excavated soils and records of the soil disposal. Workers shall avoid direct contact with soils and anyone working near the excavated soils shall wear personal protective equipment per Safety Plan Requirements.

18. SFRWCB Guidelines: Applicant shall employ San Francisco Regional Water Quality Control Board guidelines and incorporate acceptable Best Management Practices for control of onsite materials, dust and sediment stabilization and proper handling of materials. BMP provisions shall include:

    a. Implementation of hazardous or contaminated materials-handling procedures such as placing materials into lined bins with covering.

    b. Designation of appropriate parking and fueling areas;

    c. Deploying applicable dust and runoff-control measures;

    d. Delineating a site perimeter to prevent disturbing areas outside the project limits;

    e. Implementing hazardous materials storage, containment, and control measures such as secondary containment berms; and

    f. Diverting upstream run-on safely around or through the construction project.

<u>Engineering Conditions – Fees</u>

19. Grading Plan Review Fees: If the project will require grading of 50 cubic yards or more, the applicant will be required to obtain a grading permit. The applicant shall provide an initial payment for review of the grading plans with the first submittal. The grading plan review fee is based on the engineer's estimated cost for site grading, which shall be submitted with the plans. The grading plan check fee is 2.5% of the cost for grading, or it may be based upon cubic yards of earth disturbance as set forth in the City's Master Fee Schedule. Fifty percent (50%) of the total fee is to be paid with the initial submittal of plans and engineer's cost estimate. This initial payment will be credited towards the final fee. The fee balance shall be due payable prior to issuance of the grading permit.

20. Grading Inspection Fees: If the project will require grading of 50 cubic yards or more, the applicant will be required to pay a grading inspection fee at the time of grading

permit issuance. The grading inspection fee is 3% of the engineer's estimated cost of grading, or it may be based upon an approved engineer's estimate of total cubic yards, according to the current schedule of grading fee charges as set forth in the City's Master Fee Schedule.

21. Facility Reserve Charge: If the project will require an increase in size of water or sewer services to accommodate the project, the applicant shall pay the City of Pittsburg Facilities Reserve Charge (PMC Chapters 13.08, 13.12 and 13.24) (the "FRC") to the Engineering Division, for water and sewer service in the incremental amounts in effect when the applicant obtains a building permit. The applicant understands that the current FRC on file, effective August 20, 2005, shall be paid in accordance with the fee schedule approved by Resolution No. 05-10290, and amended by Resolution No. 12-11778, on February 21, 2012, a copy of which is available at the City. This fee shall be due payable prior to issuance of building permits.

Engineering Conditions – NPDES

22. Stormwater Pollution Protection During Construction: There will be no excavation activities during wet weather. If the project requires grading of 50 cubic yards or more, the applicant will be required to obtain a grading permit. Prior to issuance of the grading permit, the applicant shall submit the following to the Engineering Divisions for review: an Erosion and Sedimentation Control Plan or Stormwater Pollution Prevention Plan if the project requires a permit from the State Water Resources Control Board under the provisions of the General Construction Permit. The Stormwater Pollution Prevention Plan measures shall also include measures to prevent soil, dirt, and debris from entering the storm drain system, in accordance with California Stormwater Quality Association's (CASQA's) construction handbook.

23. Water Discharge: The facility shall not discharge liquids of any kind into a public or private sewage system, watercourse, body of water, or the ground, except in compliance with California Water Code, Division 7, Article 4. If water is encountered during excavation it shall only be discharged into the storm drain as permitted by PMC 15.88.030(B)(4).

24. State Industrial General Permit Coverage: The applicant shall obtain coverage under the State General Industrial Permit for any discharge of wastewater to New York Slough. Proof of permit coverage from the State Water Boards shall be submitted to the Engineering Division prior to commencement of facility operations.

Standard Conditions

25. Grounds for Revocation: Operation in a manner inconsistent with that described in the staff report, violation of a zoning regulation or condition of this resolution, existence of a public nuisance, or conviction of a federal or state law or city ordinance in connection with the operation of the use shall be grounds for revocation of the use permit (PMC section 18.28.100).

26. Standard Conditions of Development: The Standard Conditions of Development as

adopted by the Pittsburg Planning Commission by Resolution No. 8931 shall apply as conditions of approval for this project as applicable. Where there is a conflict between the Standard Conditions of Development and the project-specific conditions identified in this resolution, the specific conditions of this resolution shall govern.

27. Other Agency Requirements: The applicant shall comply with all the requirements of the City's Community Development Department, Contra Costa County Fire Protection District, and all other applicable local, state and federal agencies.

    It is the responsibility of the applicant to contact each local, state, or federal agency for requirements that may pertain to this project.

28. Indemnification: Applicant agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person challenging the validity of this project approval, subsequent project approval, or other action arising out of, or in connection with, this project approval. The parties shall cooperate in defending such action or proceeding. The parties shall use reasonable efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel at applicant's sole cost and expense. Applicant may select its own legal counsel to represent applicant's interests at applicant's sole cost and expense. Applicant shall pay for City's costs of defense, whether directly or by timely reimbursement to City on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent responding to and defending the claim, action or proceeding.

29. Expiration of Approval: This use permit will expire on February 27, 2026, unless the use has been legally established, or a written request for extension is filed with the Planning Division prior to the expiration date and subsequently approved by the Planning Commission.

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

On motion by Commissioner Kobata, seconded by Commissioner Smith, the foregoing resolution was passed and adopted the 27th day of February 2024, by the Planning Commission of the City of Pittsburg, California by the following vote:

AYES: Robinson, Popova, Kobata, Foster, Smith

NAYES: None

ABSTAIN: None

ABSENT: None

I hereby certify that the above Resolution No. 10243 was adopted by the Planning Commission of the City of Pittsburg on February 27, 2024.

JOHN FUNDERBURG M.S., SECRETARY
PITTSBURG PLANNING COMMISSION

MINUTES
OF A REGULAR MEETING
OF THE
PITTSBURG PLANNING COMMISSION

February 27, 2024

A regular meeting of the Pittsburg Planning Commission was called to order by Chair Popova at 7:00 p.m. on Tuesday, February 27, 2024, in the Council Chambers at City Hall, 65 Civic Avenue, Pittsburg, California.

ROLL CALL

Present: Chair Popova, Vice-Chair Kobata, Commissioners Foster, Robinson, Smith

Staff: City Attorney Donna Mooney, Director of Community and Economic Development Jordan Davis, Assistant Director of Community and Economic Development John Funderburg, Senior Planner Maurice Berenyah-Addow, Administrative Analyst I Candace Hatch

PLEDGE OF ALLEGIANCE

Commissioner Robinson led the Pledge of Allegiance.

DELETIONS / WITHDRAWALS / CONTINUANCES

There were no deletions, withdrawals or continuances.

COMMENTS FROM THE AUDIENCE

There were no comments from the audience.

CONSENT

1. Minutes of February 13, 2024

On motion by Commissioner Foster, seconded by Chair Popova to approve the consent item and carried by the following vote:

AYES: Foster, Kobata, Popova, Robinson, Smith
NAYES: None
ABSTAIN: None
ABSENT: None

PUBLIC HEARING

2. Consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)

A public hearing on the consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project.

Senior Planner Maurice Berenyah-Addow gave a presentation.
Applicant Christian Lenci spoke on behalf of the project.

Chair Popova requested a five-minute recess starting at approximately 7:45 p.m. and reconvened at approximately 7:54 p.m.

Chair Popova opened the public hearing.
Public comment was received by the following:
Rick Franco with Adams Broadwell Joseph and Cardoza
Bruce Ohlson, Pittsburg resident.
There being no one to speak further on this item, Chair Popova closed the public hearing.

On motion by Vice-Chair Kobata, approving the consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project AP-23-0046 (UP, DR, VA), seconded by Commissioner Smith.

AYES: Foster, Kobata, Popova, Robinson, Smith
NAYES: None
ABSTAIN: None
ABSENT: None

STAFF COMMUNICATIONS

Secretary Funderburg provided information and discussed the tentative schedule for upcoming meetings.

The Planning Commission Academy that will be held in March by the League of California Cities.

General Plan comment period closed on Friday, February 9, 2024, comments have been received and Secretary Funderburg is working to address all comments.

One (1) item tentatively scheduled for March 12, 2024, meeting:

1. CP (Pedestrian Commercial) Zone Text Amendments – City initiated updates to the permitted uses in this zone.

There were no further staff communications.

COMMITTEE REPORTS

Chair Popova provided an update on the Community and Economic Development Subcommittee.

ADJOURNMENT

The meeting was adjourned at 8:47 p.m. to March 12, 2024.

Respectfully Submitted,

John Funderburg, Secretary

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March 7, 2024

Via Accela Portal, E-Mail and Overnight Delivery

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Re: Appeal to City Council of Planning Commission Resolution No. 10243: Approval of Use Permit, Design Review, and Variance Application for the Oakstone Northern California Expansion Project at Linde, Inc.'s Existing Facility Located at 2000 Loveridge Road, AP-23-0046 (UP, DR, VA)

Dear Mr. Brenyah-Addow, Mr. Funderburg, and Ms. Evenson:

We write on behalf of Safe Fuel and Energy Resources California ("SAFER CA") to appeal the City of Pittsburg ("City") Planning Commission's February 27, 2024 approval of the Oakstone Northern California Expansion Project ("Project"), Application No. AP-23-0046, proposed by Linde, Inc. ("Applicant"), to the City Council pursuant to the Municipal Code § 18.18.060.[1]

SAFER CA respectfully requests that the City Council remand this matter to City staff with direction to prepare an environmental impact report ("EIR"),

[1] **Exhibit A**, Planning Commission Resolution 10243, Approval of Use Permit, Design Review and Variance Application for the Oakstone Northern California Expansion Project at Linde's Existing Facility Located at 2000 Loveridge Road, AP-23-0046 (UP) (Feb. 27, 2024).

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pursuant to the California Environmental Quality Act ("CEQA"),[2] that fully discloses, analyzes, and mitigates the Project's significant air quality, public health, and hazards impacts.

I. BACKGROUND

The Applicant proposes to expand their existing industrial gas facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035).[3] The expanded facility would increase current production of liquid nitrogen, oxygen, and argon to be distributed via truck to the Bay Area, Central Valley, and nearby states by installing a new air separation unit system.[4] The proposed expansion includes construction and operation of a second centralized atmospheric separation plant, which would include air compressors, pre-purifier vessels, an industrial class chiller, a distillation tower containing heat exchangers, booster compressor/turbine sets, and cryogenic distillation columns, three individual storage tanks, interconnecting piping, and a cooling tower.[5] The expansion would also require electric substation upgrades to distribute the large amount electricity needed to operate the facility.[6]

The City prepared an Initial Study / Mitigated Negative Declaration ("IS/MND") for the proposed Project.[7] The City issued a notice of intent to consider adoption of the MND on October 13, 2023.[8]

On December 13, 2023, the Planning Commission held a public hearing to consider the proposed Project's use permit, design review, and variance applications.[9] Prior to the public hearing, SAFER CA submitted written comments and accompanying expert report to the Planning Commission demonstrating that the City violated the CEQA by failing to prepare an EIR based on the Project's

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[2] Pub. Res. Code § 21000 *et seq*.
[3] City of Pittsburg, Oakstone Northern California Expansion Project: Draft Initial Study / Mitigated Negative Declaration (Oct. 2023) (hereinafter "IS/MND") p. 1, *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15486/638328001708630000.
[4] *Ibid*.
[5] *Id*. at p. 2.
[6] *Id*. at p. 8.
[7] *See generally id*.
[8] City of Pittsburg, Notice of Intent to Consider Adoption of a Mitigated Negative Declaration (Oct. 13, 2023), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15484/638328000277800000.
[9] City of Pittsburg, Planning Commission, Staff Report, ITEM: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA) (Dec. 13, 2023).

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significant, unmitigated public health, hazards, and biological resource impacts.[10] SAFER CA reiterated these deficiencies in oral comments during the public hearing. The Planning Commission continued the hearing.

On February 27, 2024, the Planning Commission held a second public hearing on the proposed Project.[11] Prior to the hearing, SAFER CA submitted written comments and accompanying expert report demonstrating that (1) the City violated CEQA by failing to prepare a EIR because substantial evidence in the record supporting a fair argument demonstrated significant, unmitigated air quality, public health and hazard risks, and (2) the City violated state Planning and Zoning laws, including its own Municipal Code, because there is substantial evidence in the record demonstrating that the proposed Project would be detrimental to the health, safety, and general welfare of workers, residents, and students.[12] SAFER CA reiterated these deficiencies in oral comments during the public hearing. Despite these defects, the Planning Commission adopted Resolution No. 10243 approving the Project.

Chapter 18 of the City's Municipal Code governs decisions and appeals of a competent member of the planning agency, including the Planning Commission.[13] A person desiring to appeal the decision of the Planning Commission must file a written notice of appeal with the city planner within 10 calendar days of the date of the decision.[14] The notice of appeal must contain the name and address of the person appealing the action, the decision appealed from and the grounds for appeal.[15] The city planner must then set the matter for hearing before the City

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[10] **Exhibit B**, Letter to Ivelina Popova, City of Pittsburg from Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: Agenda Item No. 2: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA) (Dec. 12, 2023) (hereinafter "SAFER CA Comments").

[11] City of Pittsburg, Planning Commission, Staff Report, ITEM: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA) (Feb. 27, 2024).

[12] **Exhibit C**, Letter to Ivelina Popova, City of Pittsburg from Andrew J. Graf, Adams Broadwell Joseph & Cardozo re: Agenda Item No. 2: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA) (Feb. 27, 2024) (hereinafter "SAFER CA Supplemental Comments").

[13] Pittsburg Municipal Code § 18.10.010.B.

[14] *Id*. §§ 10.18.040.B; 10.18.060.A.

[15] *Id*.§ 10.18.060.B.

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Council and give notice of the appeal hearing.[16] The City Council must hear the appeal as new (a *de novo* hearing), considering the testimony and evidence presented at the appeal hearing and all pertinent information form the file as a result of the previous hearings.[17]

SAFER CA submits the instant appeal of the Planning Commission's approvals for the proposed Project to the City Council.

II. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California's industrial facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's industrial projects. Failure to adequately address the environmental impacts of such projects poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

The members represented by the participants in SAFER CA live, work, recreate and raise their families in Contra Costa County and the City. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating labor organizations could also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

SAFER CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits while minimizing adverse environmental and other impacts on local communities. SAFER CA and its members are concerned about projects like this one that risk serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.

III. DECISION BEING APPEALED

SAFER CA appeals Planning Commission Resolution No. 10243, *Approval of Use Permit, Design Review and Variance Application for the Oakstone Northern*

[16] *Id.*§§ 10.18.050; 10.18.060.C.
[17] *Id.* § 10.18.060.D.

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California Expansion Project at Linde's Existing Facility Located at 2000 Loveridge Road, AP-23-0046 (UP), which was approved at the February 27, 2024 meeting.[18] This includes, but is not limited to, an appeal of the following findings and determinations:

A. Based on the Planning Commission Staff Report, "Consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of Initial Study Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Reporting Program (MMRP) for the Linde Inc., Oak stone Northern California Expansion Project, AP-23-0046 (UP,DR, VA)" and based on all the information contained in the Planning Division files on the proposed project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the Planning Commission finds that:

    1. All recitals above are true and correct and incorporated herein by reference.

    2. The Mitigated Negative Declaration for the project was prepared in compliance with Government Code Section 15120, et Seq and the Planning Commission has independently reviewed and considered the information contained therein.

The Planning Commission recitals are as follows:

A. On March 28, 2023, Eugene Gordin of SGE Consulting Engineers on behalf of Linde Inc., filed Use Permit, Design Review and Variance application for Project Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035). The proposed development project will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. The new facility will expand current production of liquid nitrogen, oxygen, and argon. The property is located in the Industrial General Plan Land Use classification and General Industrial Zoning District (IG). The project also includes on-site circulation improvements to provide a 25-foot drive aisle through the parcel to the project site and

[18] Exhibit A.

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expansion of the existing substation on the parcel near the entry/exit to Loveridge Road.

B. On October 13, 2023, Staff circulated the project Mitigated Negative Declaration (MND) for a 30-day public review and comment.

C. The proposed project is subject to the California Environmental Quality Act (Public Resources Code Section 21000, et. Seq), and the State CEQA Guidelines (Public Resources Code section 21080), 14 California Code of Regulations Section 1500, et seq., (collectively, "CEQA").

D. The proposed project is governed by the Pittsburg General Plan and Pittsburg Municipal Code (PMC) Title 18 (Zoning).

E. On December 12, 2023, the Planning Commission continued a public hearing on Application No. 23-0046, to a date to be determined.

F. On February 27, 2024, the Planning Commission held a public hearing on Application No. 23-0046, at which time oral and/or written testimony was considered and adopted Resolution No. ____ to approve the Mitigated Negative Declaration, Use Permit, Design Review and Variance to construct a new plant involving installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, to expand Linde's current production of liquid nitrogen, oxygen, and argon.

G. On or prior to February 16, 2024, notice of the February 27, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods.

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IV. GROUNDS FOR APPEAL

SAFER CA's comment letters dated December 12, 2023 and February 27, 2024, and accompanying reports prepared by technical expert Phyllis Fox, Ph.D., P.E., dated December 12, 2023 and February 26, 2024 detail the grounds for the instant appeal.[19] These documents are incorporated by reference as if fully set forth herein.

In sum, the Planning Commission violated CEQA because the IS/MND does not provide an adequate discussion of the environmental setting, obscuring the analysis of environmental impact.[20] The IS/MND also fails to disclose, analyze, and mitigate all potentially significant adverse impacts to public health, air quality, hazards and hazardous materials that could result from construction and operation of the Project.[21] Specifically, the IS/MND is deficient in six respects.

First, the IS/MND fails to analyze indirect operational emissions, substantial evidence supports a fair argument that those emissions are significant, and feasible mitigation measures are available to reduce those impacts.[22] Second, the IS/MND lacks substantial evidence to conclude health risks are less than significant because it relies on clearly erroneous meteorological data.[23] Third, the IS/MND fails to analyze acute hazard risks and impacts to on-site construction workers from diesel particulate matter ("DPM") emissions during Project construction.[24] Fourth, substantial evidence supports a fair argument that cancer and hazard risks from construction DPM emissions are significant.[25] Fifth, the IS/MND fails to analyze operational hazards, including the impact of potential air contaminants on safe operation and impacts from loading and transportation of liquified products.[26] Sixth, substantial evidence supports a fair argument that ambient air contaminants could affect safe operation and feasible mitigation measures are available to reduce the risks of accidents.[27]

Finally, the Planning Commission's approval findings were not supported by substantial evidence because the proposed Project would be detrimental to the health, safety, and general welfare of workers, residents, and students because

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[19] *See generally* Exhibit B; Exhibit C.
[20] Exhibit C at pp. 5-7.
[21] *Id*. at pp. 7-23.
[22] *Id*. at pp. 7-10.
[23] *Id*. at pp. 12-13.
[24] *Id*. at pp. 15-18.
[25] *Id*. at pp. 13-14, 16-19.
[26] *Id*. at p. 19-21, 23.
[27] *Id*. at pp. 21-22.

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construction of Project would pose significant cancer and hazard risk due to DPM emissions, and operation of the project would pose significant hazards, including the potential for catastrophic accidents.[28] Until theses significant impacts are mitigated, the Planning Commission lack's substantial evidence to conclude that the Project is not determinantal to the health safety, and general welfare.

V. REQUEST FOR REMAND TO PREPARE AN ENVIRONMENTAL IMPACT REPORT

The record demonstrates that the Planning Commission abused its discretion because it failed to comply with the procedural and substantive requirements of CEQA, as described in Section IV and Exhibit C. The record also demonstrates that the Planning Commission could not make all the necessary findings because the proposed Project is determinantal to the health, safety, and general welfare of the City. For these reasons, SAFER CA urges the City Council to remand this matter to City staff with direction to prepare an EIR that fully discloses, analyzes, and mitigates the Project's air quality, public health, and hazard impacts.

Thank you for your consideration.

Sincerely,

Andrew J. Graf

Attachments
AJG:acp

[28] *Id*. at p. 23-24.

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EXHIBIT A

BEFORE THE PLANNING COMMISSION OF THE CITY OF PITTSBURG

In the Matter of:

Approval of Use Permit, Design Review)
and Variance application for the)
Oakstone Northern California Expansion) Resolution No. 10243
Project at Linde's existing facility located)
at 2000 Loveridge Road, AP-23-0046(UP))

The Planning Commission of the City of Pittsburg DOES RESOLVE as follows:

Section 1. Background

A. On March 28, 2023, Eugene Gordin of SGE Consulting Engineers on behalf of Linde Inc., filed Use Permit, Design Review and Variance application for Project Oakstone Northern California Expansion Project at Linde's existing facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035). The proposed development project will result in the expansion of its Northern California industrial gas market by building a new plant which will involve installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, at its existing facility. The new facility will expand current production of liquid nitrogen, oxygen, and argon. The property is located in the Industrial General Plan Land Use classification and General Industrial Zoning District (IG). The project also includes on-site circulation improvements to provide a 25-foot drive aisle through the parcel to the project site and expansion of the existing substation on the parcel near the entry/exit to Loveridge Road.

B. On October 13, 2023, Staff circulated the project Mitigated Negative Declaration (MND) for a 30-day public review and comment.

C. The proposed project is subject to the California Environmental Quality Act (Public Resources Code Section 21000, et. Seq), and the State CEQA Guidelines (Public Resources Code section 21080), 14 California Code of Regulations Section 1500, et seq., (collectively, "CEQA").

D. The proposed project is governed by the Pittsburg General Plan and Pittsburg Municipal Code (PMC) Title 18 (Zoning).

E. On December 12, 2023, the Planning Commission continued a public hearing on Application No. 23-0046, to a date to be determined.

F. On February 27, 2024, the Planning Commission held a public hearing on Application No. 23-0046, at which time oral and/or written testimony was considered and adopted Resolution No. 10243 to approve the Mitigated Negative Declaration, Use Permit, Design Review and Variance to construct a new plant involving installation of an air separation unit system, including a distillation tower, heat exchanger cold box, storage tanks, air compressor and auxiliary equipment, to expand Linde's current production of liquid nitrogen, oxygen, and argon.

G. On or prior to February 16, 2024, notice of the February 27, 2024, public hearing was posted at City Hall, near the proposed project site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the proposed pilot project site, to local service agencies expected to provide services to the building, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091. The notice was also posted on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in the adjacent Nextdoor neighborhoods.

Section 2. Findings

A. Based on the Planning Commission Staff Report entitled, "Consideration of a Resolution Granting a Use Permit, Design Review and Variance and adoption of an Initial Study Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Reporting Program (MMRP) for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)" and based on all the information contained in the Planning Division files on the proposed project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the Planning Commission finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

2. The Mitigated Negative Declaration for the project was prepared in compliance with Government Code Section 15120, et. Seq and the Planning Commission has independently reviewed and considered the information contained therein.

Use Permit Findings PMC section 18.16.040:

A. The proposed project will be in accordance with the objectives of the Zoning Ordinance, the purpose of the land use district in which it is located and is appropriate to the specific location, in that the proposed heavy manufacturing activity is a conditionally permitted use in the IG District. It constitutes an expansion of the existing Linde air separation plant. It is in keeping with other industrial uses in the immediate surroundings.

B. The proposed project will not be detrimental to the health, safety, and general welfare of the City, in that upon compliance with applicable conditions of approval, it will meet health and safety requirements of the Pittsburg Community Development Department, the Contra Costa Fire Protection District, Contra Costa Health Services – Hazardous Materials Programs, and the Regional Water Quality Control Board as well as the habitat conservation requirements of the East Contra Costa County Habitat Conservation Plan (HCP).

C. The proposed project will not adversely affect the orderly development of property within the City, in that it is located an expansion of an existing use in a general industrial area.

D. The proposed project will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenue sources within the City, in that the project will utilize the site for an industrial purpose consistent with its General Industrial zoning.

E. The proposed project will be consistent with site's 'Industrial' General Plan land use designation, in that the designation is intended to provide sites for manufacturing uses. The project is also consistent with the General Plan economic development objectives (General Plan, page 6-2) which support retention and expansion of the City's manufacturing base and encourage employment growth.

F. The proposed project will not create a nuisance or enforcement problem within the neighborhood, in that it will be required to meet performance standards, as set forth by PMC chapter 18.82, which are intended to address ongoing safety, noise, odor, and maintenance concerns.

G. The proposed project will not encourage marginal development within the neighborhood, in that the project will consist of air separation equipment similar to other equipment installations at the Linde plant.

H. The proposed project will not create a demand for public services within the City beyond that of the ability of the City to meet in light of taxation and spending restraints imposed by law, in that the project will have access to existing infrastructure, including fire, police, and water.

I. The proposed project will not be inconsistent with the City's approved funding priorities, in that it does not require any City funding.

Design Review Findings PMC section 18.36.220(A):

A. The planning commission shall consider the following aspects of each application to the extent that they are applicable to the proposal:

1. Maximum height, lot coverage and setbacks (if not covered in the zoning ordinance); The project requires a height variance to allow a 137-foot-tall tower where 75 feet maximum is required. The variance findings support granting the requested variance.

2. Overall mass and bulk of structures;
The overall mass and bulk of the proposed structures is consistent with the rest of the structures at the Linde plant and surrounding industrial plants.

3. Special features of the development, such as walls, screen, towers and signs;
The special features of the development such as towers are consistent with the Linde plant and surrounding industrial plants.

4. Effective concealment and sound attenuation of exposed mechanical and electrical equipment; The site perimeter will be fenced to minimize public view, however the

scale of the installations are industrial in nature so some supporting structures and piping will be reasonably visible.

5. Colors and materials on the exterior face of building or structure, striving for a limited number of colors and materials for each project;
   The proposed colors are limited to white, blue and silver.

6. Avoidance of repetition of identical entities whenever possible;
   The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance.

7. Harmonious relationship with existing and proposed adjoining developments, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;
   The proposed new installations are sited and organized in an orderly manner and will be harmonious with the existing Linde plant installation and adjacent industrial sites.

8. Pleasing landscaping which incorporates existing landscaping and terrain as a complement to the structure, using plants which thrive in the Pittsburg climate and which are large enough in size to be effective.
   A condition of approval requires attractive landscaping around the perimeter of the site to minimize visual impacts on adjacent properties.

B. The standards to be used by the planning commission in reviewing an application:

1. The structure conforms with good taste, good design and in general contributes to the character and image of the City as a place of beauty, spaciousness, balance, taste, fitness, broad vistas, and high quality, in that the proposed new installations are sited and organized in an orderly manner. The various equipment are varied in sizes and shapes and interconnected with pipes and support structures that minimize monotony in appearance. The site perimeter will also be fenced to minimize public view.

2. The structure will be protected against exterior and interior noise, vibrations and other factors that may tend to make the environment less desirable, in that the project would be required to meet applicable performance standards to minimize potential noise and vibration impacts.

3. The exterior design and appearance of the structure is not of inferior quality as to cause the nature of the neighborhood to materially depreciate in appearance and value in that, the proposed equipment have been designed to have sleek and less reflective finishes to minimize adverse visual impacts on the surroundings.

4. The structure is in harmony with proposed developments on land in the general area in that, the proposed equipment are similar to the other structures at the existing Linde plant site.

5. The application conforms with the criteria set forth in any applicable City adopted Development Review Design Guidelines (DRDG), in that the proposed plant

expansion has been analyzed in accordance with the applicable DRDGs and found to be conforming.

Variance Findings, PMC Section 18.16.050

A. Because of special circumstances concerning the subject property including size, shape, topography, location or surroundings, the strict application of the zoning regulations deprives the property of privileges enjoyed by other properties in the vicinity and in the same land use district, in that the project expansion area is an approximately 2.5-acre portion of a larger 31.55-acre parcel that allows adequate setback of more than a 2:1 setback-to-height-ratio of the proposed 137-foot tall "Rectification Cold Box" tower from the property boundaries. The site is relatively flat with limited vegetation on the site fringes and some wetlands that limit the extent of the development footprint at the site. This constrains the horizontal orientation of the plant equipment, forcing them to be more vertically stacked to avoid impacts on the wetlands and vegetation.

B. The variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district, in that the proposed variance request to allow for a 137-foot tall "Rectification Cold Box" tower where only 75 feet maximum is allowed not in isolation of its surroundings since it is an expansion of an existing air separation plant with similar towers for venting and separating essential industrial and commercial gases. There are similar towers with heights in excess of 75 feet at the plant and on other manufacturing plants in the IG zone in the project vicinity and therefore granting the height variance will not constitute a grant of special privilege which is not generally available to other property in the vicinity.

C. The variance substantially complies with the intent and purpose of the land use district to which the property is classified, in that the existing and proposed use is consistent with the IG zoning it allows the proposed plant to install an important tower that is essential for operations and similar to other towers in the vicinity.

D. In the case of a variance from open space regulations, the grant of a variance is consistent with Government Code Section 65911 and will not conflict with general plan policies governing orderly growth and development and the preservation and conservation of open space lands.

Section 3. Decision

Based on the findings set forth above, the Planning Commission hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Attachment 4) of this resolution and approves Use Permit, Design Review and Variance Application No. 23-0046, subject to the following conditions listed below.

Planning Conditions

1. Conformity with Project Plans: The proposed Linde plant expansion (the "facility")

shall be established in substantial conformity with the project plans date-stamped March 28, 2023, except as may be hereinafter modified. Any major changes to the project plans shall be subject to review and approval by the Planning Commission at the City Planner's discretion.

2. Hazardous Materials Business Plan: The applicant shall submit a Hazardous Material Business Plan (HMBP) to the Contra Costa Health Services – Hazardous Materials Programs (CCHSHMP) prior to commencement of facility operations. The HMBP shall describe in detail the type and volume of all chemicals to be used at the facility and must include a reporting and monitoring process for any spills that may occur. It shall also include requirements for safety equipment, automatic shut-off valves, and other safety procedures that may be required, depending on the types and volumes of chemicals stored and used.

3. Landscaping: Around the perimeter of the site abutting the public rights-of-way, adjacent properties, and where determined feasible by the City Planner, the applicant shall install a combination of drought-tolerant plants, trees, and mulch cover in all the existing landscape areas located throughout the site. Installation shall be completed prior to commencement of facility operations.

4. Lighting: All lighting shall be arranged to reflect light away from adjoining properties and public rights-of-way. In general, lighting fixtures shall be shielded to prevent glare on adjoining properties and public rights-of-way.

5. Heat, Humidity, and Odors: The facility shall not produce an unreasonable, disturbing, or unnecessary emission of heat, humidity, or odors at the property line of the site that causes material distress, discomfort or injury to the average person (PMC sections 18.82.035 and 18.82.045).

6. Noise: The facility shall comply with PMC chapter 9.44 (Noise). Applicant shall limit generation of loud noises during construction between the hours of 8:00 am and 5:00 pm.

7. Property Maintenance: Each exterior of a building or other structure shall be kept in a good state of repair and the exterior finish shall be kept clean and well maintained. The entire site including paved, unpaved, and landscaped areas shall be kept in a neat and orderly manner, free of weeds, loose trash, debris, and other litter (PMC section 18.82.050).

8. Graffiti Removal: All graffiti shall be removed on any part of the property within 48 hours of its appearance.

9. Green Building Features: The project shall meet the Nonresidential Mandatory Measures specified under the 2019 California Green Building Standards Code, Part II. In addition to those measures, the project shall implement the following Nonresidential Voluntary Measures:

   Nonresidential Voluntary Measures:

A5.106.5.1 Designated parking for clean air vehicles
A5.405.5 Cement and concrete.
A5.508.1.3 Hydrochlorofluorocarbons (HCFCs), or
A5.508.1.4 Hydrochlorofluorocarbons (HCFCs).

Compliance with this condition shall be shown on the construction drawings submitted for building permits.

10. EV Spaces and EVSE: At least two (2) Electric Vehicle (EV) spaces with Electric Vehicle Supply Equipment (EVSE) shall be installed, consistent with Guideline IV.D.4 of the City of Pittsburg Development Review Design Guidelines (Planning Commission Resolution No. 9864). The installed EVSE shall be 'Level 2', capable of charging at 30 amperes or higher at 208 or 240 volts. The appropriate permissive and regulatory signage shall be provided immediately adjacent to each EV space in accordance with California Manual on Uniform Traffic Control Devices and Title 24 of the California Building Code. Compliance with this condition shall be shown on the construction drawings and improvement plans submitted for building and engineering permits. The applicant may incorporate more conduit for additional EVSE in the future.

11. Environmental Mitigation Measures: The applicant shall comply with the environmental impact mitigation measures identified in Resolution No. 10243 and detailed in attached Mitigation Monitoring Reporting Program (Exhibit B):

AIR QUALITY

a. **Mitigation Measure AQ-1:** The Applicant shall implement BAAQMD's basic BMPs for construction-related fugitive dust, which include:
   - All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
   - All haul trucks transporting soil, sand, or other loose material off site shall be covered.
   - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
   - All vehicle speeds on unpaved roads shall be limited to 15 miles per hour.
   - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
   - All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
   - All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
   - Unpaved roads providing access to sites located 100 feet or further from a paved road shall be treated with a 6- to 12-inch layer of compacted wood chips, mulch, or gravel.

A publicly visible sign shall be posted with the telephone number and person to contact at the City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

Implementation Schedule: During construction activities

Monitoring Agency: City of Pittsburg Community Development Department

BIOLOGICAL RESOURCES

b. **Mitigation Measure BIO-1:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Burrowing Owl during construction:

1. Prior to any ground disturbance, a U.S. Fish and Wildlife Service (USFWS)/California Department of Fish and Wildlife (CDFW) qualified biologist shall conduct a pre-construction survey of the study area for Burrowing Owls. The pre-construction survey shall establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game, 1993).

On the parcel where the activity is proposed, the biologist shall survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership shall not be required to be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls shall be identified and mapped. Surveys shall take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys shall document whether Burrowing Owls are nesting in or directly adjacent to disturbance areas. During the non-breeding season (September 1–January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results shall be valid only for the season (breeding or non-breeding) during which the survey is conducted.

2. If burrowing owls are found during the breeding season (February 1–August 31), the Project applicant shall avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1– January 31), the Project applicant shall avoid the owls and the burrows they are using, if possible. Avoidance shall include the establishment of a buffer zone (described below).

3. If occupied burrows for Burrowing Owls are not avoided, passive relocation shall be implemented. Owls shall be excluded from burrows in the immediate

impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours prior to excavation. The Project area shall be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows shall be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure shall be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

c. **Mitigation Measure BIO-2:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Golden Eagles during construction:

1. Prior to implementation of construction activities, a qualified biologist shall conduct a pre-construction survey to establish whether an active golden eagle nest is present within the study area. If an occupied nest is present, minimization requirements and construction monitoring shall be required, as detailed below.

2. Construction activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the construction activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

3. Construction monitoring shall ensure that no construction activities occur within the buffer zone established around an active nest. Construction monitoring shall ensure that direct effects to Golden Eagles are avoided.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

d. **Mitigation Measure BIO-3:** As required by the HCP, the Project shall implement the following avoidance measures for potential effects on Swainson's Hawks during construction:

1. Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15–September 15), a qualified biologist shall conduct a preconstruction survey no more than 1 month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the Project site are occupied. If potentially occupied nests within 1,000 feet are off the Project site, then their occupancy shall be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging)

near the Project site. If nests are occupied, minimization measures and construction monitoring are required (see below).

2. During the nesting season (March 15–September 15), covered activities within 1,000 feet of occupied nests or nests under construction shall be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.

3. If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the Project applicant can apply to the Implementing Entity for a waiver of this avoidance measure. Any waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place.

4. All active nest trees shall be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities shall be mitigated by the Project proponent according to the requirements below in **Mitigation Measure BIO-4**.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

e. **Mitigation Measure BIO-4:** If Project-related disturbance activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the study area (typically February through August in the Project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities.

If active nests are found in areas that could be directly affected or are within 300 feet of disturbance activities and would be subject to prolonged construction-related noise, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of the buffer zones and types of construction activities restricted within them shall be a minimum of 50 feet, and may be enlarged by considering factors such as the following:

- Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;
- Distance and amount of vegetation or other screening between the construction site and the nest; and

Sensitivity of individual nesting species and behaviors of the nesting birds.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

f. **Mitigation Measure BIO-5:** If Project activities take place during the Western red bat maternity roosting period between May 1 and August 31 (when pre-flight/nursing young may be present), then a qualified biologist shall conduct a roosting habitat evaluation to assess potential roosting habitat in the study area.

If potential roosting habitat is identified in the roosting habitat evaluation, then a preconstruction maternity roost survey shall be conducted within 3 days of equipment staging or initial ground disturbance. The survey will observe a 300-foot buffer around the Project footprint to determine if a maternity roost is present, and to identify and map potential maternity roost sites. If active maternity roost sites are found, then a 300-foot no-disturbance buffer shall be observed around potential maternity roost sites. The buffer shall be maintained until bats have vacated the roost and Wildlife Agencies concur that the roost is vacant.

If Project activities take place during the winter months (November 1 through March 31), then a qualified biologist shall conduct a winter hibernaculum survey. If an active winter hibernaculum is found within 300 feet of the Project footprint, then a 300-foot no disturbance buffer shall be observed around the hibernaculum until the bats have vacated and the agencies concur that the hibernaculum is vacant.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

g. **Mitigation Measure BIO-6:** Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features.

1) Redesign the Project site plan and/or temporary staging areas to avoid the aquatic features onsite; or
2) Obtain the applicable permit of the U.S. Army Corps of Engineers and the Regional Water Quality Control Board to fill the aquatic features necessary to develop the Project if redesigning the Project site plan is not feasible.

In addition, the Project Applicant shall implement the following avoidance measures described in the HCP/NCCP to avoid and minimize impacts on wetlands and riparian woodland/scrub during construction activities:

a. All wetlands, ponds, streams, and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by a qualified biologist.
b. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this

HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.

c. Trash generated by covered activities will be promptly and properly removed from the site.
d. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
e. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site.
f. Fiber rolls used for erosion control will be certified as free of noxious weed seed.
g. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
h. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures).
i. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

Implementation Schedule: Prior to ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department in coordination with the East Contra Costa County Habitat Conservancy

CULTURAL RESOURCES

h. **Mitigation Measure CUL-1:** If human remains or any associated funerary artifacts are discovered during construction, all work shall cease within the immediate vicinity of the discovery. In accordance with the California Health and Safety Code (Section 7050.5), the Contra Costa County Sheriff/Coroner must be contacted immediately. If the Coroner determines the remains to be Native American, the Coroner will notify the Native American Heritage Commission, which will in turn appoint a Most Likely Descendent (MLD) to act as a tribal representative. The MLD will work with the Applicant and a qualified

archaeologist to determine the proper treatment of the human remains and any associated funerary objects. Construction activities shall not resume until either the human remains are exhumed, or the remains are avoided via Project construction design change.

Implementation Schedule: During ground disturbance and construction activities

Monitoring Agency: City of Pittsburg Community Development Department

12. **Caltrans**:

    a. Equitable Access: If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.
    b. Encroachment Permit: Any permanent work or temporary traffic control that encroaches onto Caltrans' Right-of-Way (ROW) requires a Caltrans-issued encroachment permit.

13. **DTSC**:

    a. Soil sampling: Additional investigation and sampling (if necessary) before any groundbreaking activities commence.

    b. Soil Management Plan: Preparation of a Soil Management Plan (SMP) so there is a procedure in place if unforeseen contaminations are discovered.

    c. Imported Soil: If any work initiated as part of the proposed project require the importation of soil to backfill any excavated areas, the SMP shall include a Soil Importation Plan section that outlines contractor requirements and responsibilities for fill source verification and, if necessary, soil sampling and analysis, if it cannot be confirmed that imported fill originated from an uncontaminated source area. The Soil Importation Plan would include soil source verification guidelines and protocols as well as soil sampling frequency and recommended laboratory analyses to ensure that the imported soil is free of contamination.

14. **FAA:**

    a. Linde (Applicant) shall submit a Notice of Proposed Construction or Alteration (FAA Form 7460-1) to Federal Aviation Administration (FAA) prior to application for Building Permits, and be subject to compliance with any applicable FAA conditions of approval prior to issuance of building permits, construction, and operation of the proposed 137-foot tall "Rectification Cold Box" tower" or any equipment that could temporarily intrude into the imaginary surface, as required by the Federal Aviation Administration (FAA). This form (FAA Form 7460-1) must be submitted at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest. *See 14 CFR Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace, for reference*.

15. Excavation: During excavation, applicant shall employ a qualified archaeologist onsite to monitor and sample soil excavation for unanticipated discovery of paleontological or cultural resources. The resume of the qualified archaeologist will be provided to the City prior to excavation. Excavation shall occur outside of a rain event.

16. Safety Plan: Prior to construction, a Site Specific Safety Plan shall be prepared to address safety issues specific to construction and operations of the facility.

17. Soil Analysis: Applicant shall maintain records of soil analysis completed on excavated soils and records of the soil disposal. Workers shall avoid direct contact with soils and anyone working near the excavated soils shall wear personal protective equipment per Safety Plan Requirements.

18. SFRWCB Guidelines: Applicant shall employ San Francisco Regional Water Quality Control Board guidelines and incorporate acceptable Best Management Practices for control of onsite materials, dust and sediment stabilization and proper handling of materials. BMP provisions shall include:

    a. Implementation of hazardous or contaminated materials-handling procedures such as placing materials into lined bins with covering.

    b. Designation of appropriate parking and fueling areas;

    c. Deploying applicable dust and runoff-control measures;

    d. Delineating a site perimeter to prevent disturbing areas outside the project limits;

    e. Implementing hazardous materials storage, containment, and control measures such as secondary containment berms; and

    f. Diverting upstream run-on safely around or through the construction project.

<u>Engineering Conditions – Fees</u>

19. Grading Plan Review Fees: If the project will require grading of 50 cubic yards or more, the applicant will be required to obtain a grading permit. The applicant shall provide an initial payment for review of the grading plans with the first submittal. The grading plan review fee is based on the engineer's estimated cost for site grading, which shall be submitted with the plans. The grading plan check fee is 2.5% of the cost for grading, or it may be based upon cubic yards of earth disturbance as set forth in the City's Master Fee Schedule. Fifty percent (50%) of the total fee is to be paid with the initial submittal of plans and engineer's cost estimate. This initial payment will be credited towards the final fee. The fee balance shall be due payable prior to issuance of the grading permit.

20. Grading Inspection Fees: If the project will require grading of 50 cubic yards or more, the applicant will be required to pay a grading inspection fee at the time of grading

permit issuance. The grading inspection fee is 3% of the engineer's estimated cost of grading, or it may be based upon an approved engineer's estimate of total cubic yards, according to the current schedule of grading fee charges as set forth in the City's Master Fee Schedule.

21. Facility Reserve Charge: If the project will require an increase in size of water or sewer services to accommodate the project, the applicant shall pay the City of Pittsburg Facilities Reserve Charge (PMC Chapters 13.08, 13.12 and 13.24) (the "FRC") to the Engineering Division, for water and sewer service in the incremental amounts in effect when the applicant obtains a building permit. The applicant understands that the current FRC on file, effective August 20, 2005, shall be paid in accordance with the fee schedule approved by Resolution No. 05-10290, and amended by Resolution No. 12-11778, on February 21, 2012, a copy of which is available at the City. This fee shall be due payable prior to issuance of building permits.

Engineering Conditions – NPDES

22. Stormwater Pollution Protection During Construction: There will be no excavation activities during wet weather. If the project requires grading of 50 cubic yards or more, the applicant will be required to obtain a grading permit. Prior to issuance of the grading permit, the applicant shall submit the following to the Engineering Divisions for review: an Erosion and Sedimentation Control Plan or Stormwater Pollution Prevention Plan if the project requires a permit from the State Water Resources Control Board under the provisions of the General Construction Permit. The Stormwater Pollution Prevention Plan measures shall also include measures to prevent soil, dirt, and debris from entering the storm drain system, in accordance with California Stormwater Quality Association's (CASQA's) construction handbook.

23. Water Discharge: The facility shall not discharge liquids of any kind into a public or private sewage system, watercourse, body of water, or the ground, except in compliance with California Water Code, Division 7, Article 4. If water is encountered during excavation it shall only be discharged into the storm drain as permitted by PMC 15.88.030(B)(4).

24. State Industrial General Permit Coverage: The applicant shall obtain coverage under the State General Industrial Permit for any discharge of wastewater to New York Slough. Proof of permit coverage from the State Water Boards shall be submitted to the Engineering Division prior to commencement of facility operations.

Standard Conditions

25. Grounds for Revocation: Operation in a manner inconsistent with that described in the staff report, violation of a zoning regulation or condition of this resolution, existence of a public nuisance, or conviction of a federal or state law or city ordinance in connection with the operation of the use shall be grounds for revocation of the use permit (PMC section 18.28.100).

26. Standard Conditions of Development: The Standard Conditions of Development as

adopted by the Pittsburg Planning Commission by Resolution No. 8931 shall apply as conditions of approval for this project as applicable. Where there is a conflict between the Standard Conditions of Development and the project-specific conditions identified in this resolution, the specific conditions of this resolution shall govern.

27. Other Agency Requirements: The applicant shall comply with all the requirements of the City's Community Development Department, Contra Costa County Fire Protection District, and all other applicable local, state and federal agencies.

    It is the responsibility of the applicant to contact each local, state, or federal agency for requirements that may pertain to this project.

28. Indemnification: Applicant agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person challenging the validity of this project approval, subsequent project approval, or other action arising out of, or in connection with, this project approval. The parties shall cooperate in defending such action or proceeding. The parties shall use reasonable efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel at applicant's sole cost and expense. Applicant may select its own legal counsel to represent applicant's interests at applicant's sole cost and expense. Applicant shall pay for City's costs of defense, whether directly or by timely reimbursement to City on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent responding to and defending the claim, action or proceeding.

29. Expiration of Approval: This use permit will expire on February 27, 2026, unless the use has been legally established, or a written request for extension is filed with the Planning Division prior to the expiration date and subsequently approved by the Planning Commission.

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

On motion by Commissioner Kobata, seconded by Commissioner Smith, the foregoing resolution was passed and adopted the 27th day of February 2024, by the Planning Commission of the City of Pittsburg, California by the following vote:

AYES: Robinson, Popova, Kobata, Foster, Smith

NAYES: None

ABSTAIN: None

ABSENT: None

I hereby certify that the above Resolution No. 10243 was adopted by the Planning Commission of the City of Pittsburg on February 27, 2024.

JOHN FUNDERBURG M.S., SECRETARY
PITTSBURG PLANNING COMMISSION

EXHIBIT B

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December 12, 2023

VIA U.S. Mail, Email, and Hand Delivery

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Re: **Agenda Item No. 2: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study / Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring Reporting Program (MMRP) for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)**

Dear Chair Popova, Planning Commissioners and Mr. Brenyah-Addow:

We write on behalf of Safe Fuel and Energy Resources California ("SAFER CA") regarding Agenda Item No. 2, the Oakstone Northern California Expansion Project ("Project") proposed by Linde, Inc. ("Applicant"). SAFER CA objects to the Planning Commission's proposed approval of the Project due to the City of Pittsburg's ("City") failure to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21100 *et seq*. Specifically, the Initial Study / Mitigated Negative Declaration[1] ("IS/MND") fails as an informational document under CEQA and lacks substantial evidence to conclude that the Project's potentially significant impacts would be adequately mitigated. Moreover, substantial evidence supports a fair argument that the proposed Project may cause

[1] City of Pittsburg, Oakstone Northern California Expansion Project: Draft Initial Study / Mitigated Negative Declaration (Oct. 2023), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15486/638328001708630000.

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potentially significant, unmitigated impacts on public health, air quality, wetlands, and from hazardous materials which require an environmental impact report ("EIR").

Given the deficiencies with the IS/MND as described below, SAFER CA respectfully requests that the Planning Commission continue the public hearing and direct City staff to prepare an EIR that fully discloses, analyzes, and mitigates the Project's potentially significant environmental impacts before considering Project approval.

I. INTRODUCTION

The Applicant proposes to expand their existing industrial gas facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035).[2] The expanded facility would increase current production of liquid nitrogen, oxygen, and argon to be distributed via truck to the Bay Area, Central Valley, and nearby states by installing a new air separation unit system.[3] The proposed expansion includes construction and operation of a second centralized atmospheric separation plant, which would include air compressors, pre-purifier vessels, an industrial class chiller, a distillation tower containing heat exchangers, booster compressor/turbine sets, and cryogenic distillation columns, three individual storage tanks, interconnecting piping, and a cooling tower.[4] The expansion would also require electric substation upgrades to distribute the large amount electricity needed to operate the facility.[5]

The entire plant is outdoors, and no buildings are included with the Project.[6] Construction of the Project would occur over approximately 13 months, including site preparation, grading, onsite utilities, paving, and equipment installation.[7] The Applicant is seeking approval of the IS/MND, a use permit, design review, and variance from the Planning Commission.[8]

Based on our review of the IS/MND and available documents, we conclude the document fails to comply with CEQA. Specifically, the IS/MND does not adequately describe the current environmental setting and fails to disclose, analyze, and mitigate all potentially significant adverse impacts to air quality, hazards, and

[2] IS/MND at p. 1.
[3] IS/MND at p. 1.
[4] IS/MND at p. 2.
[5] IS/MND at p. 8.
[6] IS/MND at p. 2.
[7] IS/MND at p. 9.
[8] IS/MND at p. 9.

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biological resources that could result from construction and operation of the Project. There is substantial evidence supporting a fair argument that the Project may result in potentially significant, unmitigated impacts. To correct these flaws, the City must prepare an EIR that fully discloses, analyzes and mitigates the Project's potentially significant impacts and considers alternatives to the Project.

These comments were prepared with the assistance of Phyllis Fox, PhD, PE, whose comments and qualifications are attached as Attachment A.[9] The City must respond to Dr. Fox's comments separately and fully.

I. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California's industrial facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's industrial projects. Failure to adequately address the environmental impacts of such projects poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

The members represented by the participants in SAFER CA live, work, recreate and raise their families in Contra Costa County. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating labor organizations could also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

SAFER CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits while minimizing adverse environmental and other impacts on local communities. SAFER CA and its members are concerned about projects like this one that risk serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[10] It is in this spirit we offer these comments.

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[9] **Attachment A**, Letter to Andrew J. Graf, Adams Broadwell Joseph & Cardozo from Phyllis Fox, Environmental Management re: Linde Oakstone NorCal Expansion Project Initial Study / Mitigated Negative Declaration (Dec. 12, 2023) (hereinafter "Fox Comments").

[10] Pub. Res. Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

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II. THE CITY MUST PREPARE AN EIR

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR, except in limited circumstances.[11] The purpose of an EIR "is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government."[12]

The presumption in favor of preparing an EIR, rather than a mitigated negative declaration, is reflected in the "fair argument" standard. Under that standard, the lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that the project may have a significant effect on the environment.[13] The fair argument standard creates a "low threshold" of favoring environmental review through an EIR, rather than through a mitigated negative declaration.

"Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[14] "[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR."[15]

As detailed below, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to air quality, hazards, and biological resources. The City must prepare an EIR that analyzes, discloses, and mitigates these impacts and considers less environmentally damaging alternatives.

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[11] Pub. Res. Code § 21000; CEQA Guidelines § 15002.
[12] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).
[13] Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 1501-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.Appl.4th 1597, 1601-02.
[14] CEQA Guidelines § 15384(a).
[15] CEQA Guidelines § 15064(g).

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A. Substantial Evidence Supports a Fair Argument that Construction Health Risk Impacts Are Potentially Significant and Unmitigated

The IS/MND conducted a quantified health risk analysis ("HRA") which evaluated cancer and chronic health impacts to offsite receptors from construction and operational emissions.[16] However, the IS/MND fails to evaluate the acute health impacts from diesel particulate matter ("DPM") to on-site and off-site construction workers.[17]

DPM is a potent human carcinogen that is chronically and acutely toxic.[18] In fact, the California Office of Environmental Health Hazard Assessment ("OEHHA") concludes that "[e]posure to diesel exhaust can have immediate health effects immediate health effects."[19] Construction workers have the greatest risk when it comes to acute DPM exposure because they operate and maintain the equipment that emits DPM.[20]

Here, the IS/MND acknowledges DPM emissions would occur during Project construction, but the HRA does analyze the acute impacts to construction workers and workers at the adjacent business as sensitive receptors.[21] Short-term exposures of 1-hour, known as acute exposures, are routinely evaluated in health risk assessments using Reference Exposure Levels ("RELs").[22] Dr. Fox recommends that the IS/MND utilize a significance threshold of 10 $\mu g/m^3$ to protect against adverse effects on the respiratory system.[23] Based on her experience with other projects that have similar construction activities, Dr. Fox concludes health impacts to on-site construction workers from exposure to acute DPM emissions are potentially significant.[24] Therefore, substantial evidence supports a fair argument the proposed Project would result in potentially significant air quality impacts.

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[16] IS/MND at pp. 22-23; see also *id*., appen. A.
[17] Fox Comments at pp. 4-6.
[18] Fox Comments at p. 4.
[19] Fox Comments at pp. 4-5; California Office of Environmental Health Hazard Assessment, Health Effects of Diesel Exhaust, https://oehha.ca.gov/air/health-effects-diesel-exhaust (last updated May 21, 2001); *see also* Cal/EPA Office of Environmental Health Hazard Assessment and The American Lung Association of California, Health Effects of Diesel Exhaust (undated), *available at* https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.
[20] Fox Comments at p. 5.
[21] Fox Comments at p. 5.
[22] Fox Comments at pp. 5-6.
[23] Fox Comments at p. 6.
[24] Fox Comments at p. 6.

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B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Unmitigated Hazards Impacts

The IS/MND incorrectly concludes that the proposed Project would not create a significant hazard to the public or environment based on a Phase 1 Environmental Site Assessment ("ESA").[25] As a threshold matter, the Phase 1 ESA was not attached to the IS/MND, not available on the City's website or CEQAnet, and not included as part of the Planning Commission's agenda packet. It is well settled that a CEQA document may not rely on hidden studies or documents that are not available to the public.[26] Courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process, and that such failure must be remedied by permitting additional public comment.[27]

SAFER CA received a copy of the Phase I ESA in response to a Public Records Act Request. Based on SAFER CA's review of the Phase 1 ESA and available evidence, the record demonstrates that it does not support the IS/MND's conclusion that hazard impacts are less than significant. To the contrary, the Phase 1 ESA provides substantial evidence supporting a fair argument that the Project may cause potentially significant impacts due to disturbance of contaminated soils or other hazardous conditions that may be present at the Project site. These impacts are not adequately mitigated by the mitigation measures in the IS/MND and require preparation of an EIR.

The purpose of the Phase 1 ESA is to identify recognized environmental conditions ("RECs") in connection with the Project site.[28] RECs include "the presence or likely presence of any hazardous substance or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of future release to the environment. De minimis conditions are not recognized environmental conditions."[29]

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[25] IS/MND at pp. 57-58.
[26] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("[W]hatever is required to be considered in an EIR must be in that formal report. . .") (internal citations omitted).
[27] *Ultramar v. South Coast Air Quality Man. Dist*. (1993) 17 Cal.App.4th 689, 699.
[28] Civil & Environmental Consultants, Inc., Phase 1 Environmental Site Assessment Report: North Portion of Linde Inc Property 2000 Loveridge Road Pittsburg, California 94565 (Mar. 2023) p. 1 (hereinafter "Phase 1 ESA").
[29] *Id*. at p. 1, fn. 2.

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The Project's Phase 1 ESA identifies several hazards that potentially exist within the greater parcel. For example, soil samples that were excavated from a ditch displayed high concentrations for zinc, chromium, copper, lead, and nickel.[30] The Phase 1 ESA also identified two leaking underground storage tanks (USTs) which were removed in the late 1980s.[31] Finally, the Phase 1 ESA identified approximately nine petroleum USTs with tank capacities ranging from 500 to 20,000 gallons containing waste oil, diesel, or gasoline as present within the parcel.[32] However, the exact locations of the ditch cleanup and USTs are unknown based on the available records.[33]

Given these significant data gaps, the Phase 1 ESA concludes the Project site contains a REC given the likelihood of residual impacts to soil and/or groundwater from the document ditch cleanup and former UST releases from the upgradient facility.[34] Despite this, the IS/MND misleadingly claims that there is no evidence indicating that the Project site has been involved in the storage, accidental release, or production of hazardous materials.[35] Because the Phase 1 ESA finds that the soil at the Project site is likely contaminated and does not rule out the existence of USTs or other hazardous conditions on the Project site, the IS/MND cannot conclude that the Project's impacts are less than significant without additional site-specific soil investigation and mitigation.

The IS/MND also fails to adequately address issues raised by the Department of Toxic Substances Control ("DTSC"). Based on its review of the IS/MND, DTSC recommended additional investigation and sampling (if necessary) before any groundbreaking activities commenced because "[t]here may be unidentified environmental concerns at the site."[36] DTSC also recommended preparation of a Soil Management Plan ("SMP") in case unforeseen contaminants were discovered.[37] Lastly, DTSC recommended sampling be conducted on any imported soil to ensure it is free of contamination.[38]

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[30] *Id*. at p. 27.
[31] *Id*. at p. 27 (a 1997 letter indicates that the two USTs contained 10,000-gallon diesel and 300-gallon waste oil).
[32] *Id*. at pp. 27-28.
[33] *Ibid*.
[34] *Id*. at pp. 29-30.
[35] IS/MND at p. 58.
[36] Letter to Maurice Brenyah-Addow, City of Pittsburg from Dave Kereazis, Department of Toxic Substances Control re: Mitigated Negative Declaration (MND) for the Oakstone Northern California Expansion Project, Dated October 13, 2023 State Clearinghouse # 2023100371 (Nov. 13, 2023) p. 2.
[37] *Ibid*.
[38] *Ibid*.

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In response to DTSC's comments, City staff did not revise the IS/MND or include additional mitigation measures addressing potential soil and/or groundwater contamination. Instead, the Staff Report included DTSC's three recommendations as conditions of approval.[39] This response does not alleviate the City from its obligations to disclose, analyze and mitigate potentially significant impacts in the IS/MND.

DTSC's comments demonstrate that the IS/MNDs fails to meaningfully analyze whether the proposed Project would create a significant hazard to the public or the environment through a reasonably foreseeable upset and accident conditions involving the release of hazardous materials to the environment. Moreover, inclusion of the DTSC's recommendations as conditions of approval further demonstrates that the Project could result in potentially significant hazard impacts requiring mitigation. Yet, the IS/MND lacks the requisite analysis, and as a result lacks substantial evidence to support the conclusion that the Project's hazard impacts are less than significant.

Moreover, neither the IS/MND, nor the Staff Report, address additional evidence produced after the release of the CEQA document that further supports the conclusion that there may be potentially significant hazard impacts resulting from the disturbance of existing soil contamination. Specifically, soil sampling at the Project site revealed hydrocarbon odors in several samples.[40] Testing of the soil detected low concentrations of diesel and motor oil in nearly all soil samples, and concentrations of arsenic and vanadium at levels above the San Francisco Regional Water Quality Control Board Tier 1 environmental screening levels ("ESLs") and commercial land use ESLs.[41] These findings, coupled with the Phase 1 ESA's conclusion that contaminated soils are likely present at the Project site and DTSC's comments that additional investigation of the Project site is needed, provide substantial evidence to support a fair argument that Project's impacts are potentially significant.

Finally, Dr. Fox's comments constitute substantial evidence supporting a fair argument that the Project would result in potentially significant health impacts from the on-site soil contamination. Dr. Fox concludes that Project construction would disturb contaminated soils, releasing hazardous air pollutants, including

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[39] Staff Report at p. 12.
[40] Letter to Manual Gonzalez, Linde Engineering Americas from Stefanie Parman-Ribeiro, Baez Geotechnical Group re: Limited Soil Sampling and Analytical Testing of Soil with Detected Odor: Proposed Linde Air Separation Unit Facility Expansion 2000 Loveridge Road Pittsburg, California (July 26, 2023) p. 1.
[41] *Id*. at p. 2.

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arsenic.[42] As a result, the Project could cause potentially significant health hazard to on-site construction workers as well as nearby residents.[43] Dr. Fox bases her conclusion on the many inconsistencies between the IS/MND's summary of the Phase 1 ESA and the findings and conclusions contained in the Phase 1 ESA and findings from the soil analytical testing.[44]

In sum, the IS/MND ignores evidence showing that the Project site may contain hazardous conditions which could be disturbed by construction and operation activities. As a result, the IS/MND fails to meaningfully disclose, analyze, and mitigate the Project's potentially significant hazard impacts. Furthermore, substantial evidence supports a fair argument that the proposed Project would result in potentially significant health impacts from disturbance of on-site soil contamination.

C. The IS/MND Fails to Adequately Disclose, Analyze, and Mitigate Potentially Significant Impacts to Wetlands and Riparian Habitat

The proposed Project intends to receive take authorization coverage under the state and federal East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("HCP/NCCP").[45] The HCP/NCCP provides a framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts on endangered species.[46] If wetlands or other waters are present on the project site, the HCP/NCCP requires that a delineation of jurisdictional wetlands and waters be conducted to document the expected impacts that would result from the project.[47] A project will not receive coverage under the HCP/NCCP until it has properly mitigated the impacts on jurisdictional waters according to the terms of the HCP/NCCP, including compliance with Conservation Measure 2.12.[48]

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[42] Fox Comments at p. 3.
[43] Fox Comments at p. 4.
[44] Fox Comments at pp. 3-4.
[45] IS/MND at pp. 25-26.
[46] IS/MND at p. 25; *see also* East Contra Costa County Habitat Conservation Plan Association, Final East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (Oct. 10, 2007) (hereinafter "HCP/NCCP") p. ES-1, *available at* https://www.cocohcp.org/DocumentCenter/View/1411/ECCC-HCP-NCCP---Vol-1-PDF-565-MB?bidId=.
[47] HCP/NCCP at p. 6-12.
[48] HCP/NCCP at p. 6-12.

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Conservation Measure 2.12 requires that all projects implement the following measures to avoid and minimize impacts of land disturbing activities on wetlands, ponds, streams, and riparian woodland/scrub:[49]

1. Applicants with streams on site must follow the stream setback requirements in Conservation Measure 1.7.
2. Applicants for coverage under the HCP/NCCP must follow the guidelines in Conservation Measure 1.10 to minimize the effects of urban development on downstream hydrology, streams, and wetlands.
3. All wetlands, ponds, streams and riparian woodland/scrub to be avoided by covered activities will be temporarily staked in the field by qualified biologists.
4. Buffer zones should be established where feasible between the aquatic resource and development. Required setbacks for streams are described in Conservation Measure 1.7. Credit for preservation of aquatic habitat will be given only if these features meet minimum distances from dense urban development.
5. Fencing will be erected between the outer edge of the buffer zone and the project area. The type of fencing will match the activity and impact types. For example, projects that have the potential to cause erosion will require erosion control barriers, and projects that may bring more household pets to a site should be fenced to keep the pets out. The temporal requirements for fencing also depend on the activity and impact type. For example, fencing for permanent impacts should be permanent, and fencing for short term impacts should be removed after the activity is completed.
6. Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and permit obligations of the project proponents working under this HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
7. Trash generated by covered activities will promptly and properly be removed from the site.
8. No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
9. Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff

[49] HCP/NCCP at pp. 6-33 to 6-35.

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of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. Erosion-control measures will be placed between the outer edge of the buffer and the project site.

10. Fiber rolls used for erosion control will be certified as free of noxious weed seed.
11. Seed mixtures applied for erosion control will not contain invasive nonnative species, and will be composed of native species or sterile nonnative species.
12. Where feasible, stream crossings will be located in stream segments without riparian vegetation, and bridge footings will be built outside the stream banks (i.e., clear span structures).
13. Herbicide will not be applied within 100 feet of wetlands, ponds, streams, or riparian woodland/scrub; however, where appropriate to control serious invasive plants, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. In seasonal or intermittent stream or wetland environments, appropriate herbicides may be applied during the dry season to control nonnative invasive species (e.g., yellow star-thistle). Herbicide drift should be minimized by applying the herbicide as close to the target area as possible.

The HCP/NCCP explains that these avoidance and minimization measures are required to meet the biological objectives of the HCP/NCCP to avoid and minimize effects on wetlands, ponds, streams, and riparian woodland/scrub.[50] Because of the sensitivity of these aquatic land cover types, special avoidance and minimization measures are necessary.[51]

The IS/MND acknowledges that seasonal and perennial wetlands, drainage features, and riparian woodland are within the property lines, but claims the proposed Project would avoid impacts to these sensitive areas because they occur outside the permanent and temporary impact areas.[52] The IS/MND's discussion and analysis suffers from several fatal flaws.

[50] HCP/NCCP at p. 6-35.
[51] HCP/NCCP at p. 6-35.
[52] IS/MND at p. 31 ("No formal delineation covers the area west of the railroad tracks, which includes potential temporary impact area (staging area).").

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First, the IS/MND relies on an outdated delineation study that does not accurately define all potential jurisdictional wetlands in and around the Project site. An initial study must include a description of the project's environmental setting.[53] The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.[54] "The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts."[55]

While preparing an IS/MND necessarily involves some degree of forecasting, an agency must use its best efforts to find out and disclose all that it reasonably can.[56] If a lead finds that a particular impact is too speculative for evaluation after a thorough investigation, the agency should note its conclusion and terminate discussion of the impact.[57] But an agency is not allowed to hide behind its own failure to gather relevant data.[58]

Here, the City failed to perform a jurisdictional delineation survey for the entire Project site as required by the HCP/NCCP. While a jurisdictional delineation survey was performed in 2018 for portions of the site, a 2023 reconnaissance-level survey and habitat assessment acknowledge that the previously documented wetlands have likely increased over time.[59] Moreover, the IS/MND admits that no formal delineation survey covers the western portion of the Project site, which includes a proposed staging area, despite potential wetlands identified adjacent to the staging area.[60] Without a detailed inventory of current wetland boundaries, the IS/MND lacks substantial evidence to conclude that the Project entirely avoids impacts on wetlands.

Second, the IS/MND's impact analysis is misleading because it fails to identify and describe potential indirect impacts to wetlands and riparian habitat. When evaluating the significance of the environmental effect of a project, the lead agency must consider reasonably foreseeable indirect physical changes in the

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[53] CEQA Guidelines § 15063(d)(2).
[54] *Id*. § 15125(a); *see also Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 38 Cal. 4th 310, 320-21 (CEQA Guidelines § 15125(a) applies to an initial study).
[55] CEQA Guidelines § 15125(a).
[56] *Id*. § 15144 (emphasis added).
[57] *Id*. § 15145 (emphasis added).
[58] *City of Redlands v. County of San Bernardino (*2002) 96 Cal.App.4th 398, 408.
[59] IS/MND, appen. C, Application Form and Planning Survey Report: Oakstone Northern California Expansion Project (undated) p. 6.
[60] IS/MND at p. 31.

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environment which may be caused by the project.[61] An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project.[62] If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment.[63]

For example, construction activities such as grading, land clearing, or installation of drainage systems can alter water flow patterns, potentially affecting the natural water supply to wetlands. Construction sites also generate increased sedimentation and runoff, which can be carried into nearby wetlands and degrade water quality. Excessive sedimentation can smother aquatic habitats and negatively impact wetland vegetation. Increased truck traffic can also result in altered hydrology and increased potential for pollution runoff. Finally, excessive noise and vibrations from plant equipment may disrupt wildlife behavior and stress sensitive species in and around wetlands.

The IS/MND does not include any discussion or analysis of these potential indirect impacts despite construction and operational activities anticipated to occur only feet from protected wetlands and riparian habitat.[64] The lack of analysis is especially concerning given the Phase 1 ESA's conclusion that the Project site may contain contaminated soils or other hazards (such as USTs),[65] which could negatively impact nearby wetlands and riparian habitat if disturbed during Project construction and operation.

Third, the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands to less than significant. Unlike other HCP/NCCP measures which were incorporated into the IS/MND as mitigation,[66] none of the measures listed in Conservation Measure 2.12 were included as mitigation for the proposed Project. While the Planning Commission Staff Report identifies some (but not all) of the conservation measures,[67] none of the measures are included as conditions of approval or in the Mitigation Monitoring Reporting Program.

Instead, the IS/MND concludes that impacts to riparian habitat and protected wetlands are less than significant with Mitigation Measure ("MM") BIO-

[61] CEQA Guidelines § 15064(d).
[62] CEQA Guidelines § 15064(d)(2).
[63] CEQA Guidelines § 15064(d)(2).
[64] See IS/MND, appen. C, fig. 3 (Land Cover Map) (Agenda Packet, p. 368).
[65] Phase 1 ESA at pp. 27-28.
[66] *Compare* IS/ND at pp. 27-28 (Mitigation Measure BIO-1) *with* HCP/NCCP at pp. 6-40 to 6-41.
[67] *See* Staff Report at pp. 7-8.

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6.[68] MM BIO-6 states: "Prior to ground disturbing activities, a qualified biologist shall conduct an aquatic resources delineation covering the Project area to confirm current wetland boundaries and ensure avoidance of these features.[69] MM BIO-6 constitutes improperly deferred mitigation.

Generally, it is inappropriate to defer formulation of mitigation measures to the future.[70] Deferred mitigation is only acceptable when the measure commits to implement the mitigation, adopts specific performance standards, and identifies the types of actions that may achieve compliance with the performance standards.[71] MM BIO-6 does not include any performance standards, nor does it identify the types of actions that may achieve compliance.

Moreover, future studies are only permissible when coupled with mitigation measures designed to address impacts identified by the study.[72] However, MM BIO-6 does not specify the conditions that would trigger the need for further mitigation should the aquatic resources delineation survey identify wetlands within permanent and temporary impact areas. Nor does the measure describe the steps that will be taken if further mitigation is required. As a result, the IS/MND lacks substantial evidence to conclude impacts to wetlands and riparian habitat are less than significant.

In sum, the IS/MND lacks substantial evidence to support the conclusion that the Project's impacts on riparian habitat and protected wetlands are less than significant and that the proposed Project does not conflict with the HCP/NCCP given the inadequate discussion of the existing environmental setting. Moreover, the IS/MND fails as an informational document because it fails to disclose potentially significant indirect impacts to wetlands and riparian habitat. Finally, the IS/MND lacks adequate mitigation measures to reduce the Project's impacts on wetlands and riparian habitats to less than significant.

III. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in significant, unmitigated impacts to public health, on air quality and wetlands, and from hazardous materials. The Planning Commission should

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[68] IS/MND at p. 31.
[69] IS/MND at p. 31.
[70] CEQA Guidelines § 15126.4(a)(1)(B).
[71] CEQA Guidelines § 15126.4(a)(1)(B).
[72] *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 524.

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continue the public hearing and direct City staff to prepare an EIR that discloses, analyzes, and mitigates the Project's potentially significant environmental impacts.

Thank you for consideration of these comments.

Sincerely,



Andrew J. Graf

AJG:acp

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ATTACHMENT A

Phyllis Fox, PhD, PE
Environmental Management
745 White Pine Avenue
Rockledge, FL 32955

December 12, 2023

Andrew J. Graf
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

RE: Linde Oakstone NorCal Expansion Project Initial Study / Mitigated Negative Declaration

Dear Mr. Graf:

As you requested, I have reviewed the Linde Oakstone NorCal Expansion Project Initial Study/Mitigated Negative Declaration (IS/MND).[1] Linde, Inc., the Applicant, is proposing to expand their existing facility at 2000 Loveridge Road in Pittsburg, CA. The expanded facility would increase production of liquid nitrogen, oxygen, and argon and distribute the products by truck to the Bay Area, the Central Valley, and into nearby states. The products will be stored in three large tanks, transferred into bulk trucks, and then delivered into smaller tanks at customer locations.

The IS/MND concludes that all impacts are less than significant with incorporation of proposed mitigation measures, thus asserting an environmental impact report is not required for the Project. My review of the IS/MND and supporting documents indicates that the IS/MND fails to analyze impacts that are potentially significant and underestimates other impacts that are highly significant. The IS/MND does not include any analysis of most of the Project's major impacts, including risk of upset and construction worker health impacts. My review identifies the following impacts:

[1] Initial Study/Mitigated Negative Declaration for the Oakstone Northern California Expansion Project (IS/MND), October 2023, pdf 38-554; https://onbaseweb.pittsburgca.gov/OnBaseAgendaOnline/Documents/DownloadFileBytes/Planning_Commission_1092_Agenda_Packet_12_12_2023_7_00_00_PM.pdf?documentType=5&meetingId=1092&isAttachment=True.

- Construction worker health impacts from hazardous chemicals in Project soils that will be disturbed during construction were not evaluated and are potentially significant;
- Acute health impacts to on-site construction workers, off-site workers, and nearby residents during construction were not evaluated and are potentially significant; and
- Risk of upset impacts were not addressed and are potentially significant.

My resume is included in Exhibit 1 to these Comments. I have over 50 years of experience in the field of environmental engineering, including air emissions and air pollution control; greenhouse gas (GHG) emission inventory and control; water quality and water supply investigations; hazardous waste investigations; hazard investigations; risk of upset modeling; environmental permitting; nuisance investigations (odor, noise); health risk assessments; EIRs; and litigation support. I have reviewed and commented on hundreds of CEQA documents and air permit applications, including for tank farms, refineries, solar and wind facilities, geothermal facilities, ethanol plants, oil and gas production, quarries, terminals, ports, battery energy storage systems, and many other industrial facilities. I have MS and PhD degrees in environmental engineering from the University of California at Berkeley. I am a licensed professional engineer (chemical) in California. My work has been cited in two published CEQA opinions: (1) *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (2001) 111 Cal. Rptr. 2d 598 and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310 and has supported the record in many other CEQA cases.

HEALTH RISKS ARE SIGNIFICANT

The IS/MND failed to evaluate health impacts to on-site construction workers and off-site workers and residents from on-site soil contamination. While the IS/MND conducted a health risk assessment (HRA) for Project construction and operation, which evaluated cancer and chronic health impacts to off-site receptors from construction and operational emissions,[2] the HRA fails to address all of the health impacts of Project construction because it failed to evaluate acute health impacts from diesel particulate matter (DPM) to on-site and off-site construction workers, the nearest sensitive receptors. Finally, the IS/MND failed to disclose and analyze the risks of potential upset on construction workers, off-site workers, and nearby residents.

[2] IS/MND, Section 2.0, Health Risk Assessment, pdf 237-274.

Health Impacts from On-Site Soil Contamination

The IS/MND concludes that the Project would not create a significant hazard to the public or the environment based on the Phase 1 Environmental Site Assessment Report (ESA). The IS/MND summarizes the conclusion from the ESA as follows:[3]

> A Phase 1 Environmental Site Assessment (Phase 1) was prepared for the Project site in March 2023 and identified three data gaps that were considered recognized environmental conditions (REC) associated with the Project site (CEC, 2023). First, the Phase 1 identified a data gap regarding insufficient information on a Linde facility ditch cleanup that was conducted in 1984. Second, the Phase 1 found insufficient information detailing the removal of former underground storage tanks from the Linde Inc. plant and LG&E facilities to the south and east. Third, the Phase 1 noted the potential for offsite contaminants from the Caltrans surface water/highway runoff that flows into a drainage ditch that traverses the Project site. Stormwater discharge from the Caltrans lift station flows into the ditch and could convey contaminated water and sediment (i.e., residual metals and petroleum) across the Project site. Therefore, the Phase 1 identified this as a potential source for onsite deposition of contaminants. The Phase 1 did not identify RECs originating from the Project site based on the absence of available evidence (i.e., staining, stressed vegetation, odors, or a reported release) confirming an onsite release of contaminants.

Specifically, on page 58 of the IS/MND the IS/MND states: "Furthermore, it is very likely that, despite the contradictory information in the databases, the nine petroleum underground storage tanks are located on the developed Linde Inc. properties to the east and south of the Project site. There is no evidence presented in the Phase 1 indicating that the vacant portion of the parcel that is considered the Project site has been involved in the storage, accidental release, or production of hazardous waste or materials and that it could create a significant hazard to the public or environment."[4]

However, in contrast, the Phase 1 ESA (at page 30), states: "As no maps or other related details were available from the Linde Facility former UST [underground storage tank] removals or early 1980s ditch cleanups, it remains unclear where in relation to the Subject Property these former USTs and ditches were, and if any new samples collected would meet the current regulatory requirements. Given these concerns, and the fact that the Subject Property is likely downgradient from the Linde Facility, CEC considers these data gaps as significant, and a REC identified given the likelihood of some residual impacts to soil and/or groundwater."

The Phase 1 ESA goes on to conclude: "CEC identified a significant data gap (i.e., lack of information/details regarding the Linde Facility ditch cleanup and former Linde Facility UST removals), as a REC given the likelihood of some residual impacts to soil and/or groundwater from the documented 1980s Linde facility ditch cleanup and the documented former UST releases from the likely upgradient Linde Facility."

Moreover, in soil analytic testing (see attached), odor was observed in some soil samples that were taken from the Project site. Some of the samples were reported to

[3] IS/MND, pdf 97-98.
[4] IS/MND, pdf 99.

have detectable concentrations of some heavy metals, TPH Diesel, and TPH Motor Oil; however, nearly all the detected constituents were reported at levels below the SFBRWQCB Tier 1 ESLs, with the exception of Arsenic and Vanadium. The report concludes that the reported detections of TPH Diesel and Motor Oil are the likely source of the odor observed by the sampling technicians.

Given these contradictions, Project construction, which would disturb contaminated soils, releasing hazardous air pollutants (HAPs), could cause a potentially significant health hazard to on-site construction workers and off-site parties, including residents of at the Edgewater Apartment Complex 800 feet from the Project and workers at the Linde Welding Gas & Equipment Center property.[5] Arsenic, for example, is a confirmed carcinogen. Immediate symptoms of acute arsenic poisoning include vomiting, abdominal pain and diarrhea, followed by numbness and tingling of the extremities, muscle cramping and death, in extreme cases.[6] This is a potentially significant impact that was not addressed in the IS/MND, which thus fails as an informational document under CEQA.

Worker Acute Health Impacts from Diesel Particulate Matter

Construction equipment emits diesel particulate matter (DPM), which is a HAP. DPM is a potent human carcinogen.[7,8] It is also chronically[9] and acutely[10] toxic. OEHHA has concluded that "[e]xposure to diesel exhaust can have immediate health effects," which include "inflammation in the lungs, which may aggravate chronic

[5] IS/MND, pdf 247.
[6] World Health Organization, Arsenic: Key Facts, December 7, 2022; https://www.who.int/news-room/fact-sheets/detail/arsenic#:~:text=Long%2Dterm%20exposure%20to%20arsenic,increased%20deaths%20in%20young%20adults.
[7] Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); https://oehha.ca.gov/media/CPFs042909.pdf and OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[8] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also: OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.
[9] OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, June 28, 2016; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.
[10] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

respiratory symptoms and increase the frequency or intensity of asthma attacks."[11] The emission of DPM during construction should have triggered a construction health risk assessment that included construction workers and workers at the adjacent businesses as sensitive receptors. A health risk assessment was conducted, but it excluded these nearby sensitive receptors, thus failing as an informational document under CEQA.

Construction workers have the greatest risk. Construction workers are the nearest sensitive receptors. They are adjacent to DPM emissions because they operate and maintain the equipment that emits DPM. Further, there are nearby sensitive receptors that would be exposed to construction emissions, including workers at adjacent facilities.

Short-term exposures of 1–hour, known as acute exposures, are routinely evaluated in health risk assessments using Reference Exposure Levels or RELs. An acute REL "is an exposure that is not likely to cause adverse health effects in a human population, including sensitive subgroups, exposed to that concentration (in units of micrograms per cubic meter or $\mu g/m^3$) for the specified exposure duration on an intermittent basis."[12]

There are three types of health impacts – cancer, chronic, and acute. The IS/MND evaluated the chronic and cancer health impacts of construction and operational emissions only to off-site receptors, located at the Edgewater Apartment Complex 800 feet from the Project and workers at the Linde Welding Gas & Equipment Center property.[13] However, the most impacted sensitive receptors are construction workers and workers at the facility itself. On-site workers are not exempt from CEQA.

There are two noncancer hazard indices: chronic (long-term) and acute (1-hour). The most likely health impacts would be acute health impacts to on-site construction and operational workers due to their proximity to the source of emissions. The IS/MND failed to evaluate acute health impacts to any receptor and failed to evaluate any health impacts to construction workers and on-site operational workers, thus failing as an informational document under CEQA.

The California Office of Environmental Health Hazard Assessment (OEHHA) has established a chronic reference exposure level (REL) for DPM but not an acute REL. Acute health impacts occur over a 1-hour exposure time. The OEHHA and BAAQMD have not established an acute REL for DPM, but other agencies have. The BAAQMD significance threshold for acute impacts from "…new sources and receptors (individual

[11] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.
[12] OEHHA, Risk Assessment Guidelines. Guidance Manual for Preparation of Health Risk Assessments, February 2015, p. 6-3; https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.
[13] IS/MND, pdf 247.

project)…Increased Non-cancer>1.0 Hazard Index (chronic or acute")".[14] The BAAQMD and OEHHA risk guidance do not require the use of an OEHHA acute hazard index. The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks.

In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since OEHHA last evaluated health impacts of DPM in 1998,[15] substantial additional research has been conducted on acute health impacts of DPM.[16] Based on this more current research, Canada recently established an acute REL for DPM of 10 $\mu g/m^3$ to protect against adverse effects on the respiratory system.[17] There is no regulation or guidance requiring that only OEHHA RELs be used in California health risk assessments. The Initial Study should have evaluated acute impacts of DPM to construction and operational workers. Based on my experience in many other projects with similar construction activities, equipment and timeline, acute health impacts to on-site construction workers from exposure to DPM emissions during Project construction are typically significant and unmitigated.

Risk of Upset Impacts Were Not Evaluated

The IS/MND discloses that "…the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the Contra Costa County Fire Protection District (CCCFPD) for training and tours of their existing facility and will continue to do so for the proposed expansion."[18] Elsewhere, the IS/MND asserts, with no support, as follows:

[14] BAAQMD, Bay Area Air Quality Management District California Environmental Quality Act Air Quality Guidelines (2022 CEQA Guidelines); https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-3-thresholds_final_v2-pdf.pdf?rev=a976830cce0c4a6bb624b020f72d25b3&sc_lang=en.

[15] Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf.

[16] See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/.

[17] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

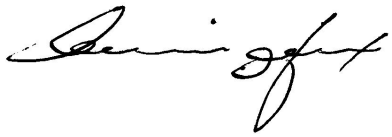
[18] IS/MND, pdf 50, 120.

> **Less-than-Significant Impact.** Once developed, the Project site would be served by the CCCFPD. The existing facility is already served by the CCCFPD and the Project is not expected to result in an increase in calls for fire and emergency protection services that would warrant changes to fire protection service ratios and/or response times. Though the products created are not poisonous and are nontoxic and nonflammable, the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the CCCFPD for training and tours of the existing facility and would continue to do so for the Project. Therefore, the Project would result in a less-than-significant impact.

The IS/MND fails to disclose the nature of these "hazards" and fails to evaluate their impact on construction workers, operational workers at the facility, and off-site sensitive receptors, failing as an informational document under CEQA.

In sum, the Project described in the IS/MND will result in significant impacts that were not disclosed in the IS/MND, which thus fails as an informational document under CEQA.

Sincerely,



Phyllis Fox, Ph.D., PE

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Dr. Fox has over 40 years of experience in the field of environmental engineering, including air pollution control (BACT, BART, MACT, LAER, RACT), greenhouse gas emissions and control, cost effectiveness analyses, water quality and water supply investigations, hydrology, hazardous waste investigations, environmental permitting, nuisance investigations (odor, noise), environmental impact reports, CEQA/NEPA documentation, risk assessments, and litigation support.

EDUCATION

Ph.D. Environmental/Civil Engineering, University of California, Berkeley, 1980.
M.S. Environmental/Civil Engineering, University of California, Berkeley, 1975.
B.S. Physics (with high honors), University of Florida, Gainesville, 1971.

REGISTRATION

Registered Professional Engineer: Arizona (2001-2014: #36701; retired), California (2002-present; CH 6058), Florida (2001-2016; #57886; retired), Georgia (2002-2014; #PE027643; retired), Washington (2002-2014; #38692; retired), Wisconsin (2005-2014; #37595-006; retired)
Board Certified Environmental Engineer, American Academy of Environmental Engineers,
Certified in Air Pollution Control (DEE #01-20014), 2002-2014; retired)
Qualified Environmental Professional (QEP), Institute of Professional Environmental Practice (QEP #02-010007, 2001-2015: retired).

PROFESSIONAL HISTORY

Environmental Management, Principal, 1981-present
Lawrence Berkeley National Laboratory, Principal Investigator, 1977-1981
University of California, Berkeley, Program Manager, 1976-1977
Bechtel, Inc., Engineer, 1971-1976, 1964-1966

PROFESSIONAL AFFILIATIONS

American Chemical Society (1981-2010)
Phi Beta Kappa (1970-present)
Sigma Pi Sigma (1970-present)
Who's Who Environmental Registry, PH Publishing, Fort Collins, CO, 1992.
Who's Who in the World, Marquis Who's Who, Inc., Chicago, IL, 11th Ed., p. 371, 1993-present.

Who's Who of American Women, Marquis Who's Who, Inc., Chicago, IL, 13th Ed., p. 264, 1984-present.
Who's Who in Science and Engineering, Marquis Who's Who, Inc., New Providence, NJ, 5th Ed., p. 414, 1999-present.
Who's Who in America, Marquis Who's Who, Inc., 59th Ed., 2005.
Guide to Specialists on Toxic Substances, World Environment Center, New York, NY, p. 80, 1980.
National Research Council Committee on Irrigation-Induced Water Quality Problems (Selenium), Subcommittee on Quality Control/Quality Assurance (1985-1990).
National Research Council Committee on Surface Mining and Reclamation, Subcommittee on Oil Shale (1978-80)

REPRESENTATIVE EXPERIENCE

Performed environmental and engineering investigations, as outlined below, for a wide range of industrial and commercial facilities including: biomass, gas, and oil-fire boilers; petroleum refineries and upgrades thereto; reformulated fuels projects; refinery upgrades to process heavy sour crudes, including tar sands and light sweet crudes from the Eagle Ford and Bakken Formations; petroleum, gasoline and ethanol distribution terminals; coal, coke, and ore/mineral export terminals; LNG export, import, and storage terminals; crude-by-rail projects; shale oil plants; crude oil/condensate marine and rail terminals; coal gasification and liquefaction plants; oil and gas production, including conventional, thermally enhanced, hydraulic fracking, and acid stimulation techniques; underground storage tanks; pipelines; compressor stations; gasoline stations; landfills; railyards; hazardous waste treatment facilities; nuclear, hydroelectric, geothermal, wood, biomass, waste, tire-derived fuel, gas, oil, coke and coal-fired power plants; wind farms; solar energy facilities; battery energy storage systems (BESS); transmission lines; airports; hydrogen plants, including waste to hydrogen plants; petroleum coke calcining plants; coke plants; activated carbon manufacturing facilities; asphalt plants; cement plants; incinerators; flares; manufacturing facilities (e.g., semiconductors, electronic assembly, aerospace components, printed circuit boards, amusement park rides); lanthanide processing plants; lithium extraction from mining wastes and geothermal fluids; ammonia plants; nitric acid plants; urea plants; food processing plants; wineries; almond hulling facilities; composting facilities; grain processing facilities; grain elevators; ethanol production facilities; soy bean oil extraction plants; biodiesel plants; paint formulation plants; wastewater treatment plants; marine terminals and ports; gas processing plants; steel mills; iron nugget production facilities; pig iron plant, based on blast furnace technology; direct reduced iron plant; acid regeneration facilities; railcar refinishing facility; battery manufacturing plants; pesticide manufacturing and repackaging facilities; pulp and paper mills; olefin plants; methanol plants; ethylene crackers; alumina plants, desalination plants; data centers; covered lagoon anaerobic digesters with biogas generators and upgrading equipment to produce renewable natural gas and electricity; selective catalytic reduction (SCR)

systems; selective noncatalytic reduction (SNCR) systems; halogen acid furnaces; contaminated property redevelopment projects (e.g., Mission Bay, Southern Pacific Railyards, Moscone Center expansion, San Diego Padres Ballpark); residential developments; commercial office parks, campuses, and shopping centers; server farms; transportation plans; and a wide range of mines including sand and gravel, hard rock, limestone, nacholite, coal, molybdenum, gold, zinc, and oil shale.

EXPERT WITNESS/LITIGATION SUPPORT

- For plaintiffs-intervenors (Sierra Club), in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications at Rush Island Units 1 and 2 and Labadie Energy Center, assist counsel in evaluating best available control technology (BACT) to reduce SO2 emissions, including wet and dry scrubbing, sorbent injection, and offsets. Case settled. *U.S. and Sierra Club vs. Ameren Missouri*, Case No. 4-11 CV 77 RWS, U.S. District Court, Eastern District of Missouri, Eastern Division, September 30, 2019.
- For the California Attorney General, assist in determining compliance with probation terms in the matter of People v. Chevron USA.
- For plaintiffs, assist in developing Petitioners' proof brief for National Parks Conservation Association et al v. U.S. EPA, Petition for Review of Final Administrative Action of the U.S. EPA, In the U.S. Court of Appeals for the Third Circuit, Docket No. 14-3147.
- For plaintiffs, expert witness in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1997-2000) at the Cemex cement plant in Lyons, Colorado. Reviewed produced documents, prepared expert and rebuttal reports on PSD applicability based on NOx emission calculations for a collection of changes considered both individually and collectively. Deposed August 2011. *United States v. Cemex, Inc.*, In U.S. District Court for the District of Colorado (Civil Action No. 09-cv-00019-MSK-MEH). Case settled June 13, 2013.
- For plaintiffs, in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1988 – 2000) at James De Young Units 3, 4, and 5. Reviewed produced documents, analyzed CEMS and EIA data, and prepared netting and BACT analyses for NOx, SO2, and PM10 (PSD case). Expert report February 24, 2010 and affidavit February 20, 2010. *Sierra Club v. City of Holland, et al.*, U.S. District Court, Western District of Michigan (Civil Action 1:08-cv-1183). Case settled. Consent Decree 1/19/14.
- For plaintiffs, in civil action alleging failure to obtain MACT permit, expert on potential to emit hydrogen chloride (HCl) from a new coal-fired boiler. Reviewed record, estimated HCl emissions, wrote expert report June 2010 and March 2013 (Cost to Install a Scrubber at the Lamar Repowering Project Pursuant to Case-by-Case MACT), deposed August 2010 and

March 2013. *Wildearth Guardian et al. v. Lamar Utilities Board*, Civil Action No. 09-cv-02974, U.S. District Court, District of Colorado. Case settled August 2013.

- For plaintiffs, expert witness on permitting, emission calculations, and wastewater treatment for coal-to-gasoline plant. Reviewed produced documents. Assisted in preparation of comments on draft minor source permit. Wrote two affidavits on key issues in case. Presented direct and rebuttal testimony 10/27 - 10/28/10 on permit enforceability and failure to properly calculate potential to emit, including underestimate of flaring emissions and omission of VOC and CO emissions from wastewater treatment, cooling tower, tank roof landings, and malfunctions. *Sierra Club, Ohio Valley Environmental Coalition, Coal River Mountain Watch, West Virginia Highlands Conservancy v. John Benedict, Director, Division of Air Quality, West Virginia Department of Environmental Protection and TransGas Development System, LLC*, Appeal No. 10-01-AQB. Virginia Air Quality Board remanded the permit on March 28, 2011 ordering reconsideration of potential to emit calculations, including: (1) support for assumed flare efficiency; (2) inclusion of startup, shutdown and malfunction emissions; and (3) inclusion of wastewater treatment emissions in potential to emit calculations.
- For plaintiffs, expert on BACT emission limits for gas-fired combined cycle power plant. Prepared declaration in support of CBE's Opposition to the United States' Motion for Entry of Proposed Amended Consent Decree. Assisted in settlement discussions. *U.S. EPA, Plaintiff, Communities for a Better Environment, Intervenor Plaintiff, v. Pacific Gas & Electric Company, et al.*, U.S. District Court, Northern District of California, San Francisco Division, Case No. C-09-4503 SI.
- Technical expert in confidential settlement discussions with large coal-fired utility on BACT control technology and emission limits for NOx, SO2, PM, PM2.5, and CO for new natural gas fired combined cycle and simple cycle turbines with oil backup. (July 2010). Case settled.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1998-99) at Gallagher Units 1 and 3. Reviewed produced documents, prepared expert and rebuttal reports on historic and current-day BACT for SO2, control costs, and excess emissions of SO2. Deposed 11/18/09. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Settled 12/22/09.
- For plaintiffs, expert witness on MACT, BACT for NOx, and enforceability in an administrative appeal of draft state air permit issued for four 300-MW pet-coke-fired CFBs. Reviewed produced documents and prepared prefiled testimony. Deposed 10/8/09 and 11/9/09. Testified 11/10/09. *Application of Las Brisas Energy Center, LLC for State Air Quality Permit*; before the State Office of Administrative Hearings, Texas. Permit remanded 3/29/10 as LBEC failed to meet burden of proof on a number of issues including MACT.

Texas Court of Appeals dismissed an appeal to reinstate the permit. The Texas Commission on Environmental Quality and Las Brisas Energy Center, LLC sought to overturn the Court of Appeals decision but moved to have their appeal dismissed in August 2013.

- For defense, expert witness in unlawful detainer case involving a gasoline station, minimart, and residential property with contamination from leaking underground storage tanks. Reviewed agency files and inspected site. Presented expert testimony on July 6, 2009, on causes of, nature and extent of subsurface contamination. *A. Singh v. S. Assaedi,* in Contra Costa County Superior Court, CA. Settled August 2009.
- For plaintiffs, expert witness on netting and enforceability for refinery being upgraded to process tar sands crude. Reviewed produced documents. Prepared expert and rebuttal reports addressing use of emission factors for baseline, omitted sources including coker, flares, tank landings and cleaning, and enforceability. Deposed. *In the Matter of Objection to the Issuance of Significant Source Modification Permit No. 089-25484-00453 to BP Products North America Inc., Whiting Business Unit, Save the Dunes Council, Inc., Sierra Club., Inc., Hoosier Environmental Council et al., Petitioners, B. P. Products North American, Respondents/Permittee,* before the Indiana Office of Environmental Adjudication. Case settled.
- For plaintiffs, expert witness on BACT, MACT, and enforceability in appeal of Title V permit issued to 600 MW coal-fired power plant burning Powder River Basin coal. Prepared technical comments on draft air permit. Reviewed record on appeal, drafted BACT, MACT, and enforceability pre-filed testimony. Drafted MACT and enforceability pre-filed rebuttal testimony. Deposed March 24, 2009. Testified June 10, 2009. *In Re: Southwestern Electric Power Company*, Arkansas Pollution Control and Ecology Commission, Consolidated Docket No. 08-006-P. Recommended Decision issued December 9, 2009 upholding issued permit. Commission adopted Recommended Decision January 22, 2010.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1989-1992) at Wabash Units 2, 3 and 5. Reviewed produced documents, prepared expert and rebuttal report on historic and current-day BACT for NOx and SO2, control costs, and excess emissions of NOx, SO2, and mercury. Deposed 10/21/08. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Testified 2/3/09. Memorandum Opinion & Order 5-29-09 requiring shutdown of Wabash River Units 2, 3, 5 by September 30, 2009, run at baseline until shutdown, and permanently surrender SO2 emission allowances.
- For plaintiffs, expert witness in liability phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for three historic modifications (1997-2001) at two portland cement plants involving three cement kilns. Reviewed produced documents, analyzed CEMS data covering subject period, prepared netting analysis for NOx, SO_2 and CO, and prepared expert and rebuttal reports. *United States v. Cemex California*

Cement, In U.S. District Court for the Central District of California, Eastern Division, Case No. ED CV 07-00223-GW (JCRx). Settled 1/15/09.

- For intervenors Clean Wisconsin and Citizens Utility Board, prepared data requests, reviewed discovery and expert report. Prepared prefiled direct, rebuttal and surrebuttal testimony on cost to extend life of existing Oak Creek Units 5-8 and cost to address future regulatory requirements to determine whether to control or shutdown one or more of the units. Oral testimony 2/5/08. Application for a Certificate of Authority to Install Wet Flue Gas Desulfurization and Selective Catalytic Reduction Facilities and Associated Equipment for Control of Sulfur Dioxide and Nitrogen Oxide Emissions at Oak Creek Power Plant Units 5, 6, 7 and 8, WPSC Docket No. 6630-CE-299.
- For plaintiffs, expert witness on alternatives analysis and BACT for NOx, SO2, total PM10, and sulfuric acid mist in appeal of PSD permit issued to 1200 MW coal fired power plant burning Powder River Basin and/or Central Appalachian coal (Longleaf). Assisted in drafting technical comments on NOx on draft permit. Prepared expert disclosure. Presented 8+ days of direct and rebuttal expert testimony. Attended all 21 days of evidentiary hearing from 9/5/07 – 10/30/07 assisting in all aspects of hearing. *Friends of the Chatahooche and Sierra Club v. Dr. Carol Couch, Director, Environmental Protection Division of Natural Resources Department, Respondent, and Longleaf Energy Associates, Intervener*. ALJ Final Decision 1/11/08 denying petition. ALJ Order vacated & remanded for further proceedings, Fulton County Superior Court, 6/30/08. Court of Appeals of GA remanded the case with directions that the ALJ's final decision be vacated to consider the evidence under the correct standard of review, July 9, 2009. The ALJ issued an opinion April 2, 2010 in favor of the applicant. Final permit issued April 2010.
- For plaintiffs, expert witness on diesel exhaust in inverse condemnation case in which Port expanded maritime operations into residential neighborhoods, subjecting plaintiffs to noise, light, and diesel fumes. Measured real-time diesel particulate concentrations from marine vessels and tug boats on plaintiffs' property. Reviewed documents, depositions, DVDs, and photographs provided by counsel. Deposed. Testified October 24, 2006. *Ann Chargin, Richard Hackett, Carolyn Hackett, et al. v. Stockton Port District*, Superior Court of California, County of San Joaquin, Stockton Branch, No. CV021015. Judge ruled for plaintiffs.
- For plaintiffs, expert witness on NOx emissions and BACT in case alleging failure to obtain necessary permits and install controls on gas-fired combined-cycle turbines. Prepared and reviewed (applicant analyses) of NOx emissions, BACT analyses (water injection, SCR, ultra low NOx burners), and cost-effectiveness analyses based on site visit, plant operating records, stack tests, CEMS data, and turbine and catalyst vendor design information. Participated in negotiations to scope out consent order. *United States v. Nevada Power.* Case settled June 2007, resulting in installation of dry low NOx burners (5 ppm NOx averaged over 1 hr) on four units and a separate solar array at a local business.

- For plaintiffs, expert witness in appeal of PSD permit issued to 850 MW coal fired boiler burning Powder River Basin coal (Iatan Unit 2) on BACT for particulate matter, sulfuric acid mist and opacity and emission calculations for alleged historic violations of PSD. Assisted in drafting technical comments, petition for review, discovery requests, and responses to discovery requests. Reviewed produced documents. Prepared expert report on BACT for particulate matter. Assisted with expert depositions. Deposed February 7, 8, 27, and 28, 2007. *In Re PSD Construction Permit Issued to Great Plains Energy, Kansas City Power & Light – Iatan Generating Station, Sierra Club v. Missouri Department of Natural Resources, Great Plains Energy, and Kansas City Power & Light.* Case settled March 27, 2007, providing offsets for over 6 million ton/yr of CO2 and lower NOx and SO_2 emission limits.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications of coal-fired boilers and associated equipment. Reviewed produced documents, prepared expert report on cost to retrofit 24 coal-fired power plants with scrubbers designed to remove 99% of the sulfur dioxide from flue gases. Prepared supplemental and expert report on cost estimates and BACT for SO2 for these 24 complaint units. Deposed 1/30/07 and 3/14/07. *United States and State of New York et al. v. American Electric Power*, In U.S. District Court for the Southern District of Ohio, Eastern Division, Consolidated Civil Action Nos. C2-99-1182 and C2-99-1250. Settlement announced 10/9/07.
- For plaintiffs, expert witness on BACT, enforceability, and alternatives analysis in appeal of PSD permit issued for a 270-MW pulverized coal fired boiler burning Powder River Basin coal (City Utilities Springfield Unit 2). Reviewed permitting file and assisted counsel draft petition and prepare and respond to interrogatories and document requests. Reviewed interrogatory responses and produced documents. Assisted with expert depositions. Deposed August 2005. Evidentiary hearings October 2005. *In the Matter of Linda Chipperfield and Sierra Club v. Missouri Department of Natural Resources.* Missouri Supreme Court denied review of adverse lower court rulings August 2007.
- For plaintiffs, expert witness in civil action relating to plume touchdowns at AEP's Gavin coal-fired power plant. Assisted counsel draft interrogatories and document requests. Reviewed responses to interrogatories and produced documents. Prepared expert report "Releases of Sulfuric Acid Mist from the Gavin Power Station." The report evaluates sulfuric acid mist releases to determine if AEP complied with the requirements of CERCLA Section 103(a) and EPCRA Section 304. This report also discusses the formation, chemistry, release characteristics, and abatement of sulfuric acid mist in support of the claim that these releases present an imminent and substantial endangerment to public health under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"). *Citizens Against Pollution v. Ohio Power Company*, In the U.S. District Court for the Southern District of Ohio, Eastern Division, Civil Action No. 2-04-cv-371. Case settled 12-8-06.

- For petitioners, expert witness in contested case hearing on BACT, enforceability, and emission estimates for an air permit issued to a 500-MW supercritical Power River Basin coal-fired boiler (Weston Unit 4). Assisted counsel prepare comments on draft air permit and respond to and draft discovery. Reviewed produced file, deposed (7/05), and prepared expert report on BACT and enforceability. Evidentiary hearings September 2005. *In the Matter of an Air Pollution Control Construction Permit Issued to Wisconsin Public Service Corporation for the Construction and Operation of a 500 MW Pulverized Coal-fired Power Plant Known as Weston Unit 4 in Marathon County, Wisconsin*, Case No. IH-04-21. The Final Order, issued 2/10/06, lowered the NOx BACT limit from 0.07 lb/MMBtu to 0.06 lb/MMBtu based on a 30-day average, added a BACT SO2 control efficiency, and required a 0.0005% high efficiency drift eliminator as BACT for the cooling tower. The modified permit, including these provisions, was issued 3/28/07. Additional appeals in progress.
- For plaintiffs, adviser on technical issues related to Citizen Suit against U.S. EPA regarding failure to update New Source Performance Standards for petroleum refineries, 40 CFR 60, Subparts J, VV, and GGG. *Our Children's Earth Foundation and Sierra Club v. U.S. EPA et al.* Case settled July 2005. CD No. C 05-00094 CW, U.S. District Court, Northern District of California – Oakland Division. Proposed revisions to standards of performance for petroleum refineries published 72 FR 27178 (5/14/07).
- For interveners, reviewed proposed Consent Decree settling Clean Air Act violations due to historic modifications of boilers and associated equipment at two coal-fired power plants. In response to stay order, reviewed the record, selected one representative activity at each of seven generating units, and analyzed to identify CAA violations. Identified NSPS and NSR violations for NOx, SO_2, PM/PM10, and sulfuric acid mist. Summarized results in an expert report. *United States of America, and Michael A. Cox, Attorney General of the State of Michigan, ex rel. Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors, v. Wisconsin Electric Power Company, Defendant*, U.S. District Court for the Eastern District of Wisconsin, Civil Action No. 2:03-CV-00371-CNC. Order issued 10-1-07 denying petition.
- For a coalition of Nevada labor organizations (ACE), reviewed preliminary determination to issue a Class I Air Quality Operating Permit to Construct and supporting files for a 250-MW pulverized coal-fired boiler (Newmont). Prepared about 100 pages of technical analyses and comments on BACT, MACT, emission calculations, and enforceability. Assisted counsel draft petition and reply brief appealing PSD permit to U.S. EPA Environmental Appeals Board (EAB). Order denying review issued 12/21/05. *In re Newmont Nevada Energy Investment, LLC, TS Power Plant*, PSD Appeal No. 05-04 (EAB 2005).
- For petitioners and plaintiffs, reviewed and prepared comments on air quality and hazardous waste based on negative declaration for refinery ultra low sulfur diesel project located in SCAQMD. Reviewed responses to comments and prepared responses. Prepared declaration and presented oral testimony before SCAQMD Hearing Board on exempt sources (cooling towers) and calculation of potential to emit under NSR. Petition for writ of mandate filed

March 2005. Case remanded by Court of Appeals to trial court to direct SCAQMD to re-evaluate the potential environmental significance of NOx emissions resulting from the project in accordance with court's opinion. California Court of Appeals, Second Appellate Division, on December 18, 2007, affirmed in part (as to baseline) and denied in part. *Communities for a Better Environment v. South Coast Air Quality Management District and ConocoPhillips and Carlos Valdez et al v. South Coast Air Quality Management District and ConocoPhillips.* Certified for partial publication 1/16/08. Appellate Court opinion upheld by CA Supreme Court 3/15/10. *(2010) 48 Cal.4th 310*.

- For amici seeking to amend a proposed Consent Decree to settle alleged NSR violations at Chevron refineries, reviewed proposed settlement, related files, subject modifications, and emission calculations. Prepared declaration on emission reductions, identification of NSR and NSPS violations, and BACT/LAER for FCCUs, heaters and boilers, flares, and sulfur recovery plants. *U.S. et al. v. Chevron U.S.A.*, Northern District of California, Case No. C 03-04650. Memorandum and Order Entering Consent Decree issued June 2005. Case No. C 03-4650 CRB.
- For petitioners, prepared declaration on enforceability of periodic monitoring requirements, in response to EPA's revised interpretation of 40 CFR 70.6(c)(1). This revision limited additional monitoring required in Title V permits. 69 FR 3203 (Jan. 22, 2004). *Environmental Integrity Project et al. v. EPA* (U.S. Court of Appeals for the District of Columbia). Court ruled the Act requires all Title V permits to contain monitoring requirements to assure compliance. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).
- For interveners in application for authority to construct a 500 MW supercritical coal-fired generating unit before the Wisconsin Public Service Commission, prepared pre-filed written direct and rebuttal testimony with oral cross examination and rebuttal on BACT and MACT (Weston 4). Prepared written comments on BACT, MACT, and enforceability on draft air permit for same facility.
- For property owners in Nevada, evaluated the environmental impacts of a 1,450-MW coal-fired power plant proposed in a rural area adjacent to the Black Rock Desert and Granite Range, including emission calculations, air quality modeling, comments on proposed use permit to collect preconstruction monitoring data, and coordination with agencies and other interested parties. Project cancelled.
- For environmental organizations, reviewed draft PSD permit for a 600-MW coal-fired power plant in West Virginia (Longview). Prepared comments on permit enforceability; coal washing; BACT for SO_2 and PM10; Hg MACT; and MACT for HCl, HF, non-Hg metallic HAPs, and enforceability. Assist plaintiffs draft petition appealing air permit. Retained as expert to develop testimony on MACT, BACT, offsets, enforceability. Participate in settlement discussions. Case settled July 2004.
- For petitioners, reviewed record produced in discovery and prepared affidavit on emissions of carbon monoxide and volatile organic compounds during startup of GE 7FA combustion

turbines to successfully establish plaintiff standing. *Sierra Club et al. v. Georgia Power Company* (Northern District of Georgia).

- For building trades, reviewed air quality permitting action for 1500-MW coal-fired power plant before the Kentucky Department for Environmental Protection (Thoroughbred).
- For petitioners, expert witness in administrative appeal of the PSD/Title V permit issued to a 1500-MW coal-fired power plant. Reviewed over 60,000 pages of produced documents, prepared discovery index, identified and assembled plaintiff exhibits. Deposed. Assisted counsel in drafting discovery requests, with over 30 depositions, witness cross examination, and brief drafting. Presented over 20 days of direct testimony, rebuttal and sur-rebuttal, with cross examination on BACT for NOx, SO_2, and PM/PM10; MACT for Hg and non-Hg metallic HAPs; emission estimates for purposes of Class I and II air modeling; risk assessment; and enforceability of permit limits. Evidentiary hearings from November 2003 to June 2004. *Sierra Club et al. v. Natural Resources & Environmental Protection Cabinet, Division of Air Quality and Thoroughbred Generating Company et al.* Hearing Officer Decision issued August 9, 2005 finding in favor of plaintiffs on counts as to risk, BACT (IGCC/CFB, NOx, SO_2, Hg, Be), single source, enforceability, and errors and omissions. Assist counsel draft exceptions. Cabinet Secretary issued Order April 11, 2006 denying Hearing Offer's report, except as to NOx BACT, Hg, 99% SO2 control and certain errors and omissions.
- For citizens group in Massachusetts, reviewed, commented on, and participated in permitting of pollution control retrofits of coal-fired power plant (Salem Harbor).
- Assisted citizens group and labor union challenge issuance of conditional use permit for a 317,000 ft^2 discount store in Honolulu without any environmental review. In support of a motion for preliminary injunction, prepared 7-page declaration addressing public health impacts of diesel exhaust from vehicles serving the Project. In preparation for trial, prepared 20-page preliminary expert report summarizing results of diesel exhaust and noise measurements at two big box retail stores in Honolulu, estimated diesel PM10 concentrations for Project using ISCST, prepared a cancer health risk assessment based on these analyses, and evaluated noise impacts.
- Assisted environmental organizations to challenge the DOE Finding of No Significant Impact (FONSI) for the Baja California Power and Sempra Energy Resources Cross-Border Transmissions Lines in the U.S. and four associated power plants located in Mexico (DOE EA-1391). Prepared 20-page declaration in support of motion for summary judgment addressing emissions, including CO_2 and NH_3, offsets, BACT, cumulative air quality impacts, alternative cooling systems, and water use and water quality impacts. Plaintiff's motion for summary judgment granted in part. U.S. District Court, Southern District decision concluded that the Environmental Assessment and FONSI violated NEPA and the APA due to their inadequate analysis of the potential controversy surrounding the project, water impacts, impacts from NH_3 and CO_2, alternatives, and cumulative impacts. *Border Power Plant Working Group v. Department of Energy and Bureau of Land Management*, Case No. 02-CV-513-lEG (POR) (May 2, 2003).

- For Sacramento school, reviewed draft air permit issued for diesel generator located across from playfield. Prepared comments on emission estimates, enforceability, BACT, and health impacts of diesel exhaust. Case settled. BUG trap installed on the diesel generator.
- Assisted unions in appeal of Title V permit issued by BAAQMD to carbon plant that manufactured coke. Reviewed District files, identified historic modifications that should have triggered PSD review, and prepared technical comments on Title V permit. Reviewed responses to comments and assisted counsel draft appeal to BAAQMD hearing board, opening brief, motion to strike, and rebuttal brief. Case settled.
- Assisted California Central Coast city obtain controls on a proposed new city that would straddle the Ventura-Los Angeles County boundary. Reviewed several environmental impact reports, prepared an air quality analysis, a diesel exhaust health risk assessment, and detailed review comments. Governor intervened and State dedicated the land for conservation purposes April 2004.
- Assisted Central California city to obtain controls on large alluvial sand quarry and asphalt plant proposing a modernization. Prepared comments on Negative Declaration on air quality, public health, noise, and traffic. Evaluated process flow diagrams and engineering reports to determine whether proposed changes increased plant capacity or substantially modified plant operations. Prepared comments on application for categorical exemption from CEQA. Presented testimony to County Board of Supervisors. Developed controls to mitigate impacts. Assisted counsel draft Petition for Writ. Case settled June 2002. Substantial improvements in plant operations were obtained including cap on throughput, dust control measures, asphalt plant loadout enclosure, and restrictions on truck routes.
- Assisted oil companies on the California Central Coast in defending class action citizen's lawsuit alleging health effects due to emissions from gas processing plant and leaking underground storage tanks. Reviewed regulatory and other files and advised counsel on merits of case. Case settled November 2001.
- Assisted oil company on the California Central Coast in defending property damage claims arising out of a historic oil spill. Reviewed site investigation reports, pump tests, leachability studies, and health risk assessments, participated in design of additional site characterization studies to assess health impacts, and advised counsel on merits of case. Prepare health risk assessment.
- Assisted unions in appeal of Initial Study/Negative Declaration ("IS/ND") for an MTBE phaseout project at a Bay Area refinery. Reviewed IS/ND and supporting agency permitting files and prepared technical comments on air quality, groundwater, and public health impacts. Reviewed responses to comments and final IS/ND and ATC permits and assisted counsel to draft petitions and briefs appealing decision to Air District Hearing Board. Presented sworn direct and rebuttal testimony with cross examination on groundwater impacts of ethanol spills on hydrocarbon contamination at refinery. Hearing Board ruled 5 to 0 in favor of appellants, remanding ATC to district to prepare an EIR.

- Assisted Florida cities in challenging the use of diesel and proposed BACT determinations in prevention of significant deterioration (PSD) permits issued to two 510-MW simple cycle peaking electric generating facilities and one 1,080-MW simple cycle/combined cycle facility. Reviewed permit applications, draft permits, and FDEP engineering evaluations, assisted counsel in drafting petitions and responding to discovery. Participated in settlement discussions. Cases settled or applications withdrawn.
- Assisted large California city in federal lawsuit alleging peaker power plant was violating its federal permit. Reviewed permit file and applicant's engineering and cost feasibility study to reduce emissions through retrofit controls. Advised counsel on feasible and cost-effective NOx, SOx, and PM10 controls for several 1960s diesel-fired Pratt and Whitney peaker turbines. Case settled.
- Assisted coalition of Georgia environmental groups in evaluating BACT determinations and permit conditions in PSD permits issued to several large natural gas-fired simple cycle and combined-cycle power plants. Prepared technical comments on draft PSD permits on BACT, enforceability of limits, and toxic emissions. Reviewed responses to comments, advised counsel on merits of cases, participated in settlement discussions, presented oral and written testimony in adjudicatory hearings, and provided technical assistance as required. Cases settled or won at trial.
- Assisted construction unions in review of air quality permitting actions before the Indiana Department of Environmental Management ("IDEM") for several natural gas-fired simple cycle peaker and combined cycle power plants.
- Assisted coalition of towns and environmental groups in challenging air permits issued to 523 MW dual fuel (natural gas and distillate) combined-cycle power plant in Connecticut. Prepared technical comments on draft permits and 60 pages of written testimony addressing emission estimates, startup/shutdown issues, BACT/LAER analyses, and toxic air emissions. Presented testimony in adjudicatory administrative hearings before the Connecticut Department of Environmental Protection in June 2001 and December 2001.
- Assisted various coalitions of unions, citizens groups, cities, public agencies, and developers in licensing and permitting of over 110 coal, gas, oil, biomass, and pet coke-fired power plants generating over 75,000 MW of electricity. These included base-load, combined cycle, simple cycle, and peaker power plants in Alaska, Arizona, Arkansas, California, Colorado, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Oregon, Texas, West Virginia, Wisconsin, and elsewhere. Prepared analyses of and comments on applications for certification, preliminary and final staff assessments, and various air, water, wastewater, and solid waste permits issued by local agencies. Presented written and oral testimony before various administrative bodies on hazards of ammonia use and transportation, health effects of air emissions, contaminated property issues, BACT/LAER issues related to SCR and SCONOx, criteria and toxic pollutant emission estimates, MACT analyses, air quality modeling, water supply and water quality issues, and methods to reduce

water use, including dry cooling, parallel dry-wet cooling, hybrid cooling, and zero liquid discharge systems.

- Assisted unions, cities, and neighborhood associations in challenging an EIR issued for the proposed expansion of the Oakland Airport. Reviewed two draft EIRs and prepared a health risk assessment and extensive technical comments on air quality and public health impacts. The California Court of Appeals, First Appellate District, ruled in favor of appellants and plaintiffs, concluding that the EIR "2) erred in using outdated information in assessing the emission of toxic air contaminants (TACs) from jet aircraft; 3) failed to support its decision not to evaluate the health risks associated with the emission of TACs with meaningful analysis," thus accepting my technical arguments and requiring the Port to prepare a new EIR. See *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (August 30, 2001) 111 Cal.Rptr.2d 598.
- Assisted lessor of former gas station with leaking underground storage tanks and TCE contamination from adjacent property. Lessor held option to purchase, which was forfeited based on misrepresentation by remediation contractor as to nature and extent of contamination. Remediation contractor purchased property. Reviewed regulatory agency files and advised counsel on merits of case. Case not filed.
- Advised counsel on merits of several pending actions, including a Proposition 65 case involving groundwater contamination at an explosives manufacturing firm and two former gas stations with leaking underground storage tanks.
- Assisted defendant foundry in Oakland in a lawsuit brought by neighbors alleging property contamination, nuisance, trespass, smoke, and health effects from foundry operation. Inspected and sampled plaintiff's property. Advised counsel on merits of case. Case settled.
- Assisted business owner facing eminent domain eviction. Prepared technical comments on a negative declaration for soil contamination and public health risks from air emissions from a proposed redevelopment project in San Francisco in support of a CEQA lawsuit. Case settled.
- Assisted neighborhood association representing residents living downwind of a Berkeley asphalt plant in separate nuisance and CEQA lawsuits. Prepared technical comments on air quality, odor, and noise impacts, presented testimony at commission and council meetings, participated in community workshops, and participated in settlement discussions. Cases settled. Asphalt plant was upgraded to include air emission and noise controls, including vapor collection system at truck loading station, enclosures for noisy equipment, and improved housekeeping.
- Assisted a Fortune 500 residential home builder in claims alleging health effects from faulty installation of gas appliances. Conducted indoor air quality study, advised counsel on merits of case, and participated in discussions with plaintiffs. Case settled.

- Assisted property owners in Silicon Valley in lawsuit to recover remediation costs from insurer for large TCE plume originating from a manufacturing facility. Conducted investigations to demonstrate sudden and accidental release of TCE, including groundwater modeling, development of method to date spill, preparation of chemical inventory, investigation of historical waste disposal practices and standards, and on-site sewer and storm drainage inspections and sampling. Prepared declaration in opposition to motion for summary judgment. Case settled.
- Assisted residents in east Oakland downwind of a former battery plant in class action lawsuit alleging property contamination from lead emissions. Conducted historical research and dry deposition modeling that substantiated claim. Participated in mediation at JAMS. Case settled.
- Assisted property owners in West Oakland who purchased a former gas station that had leaking underground storage tanks and groundwater contamination. Reviewed agency files and advised counsel on merits of case. Prepared declaration in opposition to summary judgment. Prepared cost estimate to remediate site. Participated in settlement discussions. Case settled.
- Consultant to counsel representing plaintiffs in two Clean Water Act lawsuits involving selenium discharges into San Francisco Bay from refineries. Reviewed files and advised counsel on merits of case. Prepared interrogatory and discovery questions, assisted in deposing opposing experts, and reviewed and interpreted treatability and other technical studies. Judge ruled in favor of plaintiffs.
- Assisted oil company in a complaint filed by a resident of a small California beach community alleging that discharges of tank farm rinse water into the sanitary sewer system caused hydrogen sulfide gas to infiltrate residence, sending occupants to hospital. Inspected accident site, interviewed parties to the event, and reviewed extensive agency files related to incident. Used chemical analysis, field simulations, mass balance calculations, sewer hydraulic simulations with SWMM44, atmospheric dispersion modeling with SCREEN3, odor analyses, and risk assessment calculations to demonstrate that the incident was caused by a faulty drain trap and inadequate slope of sewer lateral on resident's property. Prepared a detailed technical report summarizing these studies. Case settled.
- Assisted large West Coast city in suit alleging that leaking underground storage tanks on city property had damaged the waterproofing on downgradient building, causing leaks in an underground parking structure. Reviewed subsurface hydrogeologic investigations and evaluated studies conducted by others documenting leakage from underground diesel and gasoline tanks. Inspected, tested, and evaluated waterproofing on subsurface parking structure. Waterproofing was substandard. Case settled.
- Assisted residents downwind of gravel mine and asphalt plant in Siskiyou County, California, in suit to obtain CEQA review of air permitting action. Prepared two declarations analyzing

air quality and public health impacts. Judge ruled in favor of plaintiffs, closing mine and asphalt plant.

- Assisted defendant oil company on the California Central Coast in class action lawsuit alleging property damage and health effects from subsurface petroleum contamination. Reviewed documents, prepared risk calculations, and advised counsel on merits of case. Participated in settlement discussions. Case settled.
- Assisted defendant oil company in class action lawsuit alleging health impacts from remediation of petroleum contaminated site on California Central Coast. Reviewed documents, designed and conducted monitoring program, and participated in settlement discussions. Case settled.
- Consultant to attorneys representing irrigation districts and municipal water districts to evaluate a potential challenge of USFWS actions under CVPIA section 3406(b)(2). Reviewed agency files and collected and analyzed hydrology, water quality, and fishery data. Advised counsel on merits of case. Case not filed.
- Assisted residents downwind of a Carson refinery in class action lawsuit involving soil and groundwater contamination, nuisance, property damage, and health effects from air emissions. Reviewed files and provided advice on contaminated soil and groundwater, toxic emissions, and health risks. Prepared declaration on refinery fugitive emissions. Prepared deposition questions and reviewed deposition transcripts on air quality, soil contamination, odors, and health impacts. Case settled.
- Assisted residents downwind of a Contra Costa refinery who were affected by an accidental release of naphtha. Characterized spilled naphtha, estimated emissions, and modeled ambient concentrations of hydrocarbons and sulfur compounds. Deposed. Presented testimony in binding arbitration at JAMS. Judge found in favor of plaintiffs.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects from several large accidents as well as routine operations. Reviewed files and prepared analyses of environmental impacts. Prepared declarations, deposed, and presented testimony before jury in one trial and judge in second. Case settled.
- Assisted business owner claiming damages from dust, noise, and vibration during a sewer construction project in San Francisco. Reviewed agency files and PM10 monitoring data and advised counsel on merits of case. Case settled.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects. Prepared declaration in opposition to summary judgment, deposed, and presented expert testimony on accidental releases, odor, and nuisance before jury. Case thrown out by judge, but reversed on appeal and not retried.

- Presented testimony in small claims court on behalf of residents claiming health effects from hydrogen sulfide from flaring emissions triggered by a power outage at a Contra Costa County refinery. Analyzed meteorological and air quality data and evaluated potential health risks of exposure to low concentrations of hydrogen sulfide. Judge awarded damages to plaintiffs.
- Assisted construction unions in challenging PSD permit for an Indiana steel mill. Prepared technical comments on draft PSD permit, drafted 70-page appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analysis for electric arc furnace and reheat furnace and faulty permit conditions, among others, and drafted briefs responding to four parties. EPA Region V and the EPA General Counsel intervened as amici, supporting petitioners. EAB ruled in favor of petitioners, remanding permit to IDEM on three key issues, including BACT for the reheat furnace and lead emissions from the EAF. Drafted motion to reconsider three issues. Prepared 69 pages of technical comments on revised draft PSD permit. Drafted second EAB appeal addressing lead emissions from the EAF and BACT for reheat furnace based on European experience with SCR/SNCR. Case settled. Permit was substantially improved. See *In re: Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5 (EAB June 22, 2000).
- Assisted defendant urea manufacturer in Alaska in negotiations with USEPA to seek relief from penalties for alleged violations of the Clean Air Act. Reviewed and evaluated regulatory files and monitoring data, prepared technical analysis demonstrating that permit limits were not violated, and participated in negotiations with EPA to dismiss action. Fines were substantially reduced and case closed.
- Assisted construction unions in challenging PSD permitting action for an Indiana grain mill. Prepared technical comments on draft PSD permit and assisted counsel draft appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analyses for heaters and boilers and faulty permit conditions, among others. Case settled.
- As part of a consent decree settling a CEQA lawsuit, assisted neighbors of a large west coast port in negotiations with port authority to secure mitigation for air quality impacts. Prepared technical comments on mobile source air quality impacts and mitigation and negotiated a $9 million CEQA mitigation package. Represented neighbors on technical advisory committee established by port to implement the air quality mitigation program. Program successfully implemented.
- Assisted construction unions in challenging permitting action for a California hazardous waste incinerator. Prepared technical comments on draft permit, assisted counsel prepare appeal of EPA permit to the Environmental Appeals Board. Participated in settlement discussions on technical issues with applicant and EPA Region 9. Case settled.

- Assisted environmental group in challenging DTSC Negative Declaration on a hazardous waste treatment facility. Prepared technical comments on risk of upset, water, and health risks. Writ of mandamus issued.
- Assisted several neighborhood associations and cities impacted by quarries, asphalt plants, and cement plants in Alameda, Shasta, Sonoma, and Mendocino counties in obtaining mitigations for dust, air quality, public health, traffic, and noise impacts from facility operations and proposed expansions.
- For over 100 industrial facilities, commercial/campus, and redevelopment projects, developed the record in preparation for CEQA and NEPA lawsuits. Prepared technical comments on hazardous materials, solid wastes, public utilities, noise, worker safety, air quality, public health, water resources, water quality, traffic, and risk of upset sections of EIRs, EISs, FONSIs, initial studies, and negative declarations. Assisted counsel in drafting petitions and briefs and prepared declarations.
- For several large commercial development projects and airports, assisted applicant and counsel prepare defensible CEQA documents, respond to comments, and identify and evaluate "all feasible" mitigation to avoid CEQA challenges. This work included developing mitigation programs to reduce traffic-related air quality impacts based on energy conservation programs, solar, low-emission vehicles, alternative fuels, exhaust treatments, and transportation management associations.

SITE INVESTIGATION/REMEDIATION/CLOSURE

- Technical manager and principal engineer for characterization, remediation, and closure of waste management units at former Colorado oil shale plant. Constituents of concern included BTEX, As, 1,1,1-TCA, and TPH. Completed groundwater monitoring programs, site assessments, work plans, and closure plans for seven process water holding ponds, a refinery sewer system, and processed shale disposal area. Managed design and construction of groundwater treatment system and removal actions and obtained clean closure.
- Principal engineer for characterization, remediation, and closure of process water ponds at a former lanthanide processing plant in Colorado. Designed and implemented groundwater monitoring program and site assessments and prepared closure plan.
- Advised the city of Sacramento on redevelopment of two former railyards. Reviewed work plans, site investigations, risk assessment, RAPS, RI/FSs, and CEQA documents. Participated in the development of mitigation strategies to protect construction and utility workers and the public during remediation, redevelopment, and use of the site, including buffer zones, subslab venting, rail berm containment structure, and an environmental oversight plan.

- Provided technical support for the investigation of a former sanitary landfill that was redeveloped as single family homes. Reviewed and/or prepared portions of numerous documents, including health risk assessments, preliminary endangerment assessments, site investigation reports, work plans, and RI/FSs. Historical research to identify historic waste disposal practices to prepare a preliminary endangerment assessment. Acquired, reviewed, and analyzed the files of 18 federal, state, and local agencies, three sets of construction field notes, analyzed 21 aerial photographs and interviewed 14 individuals associated with operation of former landfill. Assisted counsel in defending lawsuit brought by residents alleging health impacts and diminution of property value due to residual contamination. Prepared summary reports.
- Technical oversight of characterization and remediation of a nitrate plume at an explosives manufacturing facility in Lincoln, CA. Provided interface between owners and consultants. Reviewed site assessments, work plans, closure plans, and RI/FSs.
- Consultant to owner of large western molybdenum mine proposed for NPL listing. Participated in negotiations to scope out consent order and develop scope of work. Participated in studies to determine premining groundwater background to evaluate applicability of water quality standards. Served on technical committees to develop alternatives to mitigate impacts and close the facility, including resloping and grading, various thickness and types of covers, and reclamation. This work included developing and evaluating methods to control surface runoff and erosion, mitigate impacts of acid rock drainage on surface and ground waters, and stabilize nine waste rock piles containing 328 million tons of pyrite-rich, mixed volcanic waste rock (andesites, rhyolite, tuff). Evaluated stability of waste rock piles. Represented client in hearings and meetings with state and federal oversight agencies.

REGULATORY (PARTIAL LIST)

- In October 2022, researched and wrote 43 pages of comments on the Lancaster Waste to Renewable Hydrogen Project on (a) significant construction emissions; (b) construction mitigation; unenforceable operational criteria pollutant and GHG emissions; (c) significant construction and operational health impacts and mitigation; and (d) significant health risks of Valley Fever and mitigation.
- In August 2022, researched and wrote 8 pages of comments on Heliogen Holdings' Application for Authority to Contstruct and Permit to Operate for the Polaris Solar Energy Project on significant operational PM10 emissions and Valley Fever;
- In June-July, 2022, Researched and wrote 29 pages of comments on the IS/MND for the SFPP Bradshaw Terminal Renewable by Rail Project on (a) significant and underestimated locomotive emissions; (*b*) omitted operational emission sources (on-site fugitive emissions, rail car transit emissions, emissions in other air districts); (c) significant construction health

risks (acute, cancer); (*d*) significant operational cancer risks; (*e*) mitigation for significant health impacts; and (f) significant construction NOx and PM10 emissions and mitigation

- In February-March 2022, researched and wrote 19 pages of responses to comments on construction impacts, risk of upset, and cumulative impacts of the Heber 1 Geothermal Repower Project IS/MND.
- In January 2022, researched and wrote 9 pages of comments on the DEIR for the San Jose Data Center on greenhouse gas emissions and the SPPE exemption.
- In January 2022, researched and wrote 30 pages of comments on the RDEIR for the Estrella Substation and Paso Robles Area Reinforcement project on (a) EMF health risks; (b) emissions from BESS charging; (c) emissions and mitigation for heliocopter emissions; and (d) Valley Fever mitigation.
- In January 2022, research and wrote 12 pages of responses to comments on the revised IS/ND for the World Energy Terminal on: (a) construction emission impacts; (b) operational VOC emissions; (c) revised tank emissions; and (d) increase in Terminal throughput.
- In December 2021, researched and wrote 20 pages of comments on the IS/MND for the North Central Valley Battery Energy Storage Facility on: (a) greenhouse gas emissions; (b) risk of upset; and (c) cumulative impacts.
- In November 2021, researched and wrote 46 pages of comments on the IS/MND for the California Renewable Carbon Williams Production Facility on: (a) construction air quality impacts; (b) operational emissions; and (c) construction and operational health risks.
- In November 2021, researched and wrote 11 pages of comments on the Final Supplemental Impact Report for the ExxonMobil Interim Trucking Phased Restart Project on: (a) crude oil truck NOx emissions; (b) tanker transport fire impacts; and (c) impacts of and mitigation for off-site accidental spills.
- In October 2021, researched and wrote 13 pages of technical comments on the Draft Supplemental Environmental Impact Report for the Casa Diablo IV geothermal power plant on the proposed LDAR program.
- In June 2021, researched and wrote 26 pages of technical comments on IS/MND for the Regional San BioGeneration Facility on: (a) significant construction air quality impacts; (b) significant operational air quality impacts; and (d) cumulative impacts.
- In May 2021, researched and wrote 64 pages of comments on the IS/MND for the Heber 1 Geothermal Repower Project on: (a) construction air quality impacts; (b) operational air quality impacts; (c) cumulative air quality impacts; (d) health impacts; (d) Valley Fever; (e) hazard and hazardous materials; (f) geologic impacts; and (g) impacts of extended operational lifetime.

- In February 2021, researched and wrote 41 pages of technical comment on the IS/MND for the Heber 2 Geothermal Repower Project on: (a) risk of upset impacts; (b) tanker truck accidents; (c) valley fever impacts; (d) construction and operational air quality impacts; (d) water use; and (e) cumulative impacts.
- In December 2020, researched and wrote 23 pages of comments on the Draft Supplemental Recirculated Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2020 A, Focused on Oil and Gas Local Permitting on: (a) significant and unmitigated construction emissions; (b) significant and unmitigated operational emissions; (c) public health and biological impacts of criteria pollutants emissions and ozone; (d) offsets not valid CEQA mitigation.
- In October and December 2020, researched and wrote 46 pages of comments on underestimated and unsupported construction emissions, omitted construction emission sources, failure to consider unique site geotechnical conditions; revised construction emissions; significant construction and operational GHG emissions; GHG mitigation; construction and operational health risks; risk of upset; and cumulative impacts for a facility proposed to upgrade landfill gas to pipeline quality natural gas.
- In October and November 2020, researched and wrote 37 pages of comments on significant construction impacts, significant operational VOC emissions, and significant public health impacts of new internal floating roof storage tanks at a marine terminal at the Port of Long Beach.
- In September to November 2020, review proposed permit amendment to add HCN emissions from the FCCU to Title V permit for a Houston Refinery and research and write report on methods to measure HCN from FCCUs in situ and remotely.
- In September and October 2020, researched and wrote 14 pages of comments on proposed Leak Detection and Repair (LDAR) program for controlling VOC emissions from a geothermal power plant.
- In August to October 2020, researched and wrote comments on grid-based impacts of San Francisco's proposed building code mandating that new construction be all electric.
- In July and August 2020, researched and wrote comments on groundwater impacts of sea level rise for Final SEIR on crude oil trucking proposal.
- In June to August 2020, researched and wrote 69 pages of comments on inadequate project description, construction impacts, operational air quality impacts, cumulative air quality impacts, public health impacts, valley fever, hazards, geologic impacts, water use, CEC licensing, and extended lifetime impacts for the repower of a geothermal power plant in Imperial County.
- In June 2020, review revised quarry reclamation plan and draft 27 pages of comments on proposed modification.

- In June and July 2020, researched and wrote 23 pages of comments on cement terminal at Port of Stockton on construction impacts, emission baseline, operational emissions, and greenhouse gas mitigation.
- In May to June 2020, review reclamation plan amendment for quarry and research and write 17 page report on hydrology and water quality impacts of proposed amendment.
- In May 2020, researched and wrote 10 pages of comments on FEIR for a new apartment project in Contra Costa County on GHG emissions from vegetation removal, mobile sources, and water use and mitigation for same.
- In March/April 2020, researched and wrote 50 pages of comments on IS/MND for battery energy storage project in San Jose (Hummingbird) on inadequate project description, criteria pollutant and GHG emissions, significant and unmitigated energy impacts, cumulative impacts, construction impacts, public health impacts from BESS accidents, and battery handling and transportation accidents. Wrote 15 pages of responses to comments on vendor specifications, battery composition, cumulative impacts, construction impacts, fire control methods, and battery accidents.
- In April 2020, researched and wrote 47 pages of comments on IS/MND for data center in Santa Clara (SV1) on operational NOx emissions; out-of-district emissions; interbasin pollutant transport; omitted emission sources; GHG compliance with plans, policies and regulations; indirect GHG emissions; air quality impacts; construction emissions; cumulative impacts; and risk of upset from battery accidents.
- In March 2020, researched and wrote 30 pages of comments on IS/MND for data center in San Jose (Hummingbird) on operational GHG and criteria pollutant emissions, cumulative impacts, and public health risks. Research and write responses to comments.
- In February-March 2020, researched and wrote 30 pages on an IS/MND for a data center in San Jose (Stack) on operational NOx and GHG emissions, cumulative impacts, heath risks, and odor.
- In February 2020, researched and wrote 33 pages of comments on Initial Study for a battery storage facility in Ventura County (Orni) on criteria pollutant and GHG emissions, worker and public health impacts, cumulative impacts, valley fever, and consistency with general plan.
- In February 2020, researched and wrote 20 pages of comments on valley fever in response to applicant's global response to comments on Valley Fever for a wind project in San Diego County.
- In January 2020, researched and wrote 32 pages of comments on the Orni battery storage facility (BESS) on incomplete project description, cumulative GHG and NOx impacts, BESS accidents, and health impacts, including soil contamination and valley fever.

- In January 2020, research and wrote 41 pages of comments on the DEIR for the NuStar Port of Stockton Liquid Bulk Terminal on operational emission calculations, significant NOx emissions, significant GHG emissions. GHG mitigation, and cumulative impacts.
- In December 2019, researched and wrote 3 pages of comments on the Silverstrand Grid battery storage facility on greenhouse gas emissions.
- In December 2019, researched and wrote 15 pages of comments on the Initial Study for the K2 Pure – Chlorine Rail Transportation Curtailment Project, including on air quality baseline, project description, emissions, cancer risks, risk of upset.
- In November 2019, reviewed agency files and researched and wrote 42 pages of comments on the Belridge Solar Project on compliance with local zoning ordinances, water quality impacts, air quality impacts, and worker and public health impacts due to soil contamination and valley fever.
- In October 2019, researched and wrote 49 pages of comments on IS/MND for data center in Santa Clara, CA on operational criteria pollutants (mobile sources, off-site electricity generation, emergency generators), ambient air quality impacts, greenhouse gas emissions and mitigation, and cumulative impacts.
- In October 2019, researched and wrote 9 pages of comments on the Application, Statement of Basis and draft Permit to Construct and Temporary Permit to Operate for proposed changes at the Paramount Refinery to facilitate refining of biomass-based feedstock to produce renewable fuels.
- In September 2019, reviewed City of Sunnyvale's file on Google's proposed Central Utility Plant and researched and wrote 34 pages of comments on construction and operational air quality impacts, cumulative impacts, and battery fire and explosion impacts. In October 2019, researched and wrote 15 pages of responses to comments.
- In August 2019, research and wrote 37 pages of comments on the DSEIR for the Le Conte Battery Energy Storage System on GHG emissions, hazards and hazardous material impacts, and health impacts.
- In August 2019, researched and wrote 38 pages of comments on IS/MND for the Hanford-Lakeside Dairy digester Project, Kings County, on project description (piecemealing), cumulative impacts, construction impacts, air quality impacts, valley fever and risk of upset.
- In July 2019, researched and wrote 48 pages of comments on IS/MND for the Five Points Pipeline Dairy Digester Cluster Project, including on air quality, cumulative impacts, worker and public health impacts (including on pesticide-contaminated soils), Valley Fever, construction air quality impacts, and risk of upset.
- In June 2019, researched and wrote 15 pages of responses to comments on IS/MND for SV1 Data Center, including operational NOx emissions, air quality analyses, construction

emissions, battery hazards, and mitigation plans for noise, vibration, risk management, storm water pollution, and emergency response and evacuation plans.

- In June 2019, researched and wrote 30 pages of comments on DEIR for the Humboldt Wind Energy Project on fire and aesthetic impacts of transmission line, construction air quality impacts and mitigation, and greenhouse gas emissions.
- In May 2019, researched and wrote 25 pages of comments on the DEIR for the ExxonMobil Interim Trucking for Santa Ynez Phased Restart Project on project description, baseline, and mitigation.
- In April 2019, researched and wrote a 16 page letter critiquing the adequacy of the FEIR for CalAm Desalination Project to support a Monterey County Combined Development Permit, consisting of a Use Permit, an Administrative Permit, and Design Approval for the Desalination Plant and Carmel Valley Pump Station.
- In April 2019, researched and wrote 22 pages of comments on DEIR for the Eco-Energy Liquid Bulk Terminal at the Port of Stockton on emissions, air quality impact mitigation, and health risk assessment.
- In March 2019, researched and wrote 43 pages of comments on DEIR for Contanda Renewable Diesel Bulk Liquid Terminal at the Port of Stockton on operational emissions, air quality impacts and mitigation and health risks.
- In February 2019, researched and wrote 36 pages of comments on general cumulative impacts, air quality, accidents, and valley fever for IS/MND for biogas cluster project in Kings County.
- In January 2019, researched and wrote 30 pages of comments on air quality and valley fever for IS/MND for energy storage facility in Kings County.
- In December 2018, researched and wrote 11 pages of comments on air quality for IS/MND for biomass gasification facility in Madera County.
- In December 2018, researched and wrote 10 pages of responses to comments on IS/MND for a wind energy project in Riverside County.
- In December 2018, researched and wrote 12 pages of responses to comments on IS/MND for a large Safeway fueling station in Petaluma. The Planning Commission voted unanimously to require an EIR.
- In November 2018, researched and wrote 30 pages of comments on IS/MND on wind energy project in Riverside County on construction health risks, odor impacts, waste disposal, transportation, construction emissions and mitigation and Valley Fever.
- In November 2018, researched and wrote 32 pages of comments on the DEIR for a solar energy generation and storage project in San Bernardino County on hazards, health risks, odor, construction emissions and mitigation, and Valley Fever.

- In September 2018, researched and wrote 36 pages of comments on the FEIR for the Newland Sierra Project including on greenhouse gas emissions, construction emissions, and cumulative impacts.
- In August 2018, researched and wrote 20 pages of comments on the health risk assessment in the IS/MND for a large Safeway fueling station in Petaluma.
- In August 2018, researched and wrote responses to comments on DEIR for the Newland Sierra Project, San Diego County on greenhouse gas emissions, construction emissions, odor, and Valley Fever.
- In July/August 2018, researched and wrote 12 pages of comments on DEIR for proposed Doheny Desal Project, on GHG, criteria pollutant, and TAC emissions and public health impacts during construction and indirect emissions during operation.
- In June 2018, researched and wrote 12 pages of technical comments rebutting NDDH responses to comments on Meridian Davis Refinery.
- In April 2018, researched and wrote 26 pages of comments on greenhouse gas emissions and mitigation as proposed in the San Diego County Climate Action Plan.
- In April 2018, researched and wrote 24 pages of comments on the FEIR for Monterey County water supply project, including GHG mitigation, air quality impacts and mitigation, and Valley Fever.
- In March-June 2018, researched and wrote 37 pages of comments on the IS/MND for the 2305 Mission College Boulevard Data Center, Santa Clara, California and responded to responses to comments.
- In March 2018, researched and wrote 40 pages of comments on the IS/MND for the Diablo Energy Storage Facility in Pittsburg, California.
- In March 2018, researched and wrote 19 pages of comments on Infill Checklist/Mitigated Negative Declaration for the Legacy@Livermore Project on CalEEMod emission calculations, including NOx and PM10 and construction health risk assessment, including Valley Fever.
- In January 2018, researched and wrote 28 pages of comments on draft Permit to Construct for the Davis Refinery Project, North Dakota, as a minor source of criteria pollutants and HAPs.
- In December 2017, researched and wrote 19 pages of comments on DEIR for the Rialto Bioenergy Facility, Rialto, California.
- In November and December 2017, researched and wrote 6 pages of comments on the Ventura County Air Pollution Control District's Preliminary Determination if Compliance (PDOC) for Mission Rock Energy Center.

- In November 2017, researched and wrote 11 pages of comments on control technology evaluation for the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Residual Risk and Technology Review.
- In September and November 2017, prepared comments on revised Negative Declaration for Delicato Winery in San Joaquin County, California.
- In October and November 2017, researched and wrote comments on North City Project Pure Water San Diego Program DEIR/DEIS to reclaim wastewater for municipal use.
- In August 2017, reviewed DEIR on a new residential community in eastern San Diego County (Newland Sierra) and research and wrote 60 pages of comments on air quality, greenhouse gas emissions and health impacts, including Valley Fever.
- In August 2017, reviewed responses to comments on Part 70 operating permit for IGP Methanol's Gulf Coast Methanol Complex, near Myrtle Grove, Louisiana, and researched and wrote comments on metallic HAP issues.
- In July 2017, reviewed the FEIS for an expansion of the Port of Gulfport and researched and wrote 10 pages of comments on air quality and public health.
- In June 2017, reviewed and prepared technical report on an Application for a synthetic minor source construction permit for a new Refinery in North Dakota.
- In June 2017, reviewed responses to NPCA and other comments on the BP Cherry Point Refinery modifications and assisted counsel in evaluating issues to appeal, including GHG BACT, coker heater SCR cost effectiveness analysis, and SO_2 BACT.
- In June 2017, reviewed Part 70 Operating Permit Renewal/Modification for the Noranda Alumina LC/Gramercy Holdings I, LLC alumina processing plant, St. James, Louisiana, and prepared comments on HAP emissions from bauxite feedstock.
- In May and June 2017, reviewed FEIR on Tesoro Integration Project and prepared responses to comments on the DEIR.
- In May 2017, prepared comments on tank VOC and HAP emissions from Tesoro Integration Project, based on real time monitoring at the Tesoro and other refineries in the SCAQMD.
- In April 2017, prepared comments on Negative Declaration for Delicato Winery in San Joaquin County, California.
- In March 2017, reviewed Negative Declaration for Ellmore geothermal facility in Imperial County, California and prepared summary of issues.
- In March 2017, prepared response to Phillips 66 Company's Appeal of the San Luis Obispo County Planning Commission's Decision Denying the Rail Spur Extension Project Proposed for the Santa Maria Refinery.

- In February 2017, researched and wrote comments on Kalama draft Title V permit for 10,000 MT/day methanol production and marine export facility in Kalama, Washington.
- In January 2017, researched and wrote 51 pages of comments on proposed Title V and PSD permits for the St. James Methanol Plant, St. James Louisiana, on BACT and enforceability of permit conditions.
- In December 2016, researched and wrote comments on draft Title V Permit for Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana, responding to EPA Order addressing enforceability issues.
- In November 2016, researched and wrote comments on Initial Study/Mitigated Negative Declaration for the AES Battery Energy Storage Facility, Long Beach, CA.
- In November 2016, researched and wrote comments on Campo Verde Battery Energy Storage System Draft Environmental Impact Report.
- In October 2016, researched and wrote comments on Title V Permit for NuStar Terminal Operations Partnership L.P, Stockton, CA.
- In October 2016, prepared expert report, Technical Assessment of Achieving the 40 CFR Part 423 Zero Discharge Standard for Bottom Ash Transport Water at the Belle River Power Plant, East China, Michigan. Reported resulted in a 2 year reduction in compliance date for elimination of bottom ash transport water. 1/30/17 DEQ Letter.
- In September 2016, researched and wrote comments on Proposed Title V Permit and Environmental Assessment Statement, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana.
- In September 2016, researched and wrote response to "Further Rebuttal in Support of Appeal of Planning Commission Resolution No. 16-1, Denying Use Permit Application 12PLN-00063 and Declining to Certify Final Environmental Impact Report for the Valero Benicia Crude-by-Rail Project.
- In August 2016, reviewed and prepared comments on manuscript: Hutton et al., Freshwater Flows to the San Francisco Bay-Delta Estuary over Nine Decades: Trends Evaluation.
- In August/September 2016, researched and wrote comments on Mitigated Negative Declaration for the Chevron Long Wharf Maintenance and Efficiency Project.
- In July 2016, researched and wrote comments on the Ventura County APCD Preliminary Determination of Compliance and the California Energy Commission Revised Preliminary Staff Assessment for the Puente Power Project.
- In June 2016, researched and wrote comments on an Ordinance (1) Amending the Oakland Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout the City of Oakland and (2) Adopting CEQA Exemption

Findings and supporting technical reports. Council approved Ordinance on an 8 to 0 vote on June 27, 2016.

- In May 2016, researched and wrote comments on Draft Title V Permit and Draft Environmental Impact Report for the Tesoro Los Angeles Refinery Integration and Compliance Project.
- In March 2016, researched and wrote comments on Valero's Appeal of Planning Commission's Denial of Valero Crude-by-Rail Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Santa Maria Rail Spur Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Valero Benicia Crude by Rail Project.
- In January 2016, researched and wrote comments on Draft Programmatic Environmental Impact Report for the Southern California Association of Government's (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy.
- In November 2015, researched and wrote comments on Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015(C) (Focused on Oil and Gas Local Permitting), November 2015.
- In October 2015, researched and wrote comments on Revised Draft Environmental Report, Valero Benicia Crude by Rail Project.
- In September 2015, prepared report, "Environmental, Health and Safety Impacts of the Proposed Oakland Bulk and Oversized Terminal, and presented oral testimony on September 21, 2015 before Oakland City Council on behalf of the Sierra Club.
- In September 2015, researched and wrote comments on revisions to two chapters of EPA's Air Pollution Control Cost Manual: Docket ID No. EPA-HQ-OAR-2015-0341.
- In June 2015, researched and wrote comments on DEIR for the CalAm Monterey Peninsula Water Supply Project.
- In April 2015, researched and wrote comments on proposed Title V Operating Permit Revision and Prevention of Significant Deterioration Permit for Arizona Public Service's Ocotillo Power Plant Modernization Project (5 GE LMS100 105-MW simple cycle turbines operated as peakers), in Tempe, Arizona; Final permit appealed to EAB.
- In March 2015, researched and wrote "Comments on Proposed Title V Air Permit, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana". Client filed petition objecting to the permit. EPA granted majority of issues. In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana, Permit No. 2560-00295-V0, Issued by the Louisiana Department of Environmental Quality, Petition No. VI-2015-03, Order Responding to the

Petitioners' Request for Objection to the Issuance of a Title V Operating Permit, September 1, 2016.

- In February 2015, prepared compilation of BACT cost effectiveness values in support of comments on draft PSD Permit for Bonanza Power Project.
- In January 2015, prepared cost effectiveness analysis for SCR for a 500-MW coal fire power plant, to address unpermitted upgrades in 2000.
- In January 2015, researched and wrote comments on Revised Final Environmental Impact Report for the Phillips 66 Propane Recovery Project. *Communities for a Better Environment et al. v. Contra Costa County et al. Contra Costa County (Superior Court, Contra Costa County, Case No. MSN15-0301, December 1, 2016).*
- In December 2014, researched and wrote "Report on Bakersfield Crude Terminal Permits to Operate." In response, the U.S. EPA cited the Terminal for 10 violations of the Clean Air Act. The Fifth Appellate District Court upheld the finding in this report in CBE et al v. San Joaquin Valley Unified Air Pollution Control District and Bakersfield Crude Terminal LLC et al, Super. Ct. No. 284013, June 23, 2017.
- In December 2014, researched and wrote comments on Revised Draft Environmental Impact Report for the Phillips 66 Propane Recovery Project.
- In November 2014, researched and wrote comments on Revised Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project and Crude Unloading Project, Santa Maria, CA to allow the import of tar sands crudes.
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for Phillips 66 Ultra Low Sulfur Diesel Project, responding to the California Supreme Court Decision, *Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310.*
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for the Tesoro Avon Marine Oil Terminal Lease Consideration.
- In October 2014, prepared: "Report on Hydrogen Cyanide Emissions from Fluid Catalytic Cracking Units", pursuant to the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 79 FR 36880.
- In October 2014, researched and wrote technical comments on Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In October 2014, researched and wrote technical comments on the Title V Permit Renewal and three De Minimus Significant Revisions for the Tesoro Logistics Marine Terminal in the SCAQMD.

- In September 2014, researched and wrote technical comments on the Draft Environmental Impact Report for the Valero Crude by Rail Project.
- In August 2014, for EPA Region 6, prepared technical report on costing methods for upgrades to existing scrubbers at coal-fired power plants.
- In July 2014, researched and wrote technical comments on Draft Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In June 2014, researched and wrote technical report on Initial Study and Draft Negative Declaration for the Tesoro Logistics Storage Tank Replacement and Modification Project.
- In May 2014, researched and wrote technical comments on Intent to Approve a new refinery and petroleum transloading operation in Utah.
- In March and April 2014, prepared declarations on air permits issued for two crude-by-rail terminals in California, modified to switch from importing ethanol to importing Bakken crude oils by rail and transferring to tanker cars. Permits were issued without undergoing CEQA review. One permit was upheld by the San Francisco Superior Court as statute of limitations had run. The Sacramento Air Quality Management District withdrew the second one due to failure to require BACT and conduct CEQA review.
- In March 2014, researched and wrote technical report on Negative Declaration for a proposed modification of the air permit for a bulk petroleum and storage terminal to the allow the import of tar sands and Bakken crude oil by rail and its export by barge, under the New York State Environmental Quality Review Act (SEQRA).
- In February 2014, researched and wrote technical report on proposed modification of air permit for midwest refinery upgrade/expansion to process tar sands crudes.
- In January 2014, prepared cost estimates to capture, transport, and use CO2 in enhanced oil recovery, from the Freeport LNG project based on both Selexol and Amine systems.
- In January 2014, researched and wrote technical report on Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project, Santa Maria, CA. Comments addressed project description (piecemealing, crude slate), risk of upset analyses, mitigation measures, alternative analyses and cumulative impacts.
- In November 2013, researched and wrote technical report on the Phillips 66 Propane Recovery Project, Rodeo, CA. Comments addressed project description (piecemealing, crude slate) and air quality impacts.
- In September 2013, researched and wrote technical report on the Draft Authority to Construct Permit for the Casa Diablo IV Geothermal Development Project Environmental Impact Report and Declaration in Support of Appeal and Petition for Stay, U.S. Department of the

Interior, Board of Land Appeals, Appeal of Decision Record for the Casa Diablo IV Geothermal Development Project.

- In September 2013, researched and wrote technical report on Effluent Limitation Guidelines for Best Available Technology Economically Available (BAT) for Bottom Ash Transport Waters from Coal-Fired Power Plants in the Steam Electric Power Generating Point Source Category.
- In July 2013, researched and wrote technical report on Initial Study/Mitigated Negative Declaration for the Valero Crude by Rail Project, Benicia, California, Use Permit Application 12PLN-00063.
- In July 2013, researched and wrote technical report on fugitive particulate matter emissions from coal train staging at the proposed Coyote Island Terminal, Oregon, for draft Permit No. 25-0015-ST-01.
- In July 2013, researched and wrote technical comments on air quality impacts of the Finger Lakes LPG Storage Facility as reported in various Environmental Impact Statements.
- In July 2013, researched and wrote technical comments on proposed Greenhouse Gas PSD Permit for the Celanese Clear Lake Plant, including cost analysis of CO2 capture, transport, and sequestration.
- In June/July 2013, researched and wrote technical comments on proposed Draft PSD Preconstruction Permit for Greenhouse Gas Emission for the ExxonMobil Chemical Company Baytown Olefins Plant, including cost analysis of CO2 capture, transport, and sequestration.
- In June 2013, researched and wrote technical report on a Mitigated Negative Declaration for a new rail terminal at the Valero Benicia Refinery to import increased amounts of "North American" crudes. Comments addressed air quality impacts of refining increased amounts of tar sands crudes.
- In June 2013, researched and wrote technical report on Draft Environmental Impact Report for the California Ethanol and Power Imperial Valley 1 Project.
- In May 2013, researched and wrote comments on draft PSD permit for major expansion of midwest refinery to process 100% tar sands crudes, including a complex netting analysis involving debottlenecking, piecemealing, and BACT analyses.
- In April 2013, researched and wrote technical report on the Draft Supplemental Environmental Impact Statement (DSEIS) for the Keystone XL Pipeline on air quality impacts from refining increased amount of tar sands crudes at Refineries in PADD 3.
- In October 2012, researched and wrote technical report on the Environmental Review for the Coyote Island Terminal Dock at the Port of Morrow on fugitive particulate matter emissions.

- In October 2012-October 2014, review and evaluate Flint Hills West Application for an expansion/modification for increased (Texas, Eagle Ford Shale) crude processing and related modification, including netting and BACT analysis. Assist in settlement discussions.
- In February 2012, researched and wrote comments on BART analysis in PA Regional Haze SIP, 77 FR 3984 (Jan. 26, 2012). On Sept. 29, 2015, a federal appeals court overturned the U.S. EPA's approval of this plan, based in part on my comments, concluding "..we will vacate the 2014 Final Rule to the extent it approved Pennsylvania's source-specific BART analysis and remand to the EPA for further proceedings consistent with this Opinion." Nat'l Parks Conservation Assoc. v. EPA, 3d Cir., No. 14-3147, 9/19/15.
- Prepared cost analyses and comments on New York's proposed BART determinations for NOx, SO2, and PM and EPA's proposed approval of BART determinations for Danskammer Generating Station under New York Regional Haze State Implementation Plan and Federal Implementation Plan, 77 FR 51915 (August 28, 2012).
- Prepared cost analyses and comments on NOx BART determinations for Regional Haze State Implementation Plan for State of Nevada, 77 FR 23191 (April 18, 2012) and 77 FR 25660 (May 1, 2012).
- Prepared analyses of and comments on New Source Performance Standards for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 FR 22392 (April 13, 2012).
- Researched and wrote comments on CASPR-BART emission equivalency and NOx and PM BART determinations in EPA proposed approval of State Implementation Plan for Pennsylvania Regional Haze Implementation Plan, 77 FR 3984 (January 26, 2012).
- Researched and wrote comments and statistical analyses on hazardous air pollutants (HAPs) emission controls, monitoring, compliance methods, and the use of surrogates for acid gases, organic HAPs, and metallic HAPs for proposed National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 76 FR 24976 (May 3, 2011).
- Prepared cost analyses and comments on NOx BART determinations and emission reductions for proposed Federal Implementation Plan for Four Corners Power Plant, 75 FR 64221 (October 19, 2010).
- Prepared cost analyses and comments on NOx BART determinations for Colstrip Units 1- 4 for Montana State Implementation Plan and Regional Haze Federal Implementation Plan, 77 FR 23988 (April 20, 2010).
- For EPA Region 8, prepared report: Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative Leland Olds Station Unit 2 Final Report, March 2011, in support of 76 FR 58570 (Sept. 21, 2011).

- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, in support of 76 FR 52388 (Aug. 22, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Flue Gas Desulfurization at Coal-Fired Electric Generating Units in Oklahoma: Sooner Units 1 & 2, Muskogee Units 4 & 5, Northeastern Units 3 &4, October 2010, in support of 76 FR 16168 (March 26, 2011). My work was upheld in: *State of Oklahoma v. EPA*, App. Case 12-9526 (10th Cri. July 19, 2013).
- Identified errors in N_2O emission factors in the Mandatory Greenhouse Gas Reporting Rule, 40 CFR 98, and prepared technical analysis to support Petition for Rulemaking to Correct Emissions Factors in the Mandatory Greenhouse Gas Reporting Rule, filed with EPA on 10/28/10.
- Assisted interested parties develop input for and prepare comments on the Information Collection Request for Petroleum Refinery Sector NSPS and NESHAP Residual Risk and Technology Review, 75 FR 60107 (9/29/10).
- Technical reviewer of EPA's "Emission Estimation Protocol for Petroleum Refineries," posted for public comments on CHIEF on 12/23/09, prepared in response to the City of Houston's petition under the Data Quality Act (March 2010).
- Researched and wrote comments on SCR cost effectiveness for EPA's Advanced Notice of Proposed Rulemaking, Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station, 74 FR 44313 (August 28, 2009).
- Researched and wrote comments on Proposed Rule for Standards of Performance for Coal Preparation and Processing Plants, 74 FR 25304 (May 27, 2009).
- Prepared comments on draft PSD permit for major expansion of midwest refinery to process up to 100% tar sands crudes. Participated in development of monitoring and controls to mitigate impacts and in negotiating a Consent Decree to settle claims in 2008.
- Reviewed and assisted interested parties prepare comments on proposed Kentucky air toxic regulations at 401 KAR 64:005, 64:010, 64:020, and 64:030 (June 2007).
- Prepared comments on proposed Standards of Performance for Electric Utility Steam Generating Units and Small Industrial-Commercial-Industrial Steam Generating Units, 70 FR 9706 (February 28, 2005).
- Prepared comments on Louisville Air Pollution Control District proposed Strategic Toxic Air Reduction regulations.
- Prepared comments and analysis of BAAQMD Regulation, Rule 11, Flare Monitoring at Petroleum Refineries.

- Prepared comments on Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electricity Utility Steam Generating Units (MACT standards for coal-fired power plants).
- Prepared Authority to Construct Permit for remediation of a large petroleum-contaminated site on the California Central Coast. Negotiated conditions with agencies and secured permits.
- Prepared Authority to Construct Permit for remediation of a former oil field on the California Central Coast. Participated in negotiations with agencies and secured permits.
- Prepared and/or reviewed hundreds of environmental permits, including NPDES, UIC, Stormwater, Authority to Construct, Prevention of Significant Deterioration, Nonattainment New Source Review, Title V, and RCRA, among others.
- Participated in the development of the CARB document, *Guidance for Power Plant Siting and Best Available Control Technology*, including attending public workshops and filing technical comments.
- Performed data analyses in support of adoption of emergency power restoration standards by the California Public Utilities Commission for "major" power outages, where major is an outage that simultaneously affects 10% of the customer base.
- Drafted portions of the Good Neighbor Ordinance to grant Contra Costa County greater authority over safety of local industry, particularly chemical plants and refineries.
- Participated in drafting BAAQMD Regulation 8, Rule 28, Pressure Relief Devices, including participation in public workshops, review of staff reports, draft rules and other technical materials, preparation of technical comments on staff proposals, research on availability and costs of methods to control PRV releases, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and cost of low-leak technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pumps and Compressors, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak and seal-less technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 5, Storage of Organic Liquids, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research

on availability and costs of controlling tank emissions, and presentation of testimony before the Board.

- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors at Petroleum Refinery Complexes, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 22, Valves and Flanges at Chemical Plants, etc, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pump and Compressor Seals, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability of low-leak technology, and presentation of testimony before the Board.
- Participated in the development of the BAAQMD Regulation 2, Rule 5, Toxics, including participation in public workshops, review of staff proposals, and preparation of technical comments.
- Participated in the development of SCAQMD Rule 1402, Control of Toxic Air Contaminants from Existing Sources, and proposed amendments to Rule 1401, New Source Review of Toxic Air Contaminants, in 1993, including review of staff proposals and preparation of technical comments on same.
- Participated in the development of the Sunnyvale Ordinance to Regulate the Storage, Use and Handling of Toxic Gas, which was designed to provide engineering controls for gases that are not otherwise regulated by the Uniform Fire Code.
- Participated in the drafting of the Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries, including participation in workshops, review of draft plans, preparation of technical comments on draft plans, and presentation of testimony before the SWRCB.
- Participated in developing Se permit effluent limitations for the five Bay Area refineries, including review of staff proposals, statistical analyses of Se effluent data, review of literature on aquatic toxicity of Se, preparation of technical comments on several staff proposals, and presentation of testimony before the Bay Area RWQCB.
- Represented the California Department of Water Resources in the 1991 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with

cross examination and rebuttal on a striped bass model developed by the California Department of Fish and Game.

- Represented the State Water Contractors in the 1987 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on natural flows, historical salinity trends in San Francisco Bay, Delta outflow, and hydrodynamics of the South Bay.
- Represented interveners in the licensing of over 20 natural-gas-fired power plants and one coal gasification plant at the California Energy Commission and elsewhere. Reviewed and prepared technical comments on applications for certification, preliminary staff assessments, final staff assessments, preliminary determinations of compliance, final determinations of compliance, and prevention of significant deterioration permits in the areas of air quality, water supply, water quality, biology, public health, worker safety, transportation, site contamination, cooling systems, and hazardous materials. Presented written and oral testimony in evidentiary hearings with cross examination and rebuttal. Participated in technical workshops.
- Represented several parties in the proposed merger of San Diego Gas & Electric and Southern California Edison. Prepared independent technical analyses on health risks, air quality, and water quality. Presented written and oral testimony before the Public Utilities Commission administrative law judge with cross examination and rebuttal.
- Represented a PRP in negotiations with local health and other agencies to establish impact of subsurface contamination on overlying residential properties. Reviewed health studies prepared by agency consultants and worked with agencies and their consultants to evaluate health risks.

WATER QUALITY/RESOURCES

- Directed and participated in research on environmental impacts of energy development in the Colorado River Basin, including contamination of surface and subsurface waters and modeling of flow and chemical transport through fractured aquifers.
- Played a major role in Northern California water resource planning studies since the early 1970s. Prepared portions of the Basin Plans for the Sacramento, San Joaquin, and Delta basins including sections on water supply, water quality, beneficial uses, waste load allocation, and agricultural drainage. Developed water quality models for the Sacramento and San Joaquin Rivers.
- Conducted hundreds of studies over the past 40 years on Delta water supplies and the impacts of exports from the Delta on water quality and biological resources of the Central Valley, Sacramento-San Joaquin Delta, and San Francisco Bay. Typical examples include:

    1. Evaluate historical trends in salinity, temperature, and flow in San Francisco Bay and upstream rivers to determine impacts of water exports on the estuary;

2. Evaluate the role of exports and natural factors on the food web by exploring the relationship between salinity and primary productivity in San Francisco Bay, upstream rivers, and ocean;
3. Evaluate the effects of exports, other in-Delta, and upstream factors on the abundance of salmon and striped bass;
4. Review and critique agency fishery models that link water exports with the abundance of striped bass and salmon;
5. Develop a model based on GLMs to estimate the relative impact of exports, water facility operating variables, tidal phase, salinity, temperature, and other variables on the survival of salmon smolts as they migrate through the Delta;
6. Reconstruct the natural hydrology of the Central Valley using water balances, vegetation mapping, reservoir operation models to simulate flood basins, precipitation records, tree ring research, and historical research;
7. Evaluate the relationship between biological indicators of estuary health and down-estuary position of a salinity surrogate (X2);
8. Use real-time fisheries monitoring data to quantify impact of exports on fish migration;
9. Refine/develop statistical theory of autocorrelation and use to assess strength of relationships between biological and flow variables;
10. Collect, compile, and analyze water quality and toxicity data for surface waters in the Central Valley to assess the role of water quality in fishery declines;
11. Assess mitigation measures, including habitat restoration and changes in water project operation, to minimize fishery impacts;
12. Evaluate the impact of unscreened agricultural water diversions on abundance of larval fish;
13. Prepare and present testimony on the impacts of water resources development on Bay hydrodynamics, salinity, and temperature in water rights hearings;
14. Evaluate the impact of boat wakes on shallow water habitat, including interpretation of historical aerial photographs;
15. Evaluate the hydrodynamic and water quality impacts of converting Delta islands into reservoirs;
16. Use a hydrodynamic model to simulate the distribution of larval fish in a tidally influenced estuary;
17. Identify and evaluate non-export factors that may have contributed to fishery declines, including predation, shifts in oceanic conditions, aquatic toxicity from

pesticides and mining wastes, salinity intrusion from channel dredging, loss of riparian and marsh habitat, sedimentation from upstream land alternations, and changes in dissolved oxygen, flow, and temperature below dams.

- Developed, directed, and participated in a broad-based research program on environmental issues and control technology for energy industries including petroleum, oil shale, coal mining, and coal slurry transport. Research included evaluation of air and water pollution, development of novel, low-cost technology to treat and dispose of wastes, and development and application of geohydrologic models to evaluate subsurface contamination from in-situ retorting. The program consisted of government and industry contracts and employed 45 technical and administrative personnel.
- Coordinated an industry task force established to investigate the occurrence, causes, and solutions for corrosion/erosion and mechanical/engineering failures in the waterside systems (e.g., condensers, steam generation equipment) of power plants. Corrosion/erosion failures caused by water and steam contamination that were investigated included waterside corrosion caused by poor microbiological treatment of cooling water, steam-side corrosion caused by ammonia-oxygen attack of copper alloys, stress-corrosion cracking of copper alloys in the air cooling sections of condensers, tube sheet leaks, oxygen in-leakage through condensers, volatilization of silica in boilers and carry over and deposition on turbine blades, and iron corrosion on boiler tube walls. Mechanical/engineering failures investigated included: steam impingement attack on the steam side of condenser tubes, tube-to-tube-sheet joint leakage, flow-induced vibration, structural design problems, and mechanical failures due to stresses induced by shutdown, startup and cycling duty, among others. Worked with electric utility plant owners/operators, condenser and boiler vendors, and architect/engineers to collect data to document the occurrence of and causes for these problems, prepared reports summarizing the investigations, and presented the results and participated on a committee of industry experts tasked with identifying solutions to prevent condenser failures.
- Evaluated the cost effectiveness and technical feasibility of using dry cooling and parallel dry-wet cooling to reduce water demands of several large natural-gas fired power plants in California and Arizona.
- Designed and prepared cost estimates for several dry cooling systems (e.g., fin fan heat exchangers) used in chemical plants and refineries.
- Designed, evaluated, and costed several zero liquid discharge systems for power plants.
- Evaluated the impact of agricultural and mining practices on surface water quality of Central Valley steams. Represented municipal water agencies on several federal and state advisory committees tasked with gathering and assessing relevant technical information, developing work plans, and providing oversight of technical work to investigate toxicity issues in the watershed.

AIR QUALITY/PUBLIC HEALTH

- Prepared or reviewed the air quality and public health sections of hundreds of EIRs and EISs on a wide range of industrial, commercial and residential projects.
- Prepared or reviewed hundreds of NSR and PSD permits for a wide range of industrial facilities.
- Designed, implemented, and directed a 2-year-long community air quality monitoring program to assure that residents downwind of a petroleum-contaminated site were not impacted during remediation of petroleum-contaminated soils. The program included real-time monitoring of particulates, diesel exhaust, and BTEX and time integrated monitoring for over 100 chemicals.
- Designed, implemented, and directed a 5-year long source, industrial hygiene, and ambient monitoring program to characterize air emissions, employee exposure, and downwind environmental impacts of a first-generation shale oil plant. The program included stack monitoring of heaters, boilers, incinerators, sulfur recovery units, rock crushers, API separator vents, and wastewater pond fugitives for arsenic, cadmium, chlorine, chromium, mercury, 15 organic indicators (e.g., quinoline, pyrrole, benzo(a)pyrene, thiophene, benzene), sulfur gases, hydrogen cyanide, and ammonia. In many cases, new methods had to be developed or existing methods modified to accommodate the complex matrices of shale plant gases.
- Conducted investigations on the impact of diesel exhaust from truck traffic from a wide range of facilities including mines, large retail centers, light industrial uses, and sports facilities. Conducted traffic surveys, continuously monitored diesel exhaust using an aethalometer, and prepared health risk assessments using resulting data.
- Conducted indoor air quality investigations to assess exposure to natural gas leaks, pesticides, molds and fungi, soil gas from subsurface contamination, and outgasing of carpets, drapes, furniture and construction materials. Prepared health risk assessments using collected data.
- Prepared health risk assessments, emission inventories, air quality analyses, and assisted in the permitting of over 70 1 to 2 MW emergency diesel generators.
- Prepare over 100 health risk assessments, endangerment assessments, and other health-based studies for a wide range of industrial facilities.
- Developed methods to monitor trace elements in gas streams, including a continuous real-time monitor based on the Zeeman atomic absorption spectrometer, to continuously measure mercury and other elements.
- Performed nuisance investigations (odor, noise, dust, smoke, indoor air quality, soil contamination) for businesses, industrial facilities, and residences located proximate to and downwind of pollution sources.

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Assessment, Control and Remediation of LNAPL Contaminated Sites, API and USEPA, 9/94
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Design of Gas Turbine Combined Cycle and Cogeneration Systems, Thermoflow, 12/00
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Noise Exposure Assessment: Sampling Strategy and Data Acquisition, AIHA PDC 205, 6/02
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EXHIBIT C

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February 27, 2024

VIA U.S. Mail, Email, and Hand Delivery

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Re: **Agenda Item No. 2: Consideration of Resolution Granting a Use Permit, Design Review, and Variance and Adoption of an Initial Study / Mitigated Negative Declaration and Mitigation Monitoring Reporting Program (for the Linde Inc., Oakstone Northern California Expansion Project, AP-23-0046 (UP, DR, VA)**

Dear Chair Popova, Planning Commissioners, Ms. Evenson, Mr. Brenyah-Addow and Mr. Funderburg:

We write on behalf of Safe Fuel and Energy Resources California ("SAFER CA") regarding Agenda Item No. 2, the Oakstone Northern California Expansion Project ("Project") proposed by Linde, Inc. ("Applicant"). SAFER CA objects to the City of Pittsburg ("City") Planning Commission's proposed approval of the Project due to the City's continuing failure to comply with the California Environmental Quality Act ("CEQA").[1] The Initial Study / Mitigated Negative Declaration ("IS/MND") prepared for the proposed Project fails as an informational document under CEQA and the City lacks substantial evidence to conclude that the Project's

[1] Pub. Resources Code § 21000 *et seq*.

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potentially significant impacts would be adequately mitigated.[2] To the contrary, substantial evidence supports a fair argument that the proposed Project may cause potentially significant, unmitigated impacts on public health and air quality, and from hazards and hazardous materials, which requires preparation of an environmental impact report ("EIR"). The Staff Report and responses to comments fail to resolve these issues.[3]

Given the ongoing deficiencies with the IS/MND as described below, SAFER CA respectfully requests that the Planning Commission continue the public hearing and direct City staff to prepare an EIR that fully discloses, analyzes, and mitigates the Project's potentially significant environmental impacts before considering Project approval.

I. INTRODUCTION

The Applicant proposes to expand their existing industrial gas facility located at 2000 Loveridge Road, Pittsburg, California 94565 (APN No. 073-190-035).[4] The expanded facility would increase current production of liquid nitrogen, oxygen, and argon to be distributed via truck to the Bay Area, Central Valley, and nearby states by installing a new air separation unit system.[5] The proposed expansion includes construction and operation of a second centralized atmospheric separation plant, which would include air compressors, pre-purifier vessels, an industrial class chiller, a distillation tower containing heat exchangers, booster compressor/turbine sets, and cryogenic distillation columns, three individual storage tanks, interconnecting piping, and a cooling tower.[6] The expansion would also require electric substation upgrades to distribute the large amount electricity needed to operate the facility.[7]

The entire plant is outdoors, and no buildings are proposed for the Project.[8] Construction of the Project would occur over approximately 13 months, including

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[2] City of Pittsburg, Oakstone Northern California Expansion Project: Draft Initial Study / Mitigated Negative Declaration (Oct. 2023) (hereinafter "IS/MND"), *available at* https://www.pittsburgca.gov/home/showpublisheddocument/15486/638328001708630000.
[3] City of Pittsburg, Planning Commission Staff Report, Item: Consideration of a Resolution Granting a Use Permit, Design Review and Variance and Adoption of an Initial Study Mitigated Negative Declaration and Mitigation Monitoring Reporting Program for the Linde Inc., Oakstone Northern California Expansion Project, AP 23-0046 (UP, DR, VA) (Feb. 27, 2024) (hereinafter "Staff Report").
[4] IS/MND at p. 1.
[5] *Ibid*.
[6] *Id*. at p. 2.
[7] *Id*. at p. 8.
[8] *Id*. at p. 2.

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site preparation, grading, onsite utilities, paving, and equipment installation.[9] The Applicant is seeking approval of the IS/MND, a use permit, design review, and variance from the Planning Commission.[10]

We reviewed the IS/MND, available supporting documents, and responses to comments with the assistance of our technical expert, Phyllis Fox, Ph.D., P.E., whose comments are attached as Exhibit A.[11] Based on our review, we conclude the document fails to comply with CEQA because the IS/MND does not provide an adequate discussion of the environmental setting, obscuring the analysis of environmental impacts. The IS/MND also fails to disclose, analyze, and mitigate all potentially significant adverse impacts to public health, air quality, hazards and hazardous materials that could result from construction and operation of the Project. There is substantial evidence supporting a fair argument that the Project may result in potentially significant, unmitigated impacts.

To correct these flaws, the City must prepare an EIR that fully discloses, analyzes, and mitigates the Project's potentially significant impacts and considers alternatives to the Project.

II. STATEMENT OF INTEREST

SAFER CA advocates for safe processes at California's industrial facilities to protect the health, safety, standard of life and economic interests of its members. For this reason, SAFER CA has a strong interest in enforcing environmental laws, such as CEQA, which require the disclosure of potential environmental impacts of, and ensure safe operations and processes for, California's industrial projects. Failure to adequately address the environmental impacts of such projects poses a substantial threat to the environment, worker health, surrounding communities and the local economy.

The members represented by the participants in SAFER CA live, work, recreate and raise their families in Contra Costa County and the City. Accordingly, these people would be directly affected by the Project's adverse environmental impacts. The members of SAFER CA's participating labor organizations could also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants, and other health and safety hazards, that exist onsite.

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[9] *Id*. at p. 9.
[10] *Ibid*.
[11] **Exhibit A**, Phyllis Fox, Comments on the Initial Study/Mitigated Negative Declaration for the Oakstone Northern California Expansion Project (Feb. 26, 2024) (hereinafter "Fox Comments").

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SAFER CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits while minimizing adverse environmental and other impacts on local communities. SAFER CA and its members are concerned about projects like this one that risk serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[12] It is in this spirit we offer these comments.

III. LEGAL STANDARD

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR, except in limited circumstances.[13] The purpose of an EIR "is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government."[14]

The presumption in favor of preparing an EIR, rather than a mitigated negative declaration, is reflected in the "fair argument" standard. Under that standard, the lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that the project may have a significant effect on the environment.[15] The fair argument standard creates a "low threshold" of favoring environmental review through an EIR, rather than through a mitigated negative declaration.

"Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[16] "[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is

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[12] Pub. Resources Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.
[13] Pub. Resources Code § 21000; 14 Cal. Code Regs. ("CEQA Guidelines") § 15002.
[14] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).
[15] Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal*. (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 1501-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.Appl.4th 1597, 1601-02.
[16] CEQA Guidelines § 15384(a).

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disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR."[17]

As detailed below, substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to air quality, public health, and from hazards and hazardous materials. The City must prepare an EIR that analyzes, discloses, and mitigates these impacts and considers less environmentally damaging alternatives before the Project can be approved.

IV. THE IS/MND FAILS TO ADEQUATELY DESCRIBE THE AMBIENT AIR QUALITY

An initial study must include a description of the project's environmental setting.[18] The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.[19] "The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts."[20]

"[P]reparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can."[21] "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."[22] An agency is not allowed to hide behind its own failure to gather relevant data.[23]

The IS/MND provides a summary of annual monitoring data from 2019 to 2021.[24] The data was obtained from a monitoring station located at 2975 Treat Boulevard, Concord, California, approximately 10 miles southwest of the Project

[17] *Id.* § 15064(g).
[18] *Id.* § 15063(d)(2).
[19] *Id.* § 15125(a); *see also Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 38 Cal. 4th 310, 320-21 (CEQA Guidelines § 15125(a) applies to an initial study).
[20] CEQA Guidelines § 15125(a).
[21] *Id.* § 15144 (emphasis added).
[22] *Id.* § 15145 (emphasis added).
[23] *City of Redlands v. County of San Bernardino (*2002) 96 Cal.App.4th 398, 408.
[24] IS/MND at p. 17.

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site.[25] This station only measures levels of ozone, particulate matter less than 10 micrometers ("PM_{10}"), particulate matter less than 2.5 micrometers ("$PM_{2.5}$"), and nitrogen dioxide ("NO_2").[26]

As a threshold matter, the monitoring station in Concord is not representative of the ambient air quality conditions at the Project site. Data from this monitoring station suffers from similar flaws to the meteorological data utilized as part of the Project's health risk assessment ("HRA"). The HRA relies on meteorological data from the Concord-Buchanan Field Airport monitoring station.[27] As Dr. Fox explains, the airport monitoring station, which is also approximately 10 miles to the southwest of the Project site, has an entirely different wind pattern than monitoring stations which are in closer proximity to the Project site.[28] In addition, the intervening terrain between Pittsburg and Concord creates significant discrepancies between the ambient air quality at Project site and the monitoring stations.

An accurate ambient air quality baseline is critical because air quality can affect the Project's safe operation. The air separation facility will pull outdoor ambient air into the main compressor.[29] Impurities and contaminants in the air other than nitrogen, oxygen, and argon are filtered out and returned to the air.[30] Nitrogen, oxygen, and argon are then physically separated by operating three internal columns at different pressures and temperature and turned in liquid.[31]

Air contains many trace impurities that can cause plugging, corrosion, or which are reactive, leading to accidents.[32] Many of these contaminants of concern are present at the Project site due to the proximity of the proposed facility to industrial facilities that emit pollutants.[33] Yet the IS/MND fails to disclose the identities or quantities of any potential contaminants present in the ambient air that could potentially impact safe operation of the Project's air separation facility.[34]

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[25] *Ibid.*
[26] *Ibid.*
[27] *Id.*, appen B. at p. 9.
[28] Fox Comments at pp. 12-14.
[29] Linde, Project Oakstone Northern California Expansion Project: Project Narrative (Jan. 18, 2023) p. 3 (hereinafter "Project Narrative").
[30] *Ibid.*
[31] *Ibid.*
[32] Fox Comments at pp. 31-34.
[33] *Ibid.*
[34] IS/MND at p. 17.

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This significant omission from the IS/MND prevents decisionmakers and the public from understanding the potential operational hazards associated with the proposed Project. The City must prepare an EIR which accurately discloses the ambient air quality to ensure all potential hazards are adequately disclosed, analyzed, and mitigated.

V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT'S OPERATIONAL AIR QUALITY IMPACTS ARE SIGNIFICANT

The IS/MND concludes operational air quality impacts are less than significant.[35] However, the IS/MND fails to analyze indirect air quality impacts from electricity usage. Substantial evidence supports a fair argument that the Project would result in significant air quality impacts when this emission source is considered. Moreover, mitigation measures are available to reduce these significant impacts which must be considered in an EIR.

A. The IS/MND Fails to Analyze Indirect Operational Emissions

The IS/MND concludes operational air quality impacts would be less than significant because criteria air pollutant ("CAP") emissions from motor vehicles and other minor emission sources such as cleaning chemicals/solvents would not exceed the Bay Area Air Quality Management District ("BAAQMD") significance thresholds for reactive organic compounds ("ROGs"), nitrogen oxides ("NOx"), PM_{10}, and $PM_{2.5}$.[36] However, the IS/MND omits a key emission source of indirect emissions: electricity usage.[37]

The IS/MND discloses that the air separation process will consume significant amounts of electricity.[38] Electricity used to support the Project will be supplied by Pacific Gas & Electric ("PG&E").[39] As of 2021, 8.9% of power supplied by PG&E originated from natural gas.[40] Gas-fired power plants emit significant amounts of greenhouse gasses ("GHGs"), criteria pollutants, and hazardous air pollutants ("HAPs").[41]

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[35] *Id*. at p. 22.
[36] *Ibid*.
[37] Fox Comments at pp. 6-9.
[38] IS/MND at p. 8.
[39] *Ibid*.
[40] *Id*., appen. A, Pacific Gas & Electric Company, 2021 Power Content Label (2021).
[41] Fox Comments at pp. 6-7.

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CEQA requires an analysis of indirect effects that are reasonably foreseeable and caused by the project but occur at a different time or place. CEQA Guidelines § 15064 states: "An indirect physical change in the environment is a physical change … which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect change in the environment." Indirect or secondary effects may include related effects on air.[42]

Here, the IS/MND fails to analyze whether CAP emissions associated with the Project's electricity usage are significant. The air quality model used to estimate emissions does not include CAP emissions from electricity supplied to the Project.[43] Nor are CAP emissions from electricity usage estimated in the IS/MND.[44] This is a major omission in the City's air quality analysis.

Indirect emissions from the Project's electricity usage are reasonably foreseeable and quantifiable. This is demonstrated by the IS/MND's detailed discussion of the Project's GHG emissions generated by electricity usage. The IS/MND acknowledges that long-term operational GHG emissions would be generated by electricity consumption, mobile sources, and water/wastewater conveyance.[45] It then estimates GHG emissions for electricity usage by multiplying the amount of CO_2e per megawatt hour generated by the mix of PG&E-owned generation and power purchases by the Project's annual electricity demand.[46] The City could have, but did not, conduct a similar analysis for ROGs, NOx, PM_{10}, or $PM_{2.5}$.

CEQA requires the City to analyze whether the Project would result in violations of air quality standards and thresholds, including whether the Project would result in a net increase of non-attainment criteria pollutants.[47] Because the IS/MND fails to analyze indirect operational CAP emissions, the City lacks substantial evidence to support the conclusion that operational air quality impacts are less than significant. The City must prepare an EIR that discloses, analyzes, and mitigates the Project's potentially significant operational air quality impacts.

[42] CEQA Guidelines § 15358(a)(2).
[43] *See generally* IS/MND, appen A.
[44] *Id*. at p. 22.
[45] *Id*. at p. 52.
[46] *Ibid*.
[47] CEQA Appendix G, Section III(a)-(c).

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B. Substantial Evidence Supports a Fair Argument that the Project's Operational Emissions Are Significant

When air pollutant emissions from the Project's electricity usage are calculated, the impact is significant.[48] For example, NOx and ROG emissions from gas-fired sources supplying electricity to the Project would exceed the applicable significance thresholds.[49]

Dr. Fox estimates electricity usage emissions by using the power mix information contained in PG&E's 2021 Power Content Label,[50] which the IS/MND relies upon to estimate GHG emissions.[51] Dr. Fox calculates that electricity usage during the first year of Project operation would generate approximately 219 pounds per hour for both NOx and ROGs.[52] This far exceeds the BAAQMD threshold of 54 pounds per day for these pollutants.[53]

Moreover, even as the amount of natural gas decreases from PG&E's portfolio, NOx and ROG emissions will remain significant.[54] Dr. Fox estimates that electricity usage during the seventh year of operation would generate approximately 90 pounds per hour for both NOx and ROGs, assuming the amount of natural gas in PG&E's portfolio decreases by a factor of 10.[55] Again, this far exceeds the BAAQMD threshold of 54 pounds per day for these pollutants.

Dr. Fox also estimates electricity usage emission using PG&'E's more recent 2022 Power Content Label.[56] Dr. Fox concludes that electricity usage during the first year of Project operation would generate approximately 118 pounds per hour for both NOx and ROGs based on the updated power mix.[57] Again, this far exceeds the BAAQMD threshold of 54 pounds per day for these pollutants.

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[48] Fox Comments at pp. 7-9.
[49] *Ibid.*
[50] *Id.* at pp. 8-9.
[51] *Ibid.*
[52] *Ibid.*
[53] Bay Area Air Quality Management District, California Environmental Quality Act: Air Quality Guidelines (Apr. 20, 2023) p. 3-4 (hereinafter "BAAQMD CEQA Guidelines"), *available at* https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-3-thresholds_final_v2-pdf.pdf?rev=a976830cce0c4a6bb624b020f72d25b3&sc_lang=en.
[54] Fox Comments at p. 9.
[55] *Ibid.*
[56] *Ibid.*
[57] *Ibid.*

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Dr. Fox's comments constitute substantial evidence in support of a fair argument that the Project's operational emissions are significant and unmitigated. Therefore, the City must prepare an EIR that discloses, analyzes, and mitigates the Project's significant NOx and ROG emissions.

C. Mitigation Measures Are Available to Reduce Significant NOx and ROG Emissions

Even though NOx and ROG emissions are primarily due to electricity generated by gas-fired power plants that are not owned by the Applicant, on-site or off-site mitigation at other sources can be used to reduce significant emissions from electricity usage.[58] For example, Dr. Fox recommends adopting a voluntary emission reduction agreement ("VERA").[59] With a VERA, a project proponent provides pound-for-pound mitigation of air emission increases through a process that funds and implements emissions reduction projects administered through air district incentive programs.[60] This approach has been found legally sufficient.[61]

The IS/MND could also impose mitigation requiring that the applicant enroll in renewable energy programs offered by PG&E which do not utilize natural gas resources. For example, while not currently active, PG&E previously offered customers the option to enroll in the Solar Choice program, allowing customers to elect to purchase solar energy to match either 50% or 100% of their energy use.[62] If a customer is enrolled in the 100% Solar Choice program, then 0% of their electricity would be supplied by gas-fired power plants.[63]

The City must prepare an EIR which analyzes the feasibility of implementing these mitigation measures to reduce significant operational air quality impacts.

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[58] *Id*. at p. 10.
[59] *Ibid*.
[60] *Ibid*.
[61] *California Building Industry Assn. v. San Joaquin Valley APCD*, Fresno County Case No. 06 CECG 02100 DS13*; National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*; Federal District Court, Eastern District of California, Case No. 1:07-CV-00820-LJO-DLB; and *Center for Biological Diversity et al. v Kern County*, Fifth Appellate District, Case No. F061908.
[62] Pacific Gas & Electric, Community Renewable Programs, Solar Choice, https://www.pge.com/en/clean-energy/solar/community-renewable-programs.html (last visited Feb. 27, 2024).
[63] IS/MND, appen. A, Pacific Gas & Electric Company, 2021 Power Content Label (2021).

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VI. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT HEALTH RISKS FROM DIESEL PARTICULATE MATTER EMISSIONS ARE SIGNIFICANT

The IS/MND concludes the Project's health risks are less than significant.[64] The IS/MND basis its conclusion on a HRA which evaluates potential health risks associated with exposure of toxic air contaminants ("TACs"), including diesel particulate matter ("DPM"), generated during Project construction and operation.[65]

TACs are generally evaluated by separating them into carcinogens and noncarcinogens based on the nature of the physiological effects associated with exposure to the pollutant.[66] Cancer risk is expressed as excess cancer cases per one million exposed individuals, typically over a lifetime of exposure.[67] Carcinogenic substances differ in that reference exposure levels ("RELs") have been developed to determine the level of exposure below which no adverse health impacts is believed to occur.[68] Acute and chronic exposure to noncarcinogens is expressed as a hazard index, which is the ratio of expected exposure levels to an acceptable REL.[69]

BAAQMD has established project-level thresholds to address the potential for an individual project to significantly elevate existing risks or hazards.[70] A project will have a cumulatively considerable impact if it results in (1) an excess cancer risk level of more than 10 in a million or (2) a non-cancer hazard index greater than 1.0 (acute or chronic).[71] Based on the results of the HRA, the IS/MND concludes that the Project would not expose nearby sensitive receptors to significant health risks.[72]

However, the HRA suffers from a fatal flaw by relying on meteorological data that is not representative of the Project site. As a result, the HRA severely underestimates health risk impact. Therefore, the City lacks substantial evidence to conclude health risk impacts are less than significant. When representative meteorological data is utilized, substantial evidence supports a fair argument that

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[64] IS/MND at p. 23.
[65] IS/MND at p. 23; *id*., appen. B.
[66] BAAQMD CEQA Guidelines at p. 5-12, *available at* https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-5-project-air-quality-impacts_final-pdf.pdf?rev=de582fe349e545989239cbbc0d62c37a.
[67] *Ibid*.
[68] *Ibid*.
[69] *Ibid*.
[70] *Id*. at p. 5-14.
[71] *Ibid*.
[72] IS/MND at p. 24.

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construction DPM emissions would expose nearby sensitive receptors and construction workers to significant, unmitigated health risks.

A. The IS/MND Lacks Substantial Evidence to Conclude Health Risks Are Less Than Significant Because It Relies on Clearly Erroneous Meteorological Data

Meteorology (e.g., prevailing wind direction) plays an important role in determining the downwind concentration and the location of the greatest affected receptor.[73] Refined models use measured meteorological data collected from stations to simulate the transport and dispersion of air pollutants.[74] The most appropriate meteorological station for a project matches the meteorological conditions (wind speeds and directions), terrain, and surrounding land use of the project.[75]

The HRA relies on metrological data from the Concord-Buchanan Field Airport monitoring station, which is approximately 10 miles away from the Project site.[76] It explains that this station was "selected as being the most representative meteorology based on proximity."[77] This is wholly inaccurate.

BAAQMD maintains AEROMOD-ready meteorological data sets for 35 sites in the Bay Area.[78] Three of these stations are closer to the Project site than the airport monitoring station.[79] In fact, the closest monitoring station at Dow Chemical is in the City, approximately 1.1 miles from the Project site.[80] Despite the availability meteorological data from multiple monitoring stations that are in closer proximity to the Project site, the HRA selected a monitoring station over 10 miles away with an entirely different wind pattern.[81]

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[73] Bay Area Air Quality Management District, Air Quality Guidelines Appendix E: Recommended Methods for Screening and Modeling Local Risks and Hazards (2022) p. E-35 (hereinafter "BAAQMD HRA Guidelines"), available at https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/appendix-e-recommended-methods-for-screening-and-modeling-local-risks-and-hazards_final-pdf.pdf?rev=b8917a27345a4a629fc18fc8650951e4&sc_lang=en.
[74] *Id*. at p. E-37.
[75] *Id*. at p. E-38.
[76] IS/MND, appen. B at p. 9.
[77] *Ibid*.
[78] BAAQMD HRA Guidelines at p. E-37; *see also* Bay Area Air Quality Management District, AERMOD-Ready Meteorological Data, https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools/ceqa-modeling-data (last updated Nov. 15, 2022).
[79] Fox Comments at p. 12.
[80] *Ibid*.
[81] *Id*. at pp. 12-14.

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BAAQMD recommends that HRAs note any differences or similarities in terrain elevation between the project and the metrological sites, especially if there are any barriers separating the two locations.[82] But the HRA does not to explain the significant differences in terrain elevation or land uses between the Project site and the airport monitoring station, including an intervening mountain range.[83] When there are significant differences in terrain elevation or land use between the project and the closest meteorological tower, BAAQMD recommends that the air dispersion model be run multiple times using meteorological data from all nearby stations.[84] The HRA uses only one monitoring station, over 10 miles away from the Project site with entirely different meteorological conditions, terrain, and surrounding land uses, thus failing to provide accurate data or follow the feasible methodology recommended by BAAQMD.[85]

Substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[86] Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,[87] but it does not include argument, speculation, unsubstantiated opinion or narrative, *evidence which is clearly erroneous or inaccurate*, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.[88]

Because the HRA used meteorological data that is not representative of the Project site, the HRA severely underestimates the Project's health risks.[89] As a result, the IS/MND lacks substantial evidence to support its finding that the Project's health risks are less than significant. The City must prepare an EIR that discloses, analyzes, and mitigates the Project's significant health risks.

B. Substantial Evidence Supports a Fair Argument that Cancer Risks from Construction DPM Emissions Are Significant

A revised HRA was developed using BAAQMD meteorological data from the Dow Chemical monitoring station, with all other assumptions remaining the same

[82] BAAQMD HRA Guidelines at p. E-38.
[83] Fox Comments at p. 12.
[84] BAAQMD HRA Guidelines at p. E-38.
[85] Fox Comments at p. 12-14.
[86] CEQA Guidelines § 15384(a).
[87] *Id*. § 15384(b).
[88] *Id*. § 15384(a) (emphasis added).
[89] Fox Comments at pp. 11-23.

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as those in the HRA prepared for the IS/MND.[90] Dr. Fox analyzed the impact of increased cancer risk on nearby receptors caused by exposure to DPM emissions during Project construction.[91] Based on the results of the revised HRA, Dr. Fox concludes that the 2-year construction cancer risk exceeds BAAQMD's threshold of 10 at several off-site locations, including:

- Diamond Hillside Apartments (20.2 cancers per million);
- Edgewater Apartments (17.7 cancers per million);
- Martin Luther King Jr. Junior High School (11 cancers per million); and
- Delta Oaks Presbyterian Church.[92]

Because the cancer risk is significant, Dr. Fox recommends implementation of Tier 4 Final construction equipment to mitigate construction DPM emissions.[93]

Dr. Fox's comments constitute substantial evidence in support of a fair argument that the proposed Project would have a significant cancer risk impact. As a result, the City must prepare an EIR which discloses, analyzes, and mitigates the Project's significant impact.

C. Substantial Evidence Supports a Fair Argument that Chronic Hazard Risks from Construction DPM Emissions Are Significant

Dr. Fox analyzed the impact of increased chronic non-carcinogenic health impacts on nearby receptors caused by exposure to DPM emissions during Project construction.[94] Based on the results of the revised HRA, Dr. Fox concludes that the chronic non-carcinogenic hazard impact exceeds BAAQMD's threshold of 1.0 over a large area surrounding the Project site, including at nearby commercial areas which contain off-site workers.[95] Because the chronic non-cancer risk is significant, Dr. Fox recommends implementation of Tier 4 Final construction equipment to mitigate construction DPM emissions.[96]

Dr. Fox's comments constitute substantial evidence in support of a fair argument that the proposed Project would have a significant chronic health risk impact. As a result, the City must prepare an EIR which discloses, analyzes, and mitigates the Project's significant impact.

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[90] *Id*. at pp. 15-23.
[91] *Id*. at pp. 15-18.
[92] *Id*. at pp. 15-18.
[93] *Id*. at p. 17.
[94] *Id*. at p. 19.
[95] *Ibid*.
[96] *Ibid*.

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D. The IS/MND Fails to Analyze Acute Hazard Risks from Construction DPM Emissions

An initial study must be prepared with a sufficient degree of analysis to provide decisionmakers with the information needed to make an intelligent judgment concerning a project's environmental impacts.[97] An EIR should provide a reasonable, good faith disclosure and analysis of the project's environmental impacts.[98] An impact analysis may be based on informed judgments by experts.[99]

While the IS/MND discusses chronic non-carcinogenic hazard impacts, it does not discuss or analyze acute non-carcinogenic hazard impacts.[100] In fact, the Staff Report admits that "acute DPM impacts were not evaluated in the Health Risk Assessment and IS/MND."[101] Diesel exhaust can have immediate (acute) health effects, including inflammation of the lungs.[102] The IS/MND does not explain why acute hazard impacts of DPM emissions are not assessed, but the Staff Report argues that an acute analysis is not required because the California Office of Environmental Health Hazard Assessment ("OEHHA") does not have an acute REL for diesel exhaust.[103] The lack of an acute REL published by OEHHA does not relieve City from its obligation to evaluate the Project's impacts. [104] If evidence is submitted tending to show that the environmental impact may be significant despite a significance standard, the agency must address that evidence.[105]

OEHHA last evaluated the health impacts of DPM in 1998.[106] Since that time, substantial additional research has been conducted on acute health impacts of DPM.[107] Although the California agencies have not established an acute REL for

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[97] CEQA Guidelines § 15151; *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356.
[98] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal* (1988) 47 Cal.3d 376, 392.
[99] *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233.
[100] IS/MND at pp. 23-24; *id*., appen. B at p. 12-13.
[101] Staff Report at p. 8.
[102] Fox Comments at pp. 11-12, 20-23; *see also* Office of Environmental Health Hazard Assessment and The American Lung Association of California, Health Effects of Diesel Exhaust (undated), *available at* https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.
[103] Staff Report at p. 13.
[104] CEQA Guidelines § 15064(b)(2).
[105] *Protect the Historic Andor Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.
[106] Fox Comments at pp. 20-23.
[107] *Id*. at pp. 20-21.

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diesel exhaust, other agencies have.[108] For example, Health Canada has recommended an acute REL of 10 μg/m^3 for diesel exhaust to protect against adverse effects on the respiratory system.[109]

Health Canada is a Canadian federal department responsible for helping Canadians maintain and improve their health.[110] Members of the department's Fuel Assessment Section prepared a report on human health risk assessment for diesel exhaust detailing the justifications for establishing an acute REL for diesel exhaust.[111] In setting an acute REL of 10 μg/m^3, the authors considered evidence from scientific studies evaluating the impacts of diesel emissions on human health.[112]

Reasonable estimates and assumptions may be used in an impact analysis.[113] The Health Canada report provides substantial evidence to establish an acute REL for DPM impacts and supports a determination about the significance of non-carcinogenic acute hazards associated with construction DPM emissions. Because the IS/MND fails to analyze acute hazard risks from construction DPM emissions, the City lacks substantial evidence to conclude that health risk impacts are less than significant. The City must prepare an EIR that discloses, analyzes, and mitigates the Project's potentially significant acute hazard impacts.

E. Substantial Evidence Supports a Fair Argument that Acute Hazard Risks from Construction DPM Emissions Are Significant

Dr. Fox analyzed the impact of increased acute non-carcinogenic health impacts on nearby receptors caused by exposure to DPM emissions during Project construction.[114] Based on the results of the revised HRA, Dr. Fox concludes that the acute non-carcinogenic hazard impact exceeds BAAQMD's threshold of 1.0 over a large area surrounding the Project site, including nearby schools, residences and commercial areas, when compared to the acute REL recommended by the Canadian

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[108] *Id*. at p. 21.
[109] *Id*. at p. 21; *see also* Health Canada, Human Health Risk Assessment for Diesel Exhaust (Mar. 2016) p. 11 (hereinafter "Health Canada Report"), *available at* https://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.
[110] Health Canada Report at p. i; Government of Canada, About Health Canada, https://www.canada.ca/en/health-canada/corporate/about-health-canada.html (last modified Feb. 27, 2014).
[111] *Id*. at pp. 5-11.
[112] *Id*. at p. 11.
[113] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 392, 410.
[114] Fox Comments at p. 20-21.

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government.[115] Because the acute hazard risk is significant, Dr. Fox recommends implementation of Tier 4 Final construction equipment to mitigate construction DPM emissions.[116]

Dr. Fox's comments constitute substantial evidence in support of a fair argument that the proposed Project would have a significant acute health risk impact. As a result, the City must prepare an EIR which discloses, analyzes, and mitigates the Project's significant impact.

F. The IS/MND Fails to Evaluate the Impacts of Construction DPM Emissions on Construction Workers

Construction workers have the greatest exposure to construction DPM emissions because they operate and maintain the equipment that emits these harmful pollutants.[117] The IS/MND claims that BAAQMD does not consider on-site workers to be sensitive receptors because all employers must follow Occupational Safety and Health Administration ("OSHA") regulations.[118] The Staff Report reiterates this assertion.[119] Neither the IS/MND, nor the Staff Report provide any citation in support of this assertion. In any event, BAAQMD does not state that on-site workers should not be classified as sensitive receptors. Outdated guidance states that BAAQMD's methodology for screening and modeling local risks and hazards does not address on-site worker exposures based on the assumption that OSHA regulations ensure the health and well-being of the on-site workforce.[120]

However, OSHA does not regulate worker exposure to DPM.[121] While OSHA has permissible exposure limits ("PELs") for some components of diesel exhaust, it does not have a permissible exposure limit for diesel exhaust.[122] Similarly,

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[115] *Id*. at p. 21.
[116] *Id*. at p. 17.
[117] *Id*. at p. 21.
[118] IS/MND at p. 19.
[119] Staff Report at p. 8.
[120] Bay Area Air Quality Management District, Recommended Methods for Screening and Modeling Local Risks and Hazards (May 2011) p. 12, *available at* https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/baaqmd-modeling-approach.pdf.
[121] Occupational Safety and Health Administration, Diesel Exhaust, https://www.osha.gov/diesel-exhaust (last visited Feb. 26, 2024).
[122] Occupational Safety and Health Administration, Hazard Alert: Diesel Exhaust/Diesel Particulate Matter (Jan. 2013), *available at* https://www.osha.gov/sites/default/files/publications/OSHA-3590.pdf; Occupational Safety and Health Administration, Diesel Exhaust, https://www.osha.gov/diesel-exhaust (last visited Jan. 10, 2024) ("OSHA has not established a standard for diesel exhaust as a unique hazard, however exposure to various components for diesel exhaust are addressed in specific OSHA standards for general industry").

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California's Division of Occupational Health and Safety ("CalOSHA") does not regulate worker exposure to DPM.[123] While CalOSHA has PELs for some components of diesel exhaust, there is no PEL "either for diesel exhaust itself, or for the tiny particles that are probably the most important part of diesel exhaust."[124]

In the absence of OSHA regulations, the California Department of Public Health's Hazard Evaluation System and Information Service ("HESIS") recommends that workplace exposure not exceed 20 μg/m^3 of diesel exhaust particles.[125] HESIS's recommendation is based on the diesel exhaust risk assessment performed by OEHHA.[126] It is also consistent with the recommendations made by the American Conference of Governmental Industrial Hygienists.[127] HESIS's recommendation constitutes substantial evidence to establish an acute REL for acceptable workplace exposure to diesel exhaust, and supports a determination about the significance of DPM emissions on construction workers.

Because the IS/MND fails to evaluate the impacts of construction DPM emissions on construction workers, the City lacks substantial evidence to conclude that the health risks are less than significant. The City must prepare an EIR which discloses, analyzes, and mitigates the Project's significant health risks.

G. Substantial Evidence Supports a Fair Argument that Acute Hazard Risks for Construction Workers from Construction DPM Emissions Are Significant

The revised HRA demonstrates that all on-site workers would be exposed to more than 50 μg/m^3 of diesel exhaust particles during Project construction.[128] Therefore, the acute non-carcinogenic hazard impacts to all on-site construction workers are at least 2.5,[129] which exceed BAAQMD's threshold of 1.0. Even if the BAAQMD threshold does not apply, as the Staff Report claims,[130] the revised HRA

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[123] Hazard Evaluation System & Information Service, Diesel Engine Exhaust (Nov. 2002) p. 4 (hereinafter "HESIS Diesel Engine Exhaust"), *available at* https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/OHB/HESIS/CDPH%20Document%20Library/diesel.pdf

[124] *Ibid.*

[125] *Ibid.*; *see also* California Air Resources Board, Staff Report: Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant (June 1998) appen. B, *available at* https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/staffrpt.pdf.

[126] HESIS Diesel Engine Exhaust at p. 4.

[127] *Ibid.*

[128] Fox Comments at pp. 20-23.

[129] 50 μg/m^3 (acute exposure) divided by 20 μg/m^3 (REL) = 2.5 hazard index.

[130] Staff Report at p. 8.

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demonstrates that all on-site workers would be exposed to acute concentrations of diesel exhaust particles in amounts that exceed the workplace exposure limit recommended by HESIS.[131] Therefore, Dr. Fox's comments constitute substantial evidence in support of a fair argument that the proposed Project would have a significant acute health risk impact to construction workers. As a result, the City must prepare an EIR which discloses, analyzes, and mitigates the Project's significant impact.

VII. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT IMPACTS FROM OPERATIONAL HAZARDS AND HAZARDOUS MATERIALS ARE SIGNIFICANT

The IS/MND concludes the Project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.[132] The IS/MND also concludes that the Project would not create a significant hazard to the public or the environment through a reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.[133] However, the IS/MND provides only a conclusory discussion of potential hazard impacts and fails to disclose or analyze several operational hazards. As discussed below, there is substantial evidence supporting a fair argument that operational hazards are significant, and mitigation measures are available to reduce these impacts.

A. The IS /MND Fails to Analyze Operational Hazards

Air separation plants present potential hazards to both on-site workers and off-site parties.[134] These hazards include electricity, gasses under pressure, very low temperatures, the ability of oxygen to accelerate combustion, ambient air quality, the asphyxiant properties of nitrogen, argon and other rare gases, and the harmful effects of breathing high concentrations of oxygen.[135] Dr. Fox details the risks and consequences posed by operation of air separation facilities.[136]

The IS/MND is silent with respect to these risks and the measures that will be implemented to protect on-site workers, nearby members of the public (including residents and students), and the environment.[137] In fact, the IS/MND does not

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[131] HESIS Diesel Engine Exhaust at p. 4.
[132] IS/MND at p. 57.
[133] *Ibid*.
[134] Fox Comments at pp. 23-37.
[135] *Id*. at pp. 23-24.
[136] *Id*. at pp. 24-25.
[137] *Id*. at p. 26-29.

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include a hazard and operations ("HAZOP") analysis.[138] A HAZOP is a formal structured process that ensures all aspects of a plant are addressed.[139] The Asia Industrial Gases Association explains:

> Air separation plant safety begins with a safety evaluation of the proposed plant site and the surrounding area. Generally, air separation plants are located in or near industrial areas as an adjunct to other industrial or chemical plants. A quantified risk assessment should be performed when plants are sited in proximity of hydrocarbon, corrosive, toxic, or other hazardous chemical sources. A plant installation should conform to the applicable industry consensus standards and shall adhere to all applicable local, state, provincial/territorial, and federal regulations. The plant operation should be reviewed for compatibility with the surrounding area. For example, the potential hazard of the cooling tower plume or cryogenic fog to nearby plants or vehicular traffic should be recognized. Adequate space should be provided for cryogenic liquid disposal.[140]

Because the IS/MND fails to disclose and analyze all operational hazards, the City lacks substantial evidence to conclude hazard impacts are less than significant. The City must prepare an EIR which discloses, analyzes, and mitigates operational hazards impacts.

B. The IS /MND Fails to Analyze the Impact of Potential Air Contaminants on Safe Operation

As discussed in Section IV, an accurate air quality baseline is critical to the assessment of the Project's operational impacts because the air separation facility will convert ambient air into liquefied oxygen, nitrogen, and argon. Because the IS/MND does not disclose the identity or quantity of contaminants in the air around the Project site, it also fails to analyze the impact of air quality on Project operations.[141] The AIGA explains why an initial and ongoing assessment of ambient air quality is critical to safe operation of air separation facilities:

> Air quality can have an impact on the air separation plant site selection and shall be evaluated. The air separation plant typically is located in an

[138] *Id*. at p. 27.
[139] *Id*. at p. 27-28.
[140] Asia Industrial Gases Association, Safe Practices Guide for Cryogenic Air Separation Plants (2013) p. 10 (hereinafter "AIGA Safe Practices Guide"), *available at* https://www.asiaiga.org/uploaded_docs/en_AIGA_056_23_Safe_Practice_Guide_for_Cryogenic_Air_Separation_Plants_Clean_Copy_10_Aug_2023.pdf.
[141] Fox Comments at pp. 31-34.

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> industrial area and thus a degree of contamination released from industrial and/or chemical plant operations can be expected to be present in the air. Trace contaminants in the atmospheric air, particularly hydrocarbons, have a direct bearing on the safe operation of an air separation plant. It is important to identify these contaminants and their levels of concentration in the atmospheric air. Short-term air quality analyses are not representative of long-term air contaminant levels. Changing site conditions can have an impact on air quality and should be evaluated periodically or when the surrounding industries change.[142]

Given that the proposed Project would operate in an industrial area, air contaminants can reasonably be expected in the air intake.[143] Trace contaminants in the air intake can cause problems in air separation units, including plugging, undesired reactions, or corrosion.[144] Yet, as discussed above, the IS/MND is silent with respect to the composition of the ambient air that would be processed in the facility and whether the facility is designed to remove all potential contaminants from the processed air.[145]

Because the IS/MND fails to evaluate the existing ambient air quality and its potential adverse impacts on operation of the Project, the City lacks substantial evidence to conclude that impacts are less than significant. The City must prepare an EIR that discloses, analyzes, and mitigates potentially significant hazard impacts.

C. Substantial Evidence Supports a Fair Argument that Ambient Air Contaminants Could Affect Safe Operation

The IS/MND states that accidental release would be rare, and products of the air separation process do not pose a significant hazard to the public.[146] However, as discussed in Section IV, trace contaminants in the ambient air around the Project site could result in undesirable consequences.[147] In fact, Dr. Fox identified several catastrophic explosions that occurred at air separation plants in recent years.[148] For example, an explosion which injured 12 people at an air separation plant in Malaysia was determined to have been caused by hydrocarbons infiltrating past the

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[142] AIGA Safe Practices Guide at p. 13.
[143] Fox Comments at pp. 32-33; *see also* AIGA Safe Practices Guide at p. 13-14.
[144] Fox Comments at pp. 31, 33.
[145] *Id*. at pp. 31-33.
[146] IS/MND at p. 57.
[147] Fox Comments at pp. 31-34.
[148] IS/MND at p. 57.

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air purification system.[149] The hydrocarbon release stemmed from nearby forest fires.[150] The proposed Project could be subject to similar hazards given the recent number of wildfires which have recently occurred in the area.[151]

The IS/MND fails to discuss or analyze the potentially significant impacts to workers, nearby residents, members of the public, and the environment should an accident occur. The City must prepare an EIR which discloses, analyzes, and mitigates impacts from potential air contaminants.

D. Feasible Mitigation Measures Are Available to Reduce the Risk of Accidents

Dr. Fox recommends that the proposed Project be designed and operated in a manner that minimizes the risk of accidents.[152] Dr. Fox identifies several important safety features which are not mentioned, let alone evaluated, in the IS/MND:

- Analysis of CO_2 at the PPU exit to verify proper operation;
- Measure LOX purge >/= 0.2% of the air to ensure no contaminant buildup in the reboiler sump;
- Analysis of hydrocarbons to assure < 450 ppm as C_1 equivalent to ensure no hydrocarbon building in reboiler sump;
- Batch analysis to verify that each component is present at acceptable level;
- Periodic defrost to remove trace components from low flow areas; and
- Downflow reboiler exist CO_2 concentration < 6% solubility to ensure CO2 and N_2O do not accumulate at too high of a rate.[153]

Dr. Fox also recommends several protective measures for on-site workers during Project operation to reduce impacts caused by accidents.[154] The City must prepare an EIR that analyzes the feasibility of the recommended mitigation measures to reduce significant hazard impacts.

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[149] Fox Comments at pp. 29-30.
[150] *Id*. at p. 29.
[151] *Id*. at pp. 30-33.
[152] Fox Comments at p. 35.
[153] *Ibid*.
[154] *Ibid*.

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E. The IS/MND Fails to Analyze the Hazards Impacts from Loading and Transportation of Liquified Products

The IS/MND concludes that the Project would not create a significant hazard to the public or environment through the routine transport, use, or disposal of hazardous materials because the end-products of the separation process are transported offsite in a stable state by specially designed trucks that operate in accordance with Federal and State regulations.[155] The IS/MND claims that an accidental release during transportation would be rare, but if one did occur, it would be managed locally and contained at the site by emergency response teams.[156] This conclusory discussion is inadequate because it fails to disclose and analyze potential impacts with loading or unloading the transport vehicles or from accidents that occur enroute.

As Dr. Fox explains, accidents have occurred during the filling and transport of gases.[157] For example, in 2019, a major uncontrolled release of high-pressure hydrogen occurred during the fill of a trailer.[158] In response, the transporter was required to implement improved training and retraining of drivers, improved trailer filling procedures, and equipment evaluations and modifications.[159] The IS/MND fails to demonstrate, based upon substantial evidence, how compliance with existing regulations reduce impacts to less than significant.

Because the IS/MND fails to evaluate the hazards associated with loading, unloading, and transportation of liquefied oxygen, nitrogen, and argon, the City lacks substantial evidence to conclude hazard impacts are less than significant. The City must prepare an EIR which discloses, analyzes, and mitigates the Project's potentially significant hazard impacts.

VIII. THE PLANNING COMMISSION CANNOT MAKE THE REQUIRED USE PERMIT FINDINGS

A use permit may be granted only if the Planning Commission can make findings that the proposed use:

- Is in accord with the objective of this title, the purposes of the land use district in which it is located and is appropriate to the specific location;

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[155] IS/MND at p. 57.
[156] *Ibid.*
[157] Fox Comments at p. 35-37.
[158] *Id.* at p. 36.
[159] *Id.* at p. 36-37.

- Is not detrimental to the health, safety, and general welfare of the city;
- Will not adversely affect the orderly development of property within the city;
- Will not adversely affect the preservation of property values and the protection of the tax base and other substantial revenues within the city;
- Is consistent with the objectives, policies, general land uses and programs specified in the general plan and applicable specific plan;
- Will not create a nuisance or enforcement problem within the neighborhood;
- Will not encourage marginal development within the neighborhood;
- Will not create a demand for public services within the city beyond that of the ability of the city to meet in the light of taxation and spending restrains imposed by law;
- Is consistent with the city's approved funding priorities; and
- If located in a commercial (CP) district, will support the goals of creating a vibrant, economically prosperous, visually interesting, and engaging pedestrian oriented atmosphere along the primary downtown corridor.[160]

As discussed in Sections V-VII, Dr. Fox identified several significant air quality and hazards impacts. If left unmitigated, the proposed Project would be detrimental to the health, safety, and general welfare of workers, residents, and students. In sum, the construction of the Project would pose a significant cancer and hazard risk due to DPM emissions.[161] Operation of the Project would pose significant hazards, including the potential for catastrophic accidents.[162] Until these significant impacts are mitigated, the Planning Commission cannot find that the proposed Project is not detrimental to the health, safety, and general welfare of the city. Therefore, the Planning Commission should continue the public hearing and direct City staff to prepare an EIR that discloses, analyzes, and mitigates the Project's significant impacts.

IX. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in significant, unmitigated impacts to public health and air quality, and from hazards and hazardous materials. The Planning Commission should continue the public hearing and direct City staff to prepare an EIR that discloses, analyzes, and mitigates the Project's significant environmental impacts.

[160] Pittsburg Municipal Code § 18.16.040.
[161] Fox Comments at pp. 11-23.
[162] *Id.* at pp. 23-37.

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Thank you for your consideration of these comments.

Sincerely,



Andrew J. Graf

AJG:ljl

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EXHIBIT A

Comments

on the

Initial Study/ Mitigated Negative Declaration

for the

Oakstone Northern California Expansion Project

Pittsburg, California

February 26, 2024

By

Phyllis Fox, PhD, PE

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1. INTRODUCTION

The Applicant, Linde, Inc, is proposing to expand their existing air separation plant in Pittsburg, California on a 31.55-acre parcel at 2000 Loveridge Road, Pittsburg, CA. RCH Group, Inc. has prepared a draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project.[1] The expanded facility will encompass 2.1 acres of Linde's existing 31-acre land on Loveridge Road.[2] Figure 1.

Figure 1: Existing Linde Facility in Pittsburg Showing Location (gold box) of the Proposed Expansion[3]



The Project will increase the production of liquid nitrogen, oxygen, and argon. The products will be stored in three large storage tanks, transferred into bulk trains when needed, and then delivered into smaller tanks at customer locations. The liquid products would be distributed via truck to the Bay Area, the Central Valley, and into nearby states.[4]

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[1] RCJ Group, Inc., Oakstone Northern California Expansion Project, Draft Initial Study/Mitigated Negative Declaration, October 2023; https://www.pittsburgca.gov/home/showpublisheddocument/15486/638328001708630000.

[2] IS/MND, pdf 321.

[3] IS/MND, pdf 321.

[4] IS/MND, pdf 318.

The air separation process uses large amounts of electricity to separate air into nitrogen (78%), oxygen (21%), and argon (1%) by cooling them down to cryogenic temperatures where they change from gas to liquid. No combustion, chemical reactions, additional ingredients, or added materials are needed to separate the gases into their pure elemental form.[5] Linde will expand the current substation with PG&E oversight.[6]

The proposed expansion (Project) includes the construction and operation of a second centralized atmospheric air separation plant adjacent to Linde's existing facility to produce liquid nitrogen, oxygen, and argon. The air separation plant will include the following:[7]

- Two main air compressors
- Two prepurifier vessels to remove moisture, carbon dioxide, and other gases in air and return them back to the atmosphere
- An industrial-class chiller to pre-cool the air
- Three individual sets of storage tanks for the three products
- Interconnecting piping and instrumentation and valving
- An electric substation to distribute large amounts of electricity to operate the facility
- A cooling tower, associated piping, and heat exchangers to remove the heat from the compressors.

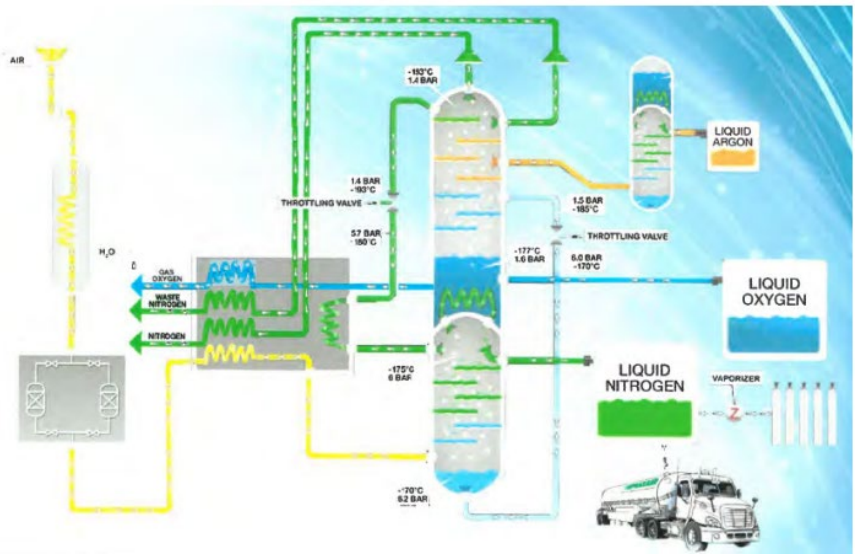
The proposed air separation process is shown in Figure 2.

[5] IS/MND, pdf 319.

[6] IS/MND, pdf 322.

[7] IS/MND, pdf 319.

Figure 2: Schematic of Proposed Air Separation Process[8]



Air is compressed in the main air compressor to 80-90 psig and "[a]ll the impurities and contaminants of air other than nitrogen, oxygen, and argon are filtered out and returned to the air."[9] The purified air is then cooled to -285 F and sent into the air separation tower where nitrogen, oxygen, and argon are physically separated by operating three internal columns at different pressures and temperatures. Gaseous nitrogen is sent to a large air conditioning unit (liquefier) to liquefy it. The liquid nitrogen is then used to liquefy the separated oxygen and argon. These three products leave the tower and are stored in individual cryogenic storage tanks. Products are then transferred into bulk trucks for delivery to customers.[10]

My review of the IS/MND and supporting documents indicates that the Project description is incomplete and inadequate to evaluate impacts. It omits information that is required to analyze impacts, fails to analyze impacts that are potentially significant, and underestimates other impacts that are highly significant. Further, my analysis of the IS/MND and supporting documents indicates that the Project will result in significant impacts that were not identified in the IS/MND, including the following:

- Operational emissions of NOx and ROG from supplying energy to the Project are significant and unmitigated;
- The health risk assessment (HRA) is based on meteorological data 10 miles southwest of the Project site that is not representative of conditions at the

[8] IS/MND, pdf 320.

[9] IS/MND, pdf 320.

[10] IS/MND, pdf 320.

Project site, thus substantially underestimating health impacts of Project construction and operation;

- Construction cancer health risks are significant over a large area surrounding the Project site, including at the Edgewater Apartments, Diamond Hillside Apartments, Martin Luther King Jr. Junior High School, Delta Oaks Presbyterian Church, many residential areas, and many off-site nearby businesses.
- The IS/MND did not conduct an acute health risk assessment.
- Construction acute health risks are significant for construction workers and off-site workers, residents, and students over a large area surrounding the Project site, including at the Edgewater Apartments, Diamond Hillside Apartments, Martin Luther King Jr. Junior High School, Delta Oaks Presbyterian Church, many residential areas, and many off-site nearby businesses.
- Construction chronic health risks are significant for construction workers and workers and residents at many off-site residential and commercial areas.
- The IS/MND failed to evaluate hazards associated with the production and transport of nitrogen, oxygen, and argon.
- The IS/MND does not include a Hazard and Operability Analysis (HAZOP) or Quantitative Risk Assessment (QRA) to evaluate the impact of accidents to on-site workers and off-site parties, which are typically significant for air separation plants.
- The IS/MND fails to disclose the impact of local air quality on facility operation, which can cause operational problems, including plugging, undesired chemical reactions, or corrosion, which can lead to accidents, affecting on-site workers and off-site parties.
- The IS/MND fails to require ambient air quality monitoring for contaminants in the air during operation that could affect facility operation.

The many omissions from the Project description identified in these comments render this IS/MND inadequate under CEQA. Further, the potentially significant impacts due to accidents indicate that the IS/MND should be withdrawn and replaced by an Environmental Impact Report (EIR) that addresses my comments.

My resume is included in Exhibit 1 to these Comments. I have over 50 years of experience in the field of environmental engineering, including air emissions and air pollution control; greenhouse gas (GHG) emission inventory and control; water quality and water supply investigations; hazardous waste investigations; hazard investigations; risk of upset modeling; environmental permitting; nuisance investigations (odor, noise);

health risk assessments; EIRs; and litigation support. I have reviewed and commented on hundreds of CEQA documents and air permit applications, including for tank farms, refineries, solar and wind facilities, geothermal facilities, ethanol plants, oil and gas production, quarries, terminals, ports, battery energy storage systems, and many other industrial facilities. I have MS and PhD degrees in environmental engineering from the University of California at Berkeley. I am a licensed professional engineer (chemical) in California. My work has been cited in two published CEQA opinions: (1) *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (2001) 111 Cal. Rptr. 2d 598 and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310 and has supported the record in many other CEQA cases.

2. PROJECT DESCRIPTION IS INCOMPLETE

The impacts of an air separation plant depend on the design of the facility. The IS/MND does not include adequate design information to evaluate impacts. The IS/MND includes a site plan,[11] 3D elevation,[12] and noise contour map.[13] However, it omits important information and analyses including:

- Comprehensive analysis of local ambient air quality that identifies contaminants in ambient air that may impact operation of the facility;
- Impact of emissions from the facility on local ambient air quality;
- Hazards of air separation plants to on-site workers, including electricity, gases under pressure, very low temperatures, the ability of oxygen to accelerate combustion, and the asphyxiant properties of nitrogen, argon, and the rare gases;
- Impacts of liquid spills;
- Impacts of loading and transporting produced gases to market;
- Worker safety training.

3. AIR QUALITY IMPACTS

The IS/MND discloses that "[t]he air separation process is the most electricity intensive process known to man . . . . We consume 25 times the amount of electricity of a normal industrial customer and are often one of the Top 20 customers of the

[11] IS/MND, Figure 3, pdf 10.

[12] IS/MND, Figure 4, pdf 11.

[13] IS/MND, Figure 6, pdf 80.

associated electricity utility."[14] The electricity used to support the Project will be supplied by the California grid, which includes gas-fired power plants. These emit significant amounts of greenhouse gases, criteria pollutants, and HAPs. The IS/MND estimated GHG emissions from supplying electricity but failed to estimate criteria pollutants or HAPs. I estimate NOx and ROG emissions in this comment.

3.1. Operational Emissions Are Underestimated and Significant

The IS/MND estimated operational emissions as summarized in Table 1. These emissions are average daily and annual operational emissions from mobile sources.[15] There is no evidence in the IS/MND that they include emissions from supplying electricity to the Project, which must be separately calculated and added to mobile source emissions.

Table 1: Estimated Project Operational Emissions (lb/day)[16]

Source	ROG	NOx	PM10	PM2.5
Average Daily Operational Emissions (lbs)	0.2	14.3	3.5	1.1
BAAQMD Thresholds of Significance	54	54	82	54
Potentially Significant?	No	No	No	No
Annual Operational Emissions (tons)	0.0	2.6	0.6	0.2
BAAQMD Thresholds of Significance	10	10	15	10
Potentially Significant?	No	No	No	No

3.1.1. Emissions from Supplying Energy

The IS/MND discloses that "[t]he air separation process is the most electricity intensive process known to man . . . We consume 25 times the amount of electricity of a normal industrial customer and are often one of the Top 20 customers of the associated electric utility."[17] Emissions from supplying this electricity to the Project were not included in the IS/MND's estimate of Project operational emissions. They are estimated in this comment.

The Project is estimated to require an added peak electricity demand at full buildout of 12.3 MW (by 2032) and would consume approximately 107,748 MWh per

[14] IS/MND, pdf 321.

[15] IS/MND, pdf 98.

[16] IS/MND, Table 5, pdf 26. See also CalEEMod output, Section 2.4, pdf 167.

[17] IS/MND, pdf 321. See also pdf 12 ("Air separation facilities consume 25 times the amount of a normal industrial customer and are often one of the Top 20 customers of the associated electric utility.")

year.[18] Electricity is generated in California using a mixture of sources, including gas-fired power plants, nuclear, solar, and wind. Gas-fired power plants are currently the dominant source of electricity. Gas-fired plants emit criteria pollutants [NO_2, SO_2, VOCs, CO, PM10, PM2.5, greenhouse gases (GHGs), and hazardous air pollutants (HAPs)].

Most of this electricity is currently supplied by gas-fired power plants. The emissions from supplying this electricity will decrease over the duration of the Project as California electricity is subject to SB100 and California's Renewables Portfolio Standard (RPS), which require increasing renewable energy to 60% by 2030 and to 100% by 2045.[19]

Renewable energy sources (e.g., wind, solar) do not emit criteria pollutants and HAPs. Thus, criteria pollutant and HAP emissions from the generation of energy to support the Project will decline over time until gas-fired sources in the Project's electricity supply are eliminated.[20] However, in the near term, the generation of electricity to support the Project will predominantly come from gas-fired sources that emit criteria pollutants and HAP emissions. The IS/MND did not estimate criteria pollutants and HAP emissions from supplying energy to the Project before it is fully decarbonized, which will not occur over the lifetime of the Project. Thus, the IS/MND fails as an informational document under CEQA. These omitted emissions are estimated in this comment.

3.1.2. Criteria Pollutant Emissions from Supplying Energy

The CalEEMod model used to estimate Project emissions does not include criteria pollutant emissions from supplying electricity to the Project. They were not otherwise estimated in the IS/MND. This comment estimates the NOx and ROG emissions from supplying energy to the Project.

The IS/MND estimated GHG emissions from generating the energy required to support the Project[21] but did not estimate criteria pollutants or HAPs from supplying this energy, thus failing as an informational document under CEQA. I estimate NOx and ROG emissions from supplying Project energy in this comment, which demonstrates that they are significant. The Applicant should estimate other criteria

[18] IS/MND, pdf 40-41.

[19] IS/MND, pdf 38-39.

[20] IS/MND, pdf 40-41.

[21] IS/MND, Table 8, pdf 26.

pollutants (PM2.5, PM10, SO_2) and HAPs from supplying energy to support this Project and the resulting revised CEQA document should be recirculated.

The Project will use 26,280,000 kWh/yr (26,280 MWh/yr) of electricity in 2025 to 107,748,000 kWh (107,748 MWh/yr) in 2032.[22] The IS/MND did not estimate criteria pollutants from generating this energy, thus failing as an informational document under CEQA. However, it did estimate GHG emissions from generating electricity in 2025 to 2030 using PG&E's 2021 Power Content Label.[23,24] Under the PG&E base plan, 8.9% natural gas would be included in the power supply.[25] All other sources of electricity under PG&E's base plan would not generate GHGs (and presumably, criteria pollutants).

The GHG emissions from using natural gas to generate electricity in 2025 are reported as 1,168 metric tons in 2025 based on 56 pounds of CO_2e per MWh, which I verified through calculations in this footnote.[26] The estimated 1,168 MT/yr of GHG emissions, *supra*, agrees with the IS/MND.[27]

Thus, following this same calculation procedure, and conservatively assuming average NOx and ROG concentrations in emissions from gas-fired power plants contributing electricity to the Project in 2025 are 2 ppm,[28] emissions in lb/MMBTU are estimated from:

$$\textbf{Error! Bookmark not defined.Error! Bookmark not defined.}\frac{lb}{MMBtu} = ppm * 10^{-6} * \frac{1}{molar\ volume} * Molar\ Weight * F_d * \frac{20.9\%}{20.9\% - \%O_2}$$

Using this equation, the NOx and ROG emissions from supplying power to the Project in 2025 are 0.00244 lb/MMBtu.[29] The Project will require 26,280 MWh of

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[22] IS/MND, Table 2, pdf 12.

[23] IS/MND, Table 8, footnote 2, pdf 56.

[24] PG&E, 2021 Power Content Label; https://www.pge.com/content/dam/pge/docs/account/billing-and-assistance/bill-inserts/1022-Power-Content-Label.pdf.

[25] Ibid.

[26] 2025 GHG Emissions (IS/MND, Table 8) = [(98 lb CO_2e/MWh)(26,280 MWh)/2000 lb/ton][0.907185 Mt/ton] = **1,168.2 MT/yr.**

[27] IS/MND, Table 8, pdf 56.

[28] CARB, Gas-Fired Power Plant NOx Emission Control and Related Environmental Impacts, May 2004; https://ww2.arb.ca.gov/sites/default/gas files/classic/research/apr/reports/l2069.pdf. See pdf 31.

[29] NOx and ROG emission factor in lb/MMBtu =(concentration in ppm)(10^{-6})(1/molar volume)(molar weight)(Fd)(20.9%)/(20.9%-%O_2) = (2 ppm)(10^{-6})(1/molar volume)(molar weight)(F_d)(20.9%/(20.9%/(20.9%-3%)) = (2 ppm)(10^{-6})(1/379.7 dscf/lb-mol)(46.01 g/mol)(8608 dscf/MMBtu)(20.9%/(20.9%-3%)) = **0.00244 lb/MMBtu**.

electricity in 2025,[30] which is equivalent to 89,667 MMBtu/hr in 2025 and 107,748 MWh or 367,636 MMBtu/hr in 2032.[31] Thus, NOx and ROG emissions from supplying power to the Project in 2025 will be (0.00244 lb/MMBtu)(89,667 MMBtu/hr) = 219 lb/hr.

Assuming NOx and ROG emissions from supplying electricity to the Project in future years beyond 2025, which will include significantly more wind and solar with zero NOx and ROG emissions, NOx and ROG emissions will decline to 0.2 ppm by 2032 or by a factor of 10 from reducing GHG emissions by replacing gas-fired sources with solar and wind. As 367,636 MMBtu of electricity will be required in 2032, NOx and ROG emissions from supplying power to the project in 2032 will be (0.00244 lb/MMBtu)(0.2/2)(367,636 MMBtu) = 90 lb/hr.

The BAAQMD NOx and ROG significance thresholds are 54 lb/day.[32] Thus, NOx and ROG emissions from supplying electricity to the Project exceed the BAAQMD operational significance thresholds of 54 lb/day and are significant impacts of the Project that were not disclosed in the IS/MND. Therefore, mitigation is required for operational Project NOx and ROG emissions based on the cited 2021 Power Content Label.

The PG&E 2022 Power Content Label[33] shows that natural gas is projected to supply 4.8% of the electricity. Thus, based on this updated information, NOx and ROG emissions from supplying power to the Project in 2022 will be (219 lb/hr)(4.8%/8.9%) = 118 lb/hr, which exceeds the significance threshold of 54 lb/day. Thus, ROG emissions are significant in 2022 when natural gas emissions from supplying electricity are included. Using the PG&E 2022 Power Content Label, total NOx emissions also equal 118 lb/hr, which exceeds the significance threshold of 54 lb/day and is thus a significant impact of Project operation.

The Applicant should perform similar calculations for all criteria pollutants and a responsive CEQA document circulated for review. See Comment 3.2 for NOx mitigation.

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[30] IS/MND, Table 2, pdf 12.

[31] IS/MND, Table 2, pdf 12: Assuming 1 MWh = 3.412e+6 Btu/hr, the energy required to operate the facility in MMBtu: **2025**: (26,280 MWh)(3.412 MMBtu/MWh) = **89,667.4 MMBtu/hr; 2032**: (107,748 MWh)(3.412 MMBtu/MWh) = **367,636 MMBtu/hr**.

[32] IS/MND, Table 5, pdf 26; BAAQMD, 3. Thresholds of Significance, Table 3-1, pdf 4; https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-3-thresholds_final_v2-pdf.pdf?rev=a976830cce0c4a6bb624b020f72d25b3&sc_lang=en.

[33] https://www.energy.ca.gov/filebrowser/download/6048.

3.2. Mitigation for Significant Operational NOx Emissions

The significant NOx emissions are primarily due to emissions from generating electricity at gas-fired power plants at distant locations that are not owned by the Applicant. As the Applicant has no jurisdiction over these facilities, source control is not feasible. However, on-site or off-site mitigation at other sources can be used to reduce significant NOx and ROG emissions from supplying Project energy.

A Voluntary Emission Reduction Agreement, or VERA, is a mitigation measure under CEQA by which a project proponent provides pound-for-pound mitigation of air emission increases through a process that funds and implements emission reduction projects administered through an air district's incentive grant programs. A VERA can be implemented to address air quality impacts under CEQA, from both construction and operational phases of a project.[34]

VERAs have been identified as mitigation measures within other CEQA documents.[35] A VERA would require the Applicant to make a one-time payment for its significant unmitigated emissions in excess of significance thresholds to the BAAQMD, which would then use the payment to develop off-site mitigation. Types of projects that have been funded include electrification of stationary internal combustion engines and replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks. The SJVAPCD, for example, has repeatedly concluded that a VERA "is a feasible mitigation measure under CEQA, effectively achieving emission reductions necessary to reduce impacts to a less than significant level."[36]

This approach has been found legally sufficient by court rulings in the following cases: *California Building Industry Assn. v. San Joaquin Valley APCD*, Fresno County Case No. 06 CECG 02100 DS13*; National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*; Federal District Court, Eastern District of California, Case No. 1:07-CV-00820-LJO-DLB; and *Center for Biological Diversity et al. v Kern Count*y, Fifth Appellate District, Case No. F061908.

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[34] SJVAPCD, Appendix D, Public Resource; Existing Control of Air Pollution Sources of Concern, Stockton CERP, pdf 12-13; https://community.valleyair.org/media/2411/appendix-d-public-resource-existing-control-of-air-pollution-sources-of-concern-030621.pdf.

[35] SJVAPCD, Summary of Comments and Responses to Proposed Revisions to the GAMAQI-2012, May 31, 2012, p. 3; https://www.valleyair.org/transportation/GAMAQIDRAFT-2012/GAMAQIResponsetoComments5-10-12%20.pdf.

[36] SJVAPCD 2017, pp. 5, 9.

4. CONSTRUCTION HEALTH RISKS ARE SIGNIFICANT

The Project will emit toxic air contaminants (TACs)[37] during Project construction and operation. Risk assessments are conducted to determine acute, chronic, and cancer health risks to sensitive receptors from TAC emissions. Chronic health impacts occur from continuous exposures for up to a lifetime.[38] Acute health impacts are those that occur from short-term, typically 1-hour exposures.

Sensitive receptors include construction workers, on-site operational workers, and off-site workers and residents. The IS/MND conducted cancer and chronic health risk assessments (HRAs) for Project construction and operation and concluded that construction and operational health impacts were not significant.[39] These risk assessments significantly underestimate cancer and chronic health risks for several reasons discussed in these comments. The IS/MND did not estimate acute health impacts, failing as informational document under CEQA. When the errors and omissions in the IS/MND's HRAs are corrected, cancer, chronic, and acute construction health risks are significant both on-site and over a large area surrounding the Project site that includes many sensitive receptors.

The major HAP emitted during construction is diesel particulate matter (DPM), which is emitted by construction equipment. DPM is a potent human carcinogen.[40,41] It is also chronically[42] and acutely[43] toxic. In 1998, California identified DPM as a toxic air

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[37] IS/MND, Sections 2.1.2.1 & 2.1.2.2, pdf 201-202.

[38] OEHHA, footnote (1), OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, October 11, 2023; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[39] IS/MND, Tables 6, 7, pdf 27-28.

[40] Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); https://oehha.ca.gov/media/CPFs042909.pdf and OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[41] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also: OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[42] OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, June 28, 2016; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[43] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

contaminant (TAC) based on its potential to cause cancer, premature death, and other health problems (e.g., asthma attacks and other respiratory symptoms).[44] OEHHA has concluded that "[e]xposure to diesel exhaust can have immediate health effects," which include "inflammation in the lungs, which may aggravate chronic respiratory symptoms and increase the frequency or intensity of asthma attacks."[45] Thus, there are two noncancer hazard indices: chronic (long-term) and acute (1-hour). The most likely noncancer index to be exceeded during construction is the acute hazard index. The IS/MND included DPM in its chronic and cancer risk assessment but did not conduct an acute HRA for DPM,[46] thus failing as an informational document under CEQA.

4.1. The HRAs Used the Wrong Meteorological Data

The IS/MND construction and operational HRAs used meteorological data from Concord (Buchanan Field Airport), whose nearest runway is about 10 miles southwest of the Project site,[47] rather than meteorological data from Pittsburg, near the Project site. The IS/MND asserts with no analysis that the Concord station was selected "as being the most representative meteorology based on proximity."[48] This is wrong. There are three meteorological stations within 5 miles of the Project site, yet the HRA chose to use meteorological data from Buchanan Field that has a completely different wind pattern that significantly underestimates Project ambient air quality and public health impacts. The wind rose for the meteorological data used in the IS/MND's HRA is shown in Figure 3.

[44] IS/MND, pdf 201-202.

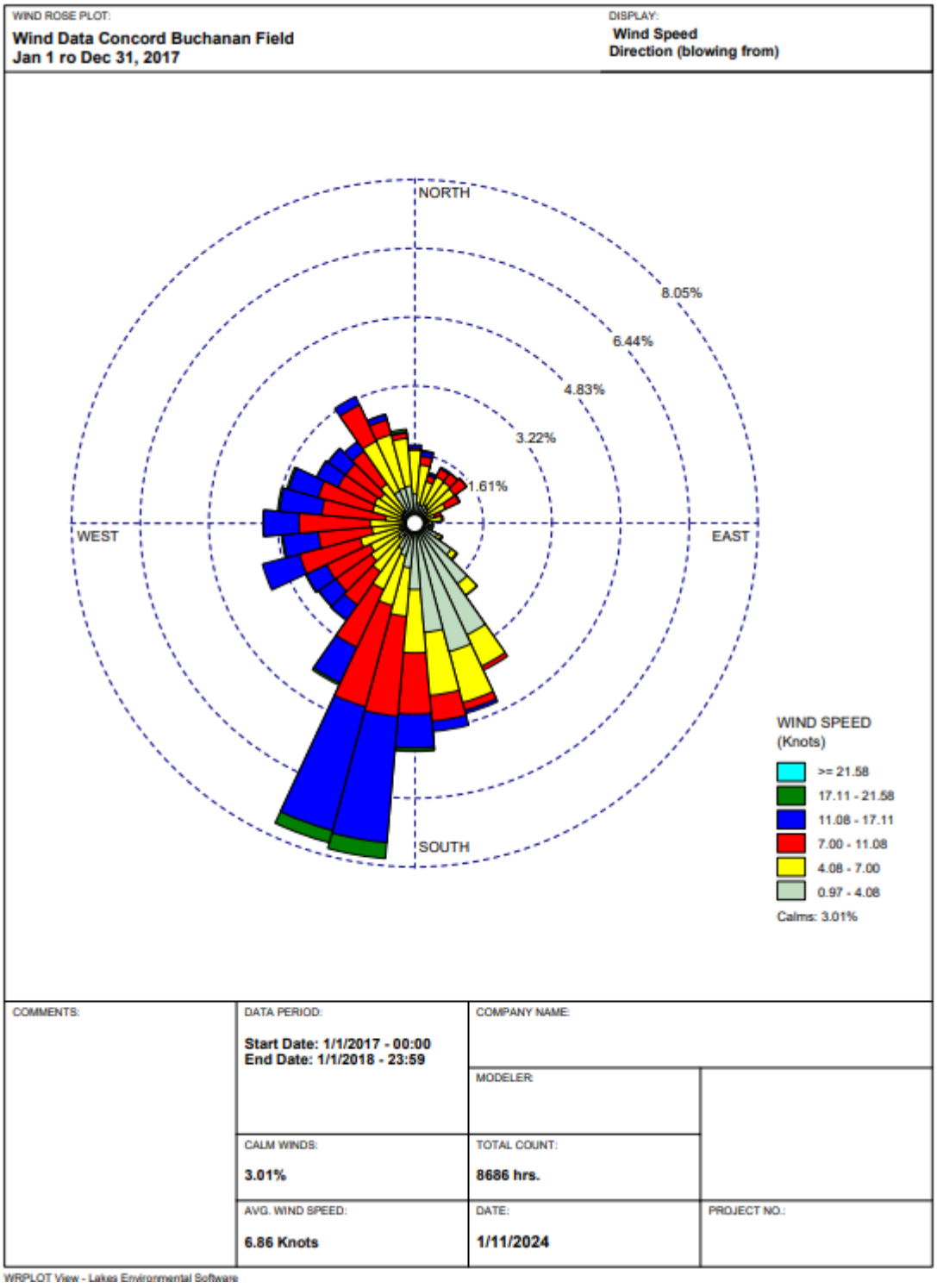
[45] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.

[46] IS/MND, Tables 6 and 7, pdf 27-28.

[47] IS/MND, pdf 79.

[48] IS/MND, pdf 207.

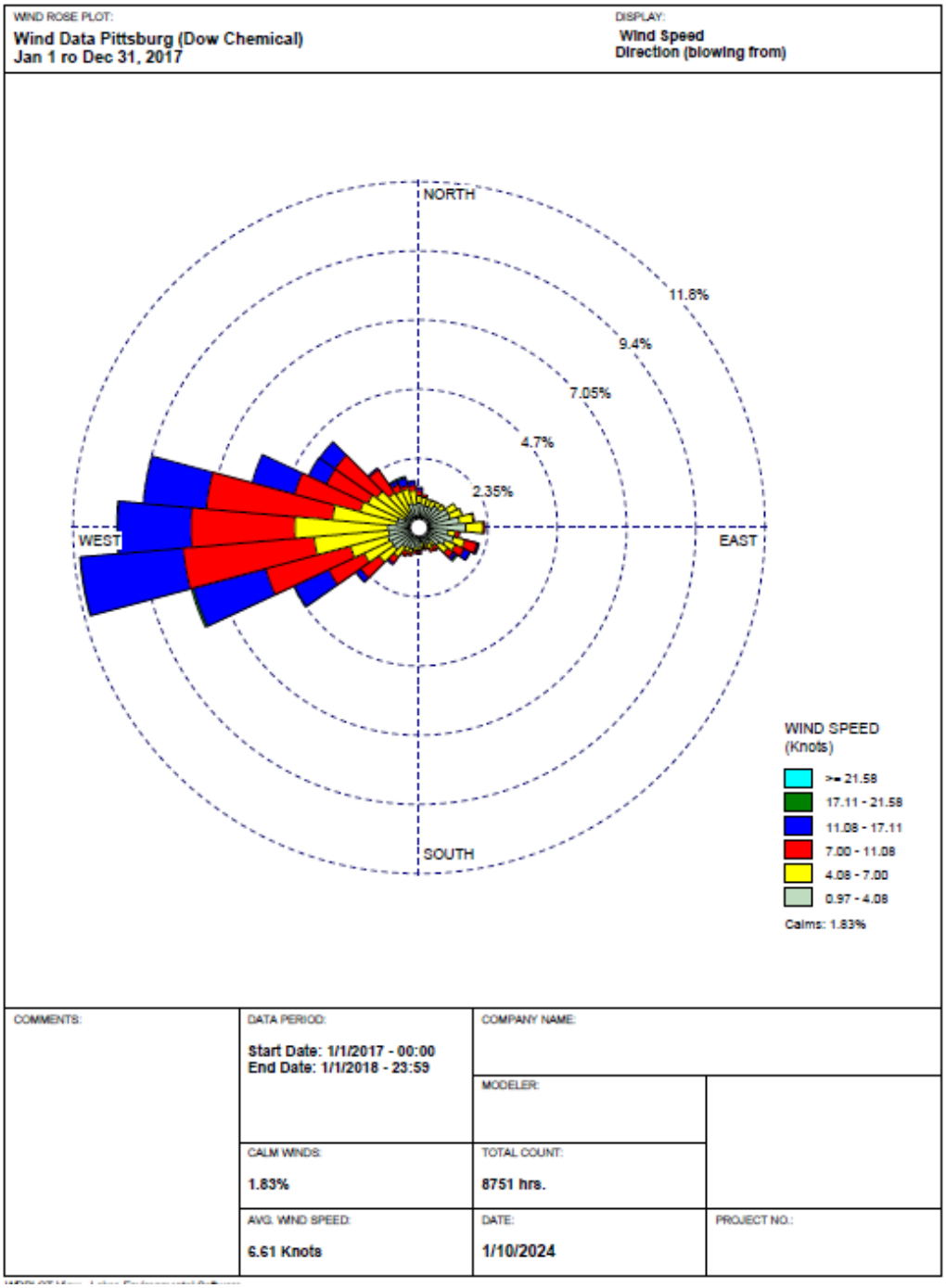
Figure 3: Wind Rose for Concord Buchanan Field Used in the IS/MND's HRA



As noted previously, there are three met stations within 5 miles of the Project site that are more representative of wind conditions at the Project site than data from Concord. Figure 4 is a wind rose for the adjacent Dow Chemical facility in Pittsburg,

located 1.1 miles northeast of the Project site. I revised the HRA using this wind data, but otherwise retaining the IS/MND's assumptions. Comments 4.3 – 4.5.

Figure 4: Wind Rose for Pittsburg (Dow Chemical)



4.2. Construction DPM Emissions

Construction equipment emits diesel particulate matter (DPM), which is a potent human carcinogen.[49,50] It is also chronically[51] and acutely[52] toxic. In 1998, California identified DPM as a toxic air contaminant (TAC) based on its potential to cause cancer, premature death, and other health problems (e.g., asthma attacks and other respiratory symptoms).[53] OEHHA has concluded that "[e]xposure to diesel exhaust can have immediate health effects," which include "inflammation in the lungs, which may aggravate chronic respiratory symptoms and increase the frequency or intensity of asthma attacks."[54] Thus, there are two noncancer hazard indices: chronic (long-term) and acute (1-hour). The most likely noncancer index to be exceeded during construction is the acute hazard index. The IS/MND included DPM in its chronic and cancer risk assessment but did not conduct an acute HRA for DPM,[55] thus failing as an informational document under CEQA. The cancer, chronic, and acute health impacts of DPM emissions are presented in Comments 4.3, 4.4, and 4.5. The following sections address the cancer, chronic, and acute health impacts of DPM emissions during Project construction.

4.3. Revised Construction Cancer Health Risks Are Significant

As explained in Comment 4.1, the IS/MND's cancer risk assessment was based on met data from Concord (Figure 3), which is not representative of wind conditions at the Project site in Pittsburg (Figure 4). Thus, the HRA was revised using Pittsburg

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[49] Cal/EPA OEHHA and American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also OEHHA, Appendix A: Hot Spots Unit Risk and Cancer Potency Values, p. 1 (DPM unit risk = 3 E-4); https://oehha.ca.gov/media/CPFs042909.pdf and OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[50] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf. See also: OEHHA, Diesel Exhaust Particulate; https://oehha.ca.gov/chemicals/diesel-exhaust-particulate#:~:text=Cancer%20Potency%20Information&text=Listed%20as%20Particulate%20Emissions%20from,(ug%2Fm3)%2D1.

[51] OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, June 28, 2016; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[52] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

[53] IS/MND, pdf 201-202.

[54] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.

[55] IS/MND, Tables 6 and 7, pdf 27-28.

(Dow Chemical) meteorological data but otherwise retaining the IS/MND's risk assessment assumptions.

The IS/MND estimated on-site offroad construction DPM emissions of 1.6550 tons/yr in 2024 and 0.02 tons/yr in 2025 for an average of 0.8375 tons/yr.[56] The resulting cancer risk isopleths using Pittsburgh Dow Chemical meteorological data but otherwise retaining the IS/MND's assumptions are presented in Figure 5.

Figure 5: Construction 2-Year Cancer Risk Based on Construction DPM Emissions[57]



This analysis shows that the 2-year construction cancer risk exceeds the BAAQMD's cancer significance threshold of 10 in one million over a large area surrounding the Project site, detailed below. These risk estimates are based on the annual DPM emission rate of 1.655 tons/yr for 2024 and 0.02 tons/yr for 2025.[58] The average is 0.8375 tons/yr over the 2-year construction period. Receptors where the cancer risk will exceed 10 in one million include:

[56] IS/MND, pdf 236: 8. Annual Onsite Offroad DPM Exhaust Construction Emissions by Phase. See also IS/MND, Table 8, pdf 236.

[57] The risk estimates are based on construction emissions of 1.64 lb/day.

[58] IS/MND, pdf 24.

(1) at the Edgewater Apartments 800 feet southwest of the Project at 2105 Carion Ct (Figure 6) (17.7 cancers per million);

(2) at the Diamond Hillside Apartments (2205 East Leland Road) 1,900 feet southeast of the Project (20.2 cancers per million)[59] (Figure 7);

(3) at the Martin Luther King Jr. Junior High School 1,300 feet west of the Project site (11 cancers per million) (Figure 8);

(4) in many residential areas within the significant impact isopleths (Figure 5);

(5) at the Delta Oaks Presbyterian Church 600 feet southwest of the Project site;

(6) at many off-site nearby businesses, e.g., Ideal Home Décor Center, Inc., Starbucks, Jack in the Box, Hampton Inn & Suites Pittsburg, Grabber Construction Products, Linde Welding Gas & Equipment Center, and Ideal Home Décor Center, Inc., among many others.

Thus, construction cancer risks are significant, requiring mitigation such as the use of all Tier 4 Final construction equipment.

Figure 6: Edgewater Apartments (2105 Carion Ct.)



[59] IS/MND, pdf 24.

Figure 7: Diamond Hillside Apartments (2205 East Leland Road)

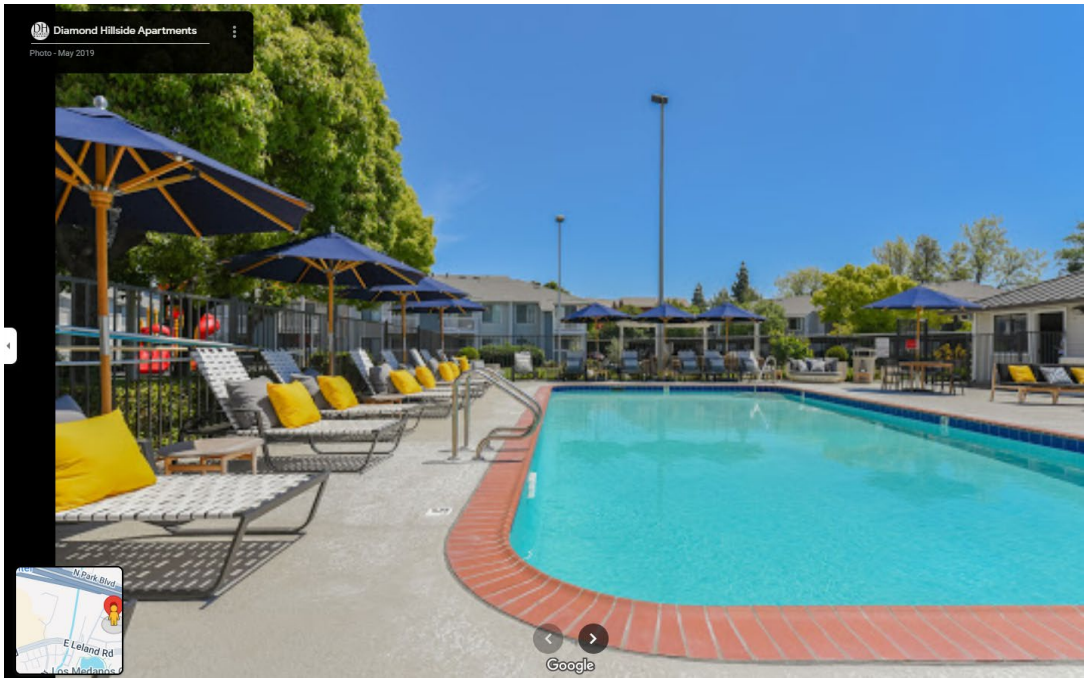


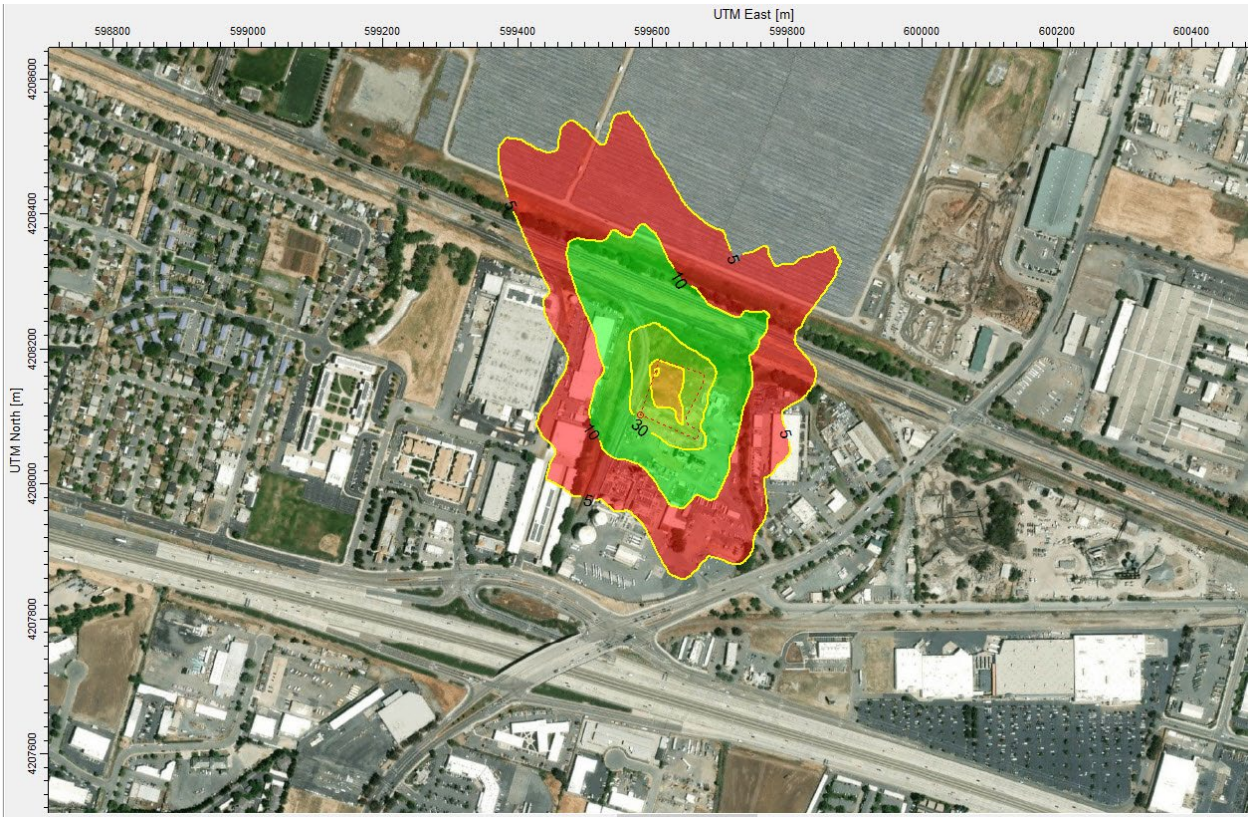
Figure 8: Martin Luther King Jr. Junior High School



4.4. Revised Construction Chronic Health Impacts

Chronic health impacts occur from continuous exposures for up to a lifetime.[60] The OEHHA chronic reference exposure level (REL) for DPM is 5 µg/m^3.[61,62] The construction 1-hour DPM emissions would exceed the 5 µg/m^3 REL (and the BAAQMD non-cancer chronic hazard index of 1) in a large area surrounding the Project site that includes commercial areas. Figure 9. Thus, chronic health impacts are significant for construction workers and workers at businesses within the 5 µg/m^3 isopleth.

Figure 9: Chronic (8-Hr) DPM Construction Health Impacts (µg/m^3)



[60] OEHHA, footnote (1), OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, October 11, 2023; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[61] Id.

[62] BAAQMD, Section 3. Thresholds of Significance, pdf 4, Table 3-1; https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-3-thresholds_final_v2-pdf.pdf?la=en.

4.5. Construction Acute Health Impacts Are Significant

The IS/MND did not evaluate short-term, acute exposures to DPM during construction.[63] Short-term exposures of 1 hour, known as acute exposures, are routinely evaluated in health risk assessments using Reference Exposure Levels or RELs. An acute REL "is an exposure that is not likely to cause adverse health effects in a human population, including sensitive subgroups, exposed to that concentration (in units of micrograms per cubic meter or $\mu g/m^3$) for the specified exposure duration on an intermittent basis."[64] Concentrations greater than the acute REL are assumed to cause significant acute health impacts. Thus, I prepared an acute construction health risk assessment to determine acute 1-hour health risks to sensitive receptors, which include construction workers, on-site operational workers, and off-site workers and residents.

The acute hazard index is the ratio of the modeled 1-hour concentration from Project emissions to the acute REL.[65] The OEHHA and the BAAQMD have not established an acute REL for DPM, but other agencies have. The BAAQMD and OEHHA risk guidance do not require the use of an OEHHA acute risk exposure level. The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks.

OEHHA has concluded that "[e]xposure to diesel exhaust can have immediate (acute) health effects," which include "inflammation in the lungs, which may aggravate chronic respiratory symptoms and increase the frequency or intensity of asthma attacks."[66] The IS/MND included DPM in its chronic and cancer risk assessment but did not conduct an acute HRA for DPM,[67] thus failing as an informational document under CEQA.

While OEHHA has not established an acute REL for DPM, other agencies have. In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since

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[63] IS/MND, Section 2.2.5.4, pdf 211-212.

[64] OEHHA, Risk Assessment Guidelines. Guidance Manual for Preparation of Health Risk Assessments, February 2015, p. 6-3; https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.

[65] OEHHA, OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, October 11, 2023; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[66] OEHHA and the American Lung Association of California, Health Effects of Diesel Exhaust; https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf.

[67] IS/MND, Tables 6 and 7, pdf 27-28.

OEHHA last evaluated health impacts of DPM in 1998,[68] substantial additional research has been conducted on acute health impacts of DPM.[69] Based on this more current research, Canada recently established an acute REL for DPM of 10 μg/m^3 to protect against adverse effects on the respiratory system.[70] There is no regulation or guidance requiring that only OEHHA RELs be used in California health risk assessments. The emission of DPM during construction should have triggered a construction acute health risk assessment using the Canadian acute REL.

Construction workers have the greatest exposure to DPM emissions. They are adjacent to DPM emissions because they operate and maintain the equipment that emits DPM. Further, there are nearby sensitive receptors that would be exposed to construction emissions, including workers at adjacent businesses and residents.

The Office of Environmental Health Hazard Assessment's (OEHHA's) risk assessment guidelines recommend a formal health risk assessment for short-term construction exposures lasting longer than 2 months, and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.[71] The duration of construction for this Project is approximately 2 years.[72] OEHHA risk assessment guidelines recommend a health risk assessment for these short-term construction projects.[73] The IS/MND fails as an informational document under CEQA for failing to conduct an acute HRA for DPM emissions from project construction and for failing to consider construction workers as sensitive receptors.

Risk assessments are also conducted to determine acute 1-hour health risks to sensitive receptors, which include construction workers, on-site operational workers, and off-site workers and residents. Acute health impacts are those that occur from short-term, typically 1-hour exposures. The acute hazard index is the ratio of the

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[68] Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf.

[69] See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/.

[70] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

[71] Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0.

[72] IS/MND, pdf 206.

[73] IS/MND, pdf 275, 277, 284 ("Analysis was prepared consistent with OEHHA Guidance (OEHHA 2015)."), pdf 289.

modeled 1-hour concentration from Project emissions to the acute REL.[74] The acute REL for DPM is 10 µg/m^3. Construction 1-hour DPM emissions would exceed 10 µg/m^3 and the BAAQMD acute non-cancer hazard index threshold of 1.0 in a large area surrounding the Project site that includes many residential and commercial areas and a high school. Thus, construction acute health impacts are significant for construction workers, workers at businesses, residences, and students within the 10 µg/m^3 isopleth. Figure 10.

Figure 10: Acute DPM Construction Health Impacts (µg/m^3)



The IS/MND asserts that, according to the BAAQMD, "workers are not considered sensitive receptors because all employers must follow regulations set forth by the Occupation Safety and Health Administration to ensure the health and well-being of their employees."[75] However, no citation is provided for this assertion, and I

[74] OEHHA, OEHHA Acute, 8-hour and Chronic Reference Exposure Level (REL) Summary, October 11, 2023; https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.

[75] IS/MND, pdf 23-24.

was unable to find any support for it in BAAQMD CEQA guidance. Regardless, BAAQMD CEQA Guidelines do not supersede CEQA.

BAAQMD CEQA Guidelines include "off-site workers and students, consistent with the Air District's permitting requirement."[76] Further, these Guidelines identify "sensitive receptors" as "people – children, adults, and seniors – occupying or residing in . . . residential dwellings . . . places of business . . . . Worker receptors are off-site locations where people work, including indoor and outdoor areas and commercial/industrial areas currently zoned or planned to be zoned for manufacturing, light or heavy industry, office, or retail activity."[77] The IS/MND does not evaluate health impacts to off-site residents, workers, or students, failing as an informational document under CEQA.

4.5.1. Construction and Operational Workers

Workers will be present on-site and off-site during Project construction, operation, and decommissioning. On-site and off-site construction and on-site operational workers are sensitive receptors that must be included in CEQA analyses. My analysis of worker impacts summarized in Figure 12 indicates that workers in many off-site businesses will experience significant acute health impacts from Project construction.

4.5.2. Public Receptors

Public sensitive receptors are present in areas that will be affected by the Project. These include residents at the Edgewater Apartments 800 feet southwest of the Project; residents at the Diamond Hillside Apartments south of the Project; and workers and students at Martin Luther King Junior High School 1,300 feet west of the Project site.[78] Motorists on adjacent roadways are also sensitive receptors who could experience acute impacts.

5. HAZARDS AND HAZARDOUS MATERIALS

The IS/MND concludes that the Project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment without

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[76] BAAQMD, Air Quality Guidelines, Appendix E: Recommended Methods for Screening and Modeling Local Risks and Hazards, pdf 15; https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa-guidelines-2022/appendix-e-recommended-methods-for-screening-and-modeling-local-risks-and-hazards_final-pdf.pdf?rev=b8917a27345a4a629fc18fc8650951e4.

[77] BAAQMD, Air Quality Guidelines, Appendix E, pdf 22-23.

[78] IS/MND, pdf 23.

any analysis.[79] However, as documented in this comment, accidents have occurred at many similar facilities. Thus, accidents at the proposed facility cannot be dismissed. An accident could result in significant impacts to on-site workers and off-site workers and residents. The IS/MND failed to evaluate and mitigate the impacts of accidents at the proposed facility, during product loading and product transport to market, thus failing as an informational document under CEQA.

Industrial cryogenic air separation plants present potential hazards to both on-site workers and off-site parties[80] that must be disclosed and mitigated.[81] The hazards include electricity, gases under pressure, very low temperatures, the ability of oxygen to accelerate combustion, ambient air quality, the asphyxiant properties of nitrogen, argon, and the rare gases, and the harmful effects of breathing high concentrations of oxygen,[82] as follows:[83]

- Cryogenic injuries or burns resulting from skin contact with very cold vapor, liquid, or surfaces. Effects are similar to those of a heat burn. Severity varies with the temperature and time of exposure. Exposed or insufficiently protected parts of the body can stick to cold surfaces due to the rapid freezing of available moisture, and skin and flesh can be torn on removal;
- Risk of frostbite or hypothermia (general cooling of the body) in a cold environment. There can be warning signs, in the case of frostbite, while the body sections freeze. As the body temperature drops, the first indications of hypothermia are bizarre or unusual behavior followed, often rapidly, by loss of consciousness;
- Respiratory problems caused by the inhalation of cold gas. Short-term exposure generally causes discomfort; however, prolonged inhalation can result in effects leading to serious illness such as pulmonary oedema or pneumonia; and

[79] IS/MND, pdf 55.

[80] EIGA, Hazards of Inert Gases and Oxygen Depletion, ISC Document 44/09/E, 2009; https://www.linde-gas.com/en/images/Hazards%20of%20inert%20gases%20and%20oxygen%20depletion_tcm17-13909.pdf.

[81] See, for example, AIGA, Safe Practices Guide for Cryogenic Air Separations Plants, AIGA 056/23; https://www.asiaiga.org/uploaded_docs/en_AIGA_056_23_Safe_Practice_Guide_for_Cryogenic_Air_Separation_Plants_Clean_Copy_10_Aug_2023.pdf.

[82] Schmidt et al., 2001, p. 11.

[83] EIGA, Guideline for Safe Practices for Cryogenic Air Separation Plants, Doc 147/22, Section 5.1, pdf 16; https://www.eiga.eu/uploads/documents/DOC147.pdf.

- Hazardous concentrations and/or reduced visibility can also occur at considerable distances from the point of discharge, depending on topography and weather conditions. Cold gases are heavier than air, tend to settle and flow to low levels, and can create a dense water vapor fog.

Any industrial process that generates or uses oxygen creates elevated risks of fire. In air separation plants, for example, pure oxygen is in contact with equipment. Friction, mechanical impacts, and/or contact with organic materials incompatible with oxygen can quickly ignite a fire inside of valves and other equipment, resulting in explosion-like reactions. Any flammable material in contact with oxygen will readily burn once ignited, including metals.

These plants process large amounts of strong oxidants, such as concentrated oxygen and liquid oxygen at extremely low temperatures and high pressures. Thus, the danger of explosions and bursting is constantly present. In Japan, for example, "numerous accidents have occurred at various locations at air separation plants." The total number of casualties in Japan from accidents at air separation plants as of 1970 was 48, of which 37 were from explosions, 6 from bursting, 3 from burns, and one each from frostbite and suffocation. Half of these, 24, occurred in the reboiler of the liquefaction column.[84]

Oxygen concentrations greater than 23.5% create fire hazards as oxygen promotes very rapid combustion of flammable materials and some materials that are normally regarded as nonflammable. Oxygen concentrations above 23.5% dramatically increase the ease of ignition of clothing. Once ignited by even a spark or cigarette, clothing can burst into flames and burn rapidly. Even body hair is subject to flash fires that can spread rapidly over the entire exposed surface.

The IS/MND is silent on these risks and the measures that are currently in place in the existing operations building and measures that will be implemented to accommodate this Project to protect on-site workers. Thus, the IS/MND fails as an informational document under CEQA for failing to disclose these worker risks and for failing to mitigate them. The workers will use existing facilities at the existing Linde plant. However, the IS/MND fails to disclose any design details of these existing facilities relevant to worker safety in the instant IS/MND.

[84] NASA, Translation of the Entire Issue of The Journal of Ammonium Sulphate Engineering, Survey of Accidents at Air Separation Plants, Vol. 17, No. 3, 1964, 47 pp, December 1970, pdf 16-17, Table 2; https://dn790005.ca.archive.org/0/items/nasa_techdoc_19710003182/19710003182.pdf.

5.1. Operational Hazards Were Not Evaluated

The IS/MND discloses that "the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the Contra Costa County Fire Protection District (CCCFPD) for training and tours of their existing facility and will continue to do so for the proposed expansion."[85] However, the IS/MND does not disclose the hazards that have been and would be discussed with CCCFPD nor analyze these Project impacts to on-site workers and off-site workers, residents, and students.

Any industrial process that generates or uses oxygen, for example, has an elevated risk of fire. In air separation plants, pure oxygen is in contact with different types of equipment. Friction, mechanical impact, and contact with organic materials not compatible with oxygen can quickly spark a fire inside valves, for example. The resulting explosion-like reaction is a substantial risk to people working nearby. The IS/MND fails to discuss these risks and impose mitigation, thus failing as an informational document under CEQA.

Hydrogen also presents significant problems that are not addressed in the IS/MND. Hydrogen is prone to material damage, which may lead to leakage. High-pressure leaking hydrogen is highly susceptible to spontaneous combustion due to its combustion characteristics, which may cause a jet fire or explosion, resulting in serious casualties and property damage.[86] While hydrogen has many advantages as a fuel, it presents safety issues that are not discussed in the IS/MND compared with natural gas, including easy leakage, low minimum ignition energy, wide flammable range in air, wide explosion volume and embrittlement effects.[87] Further:[88]

[85] IS/MND, pdf 13, 50, 83, 120, 321.

[86] Hao Li and others, Safety of Hydrogen Storage and Transportation: An Overview on Mechanisms, Techniques, and Challenges, Energy Reports, v. 8, November 2022, pp. 6285-6296; https://www.sciencedirect.com/science/article/pii/S2352484722008332.

[87] Ibid.

[88] Ibid.

> Hydrogen can easily cause material failure, which in turn can lead to leakage. Hydrogen leakage is followed by a mixture of air in a certain space to form a gas cloud; if it encounters an ignition source at this time, hydrogen cloud explosions easily occur. Even without ignition sources, high-pressure hydrogen leakage may cause spontaneous combustion and explosion. In 2019, there were several hydrogen explosions in Norway, the United States and South Korea. Among them, the explosion of a hydrogen fuel storage tank in South Korea caused 2 deaths and 6 injuries(Yang et al., 2021). The causes of the accidents were hydrogen cloud explosions and chain explosions caused by hydrogen spontaneous combustion. These once again caused widespread public concern for hydrogen energy safety.

Thus, these authors concluded that "[b]ecause of these dangerous attributes and the high cost, the large-scale utilization of hydrogen is subject to certain restrictions. Therefore, it is necessary to conduct detailed and in-depth research on the safety of hydrogen to ensure its safe and economic large-scale utilization."

The IS/MND also does not include a HAZOP, a formal structured process to ensure that all aspects of a plant are addressed, including startup, shutdown, normal operation, materials of construction, etc.[89] The Asia Industrial Gases Association (AIGA), for example, states as follows (emphasis in original):[90]

> Air separation plant safety begins with a safety evaluation of the proposed plant site and the surrounding area. Generally, air separation plants are located in or near industrial areas as an adjunct to other industrial or chemical plants. A quantified risk assessment should be performed when plants are sited in proximity of hydrocarbon, corrosive, toxic, or other hazardous chemical sources. A plant installation should conform to the applicable industry consensus standards and shall adhere to all applicable local, state, provincial/territorial, and federal regulations. The plant operation should be reviewed for compatibility with the surrounding area. For example, the potential hazard of the cooling tower plume or cryogenic fog to nearby plants or vehicular traffic should be recognized. Adequate space should be provided for cryogenic liquid disposal. Environmental impacts of air separation plants are addressed in EIGA Doc 94, *Environmental Impacts of Air Separation Units* [17].

The IS/MND does not address any of these issues. The facility is located in close proximity to hydrocarbon, corrosive, toxic, and other hazardous chemical sources (e.g., the adjacent Linde facility), thus requiring a Quantified Risk Assessment (QRA). The IS/MND does not include a QRA, which is required under CEQA when the public at large, as here, could be affected. Further, given the hazards of these facilities, once the

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[89] William K. Schmidt, Karen S. Winegardner, Howard Castle-Smith, and Martin Dennehy, Safe Design and Operation of a Cryogenic Air Separation Unit, *Process Safety Progress*, December 2001, v. 20, no. 4, p. 3; https://www.researchgate.net/publication/227599641_Safe_design_and_operation_of_a_Cryogenic_Air_Separation_Unit.

[90] AIGA, Safe Practices Guide for Cryogenic Air Separation Plants, AIGA 056/14, Section 6.1, pdf 15; https://asiaiga.org/uploaded_docs/AIGA_056_14%20Safe%20practices%20guide%20for%20cryogenic%20air%20separation%20plants.pdf.

plant is operational, regular training sessions and safety meetings should be required. None are required in the IS/MND. The plant includes a cooling tower near roads but the IS/MND does not address the potential hazard of the cooling tower plume or cryogenic fog impacting nearby plants or vehicular traffic on nearby roads. Thus, the IS/MND fails as an informational document under CEQA.

Other important design considerations identified in AIGA 056 and other documents cited in these comments—including safety factors in plant layout, materials of construction, handling of aluminum packing during installation, construction materials, insulation, cleaning, electrical risks, and intake air quality—cannot be evaluated as the IS/MND does not contain adequate process design information to evaluate impacts, thus failing as an informational document under CEQA.

These plants have many potential significant hazards that are not disclosed or mitigated in the IS/MND. These include impacts arising from adjacent facilities; the proximity of electricity, gases under pressure, very low temperatures, the ability of oxygen to accelerate combustion, the asphyxiant properties of nitrogen, argon, and the rare gases; and ambient air quality. The IS/MND does not discuss any of these issues or impose mitigation[91] for their impacts. Rather, the IS/MND asserts, with no support, as follows:[92]

> **Less-than-Significant Impact.** Once developed, the Project site would be served by the CCCFPD. The existing facility is already served by the CCCFPD and the Project is not expected to result in an increase in calls for fire and emergency protection services that would warrant changes to fire protection service ratios and/or response times. Though the products created are not poisonous and are nontoxic and nonflammable, the cryogenic temperatures and extreme purity of the gases create their own hazards. Linde has met with the CCCFPD for training and tours of the existing facility and would continue to do so for the Project. Therefore, the Project would result in a less-than-significant impact.

Air separation plants have four major hazards: (1) rapid oxidation; (2) embrittlement; (3) pressure excursions due to vaporizing liquids; and (4) oxygen enriched or deficient atmospheres. Other conditions that can lead to accidents include

[91] Emerson, How to Improve Reliability and Safety of Air Separation Units; https://www.emerson.com/documents/automation/air-separation-e-book-web-en-8092214.pdf.

[92] IS/MND, pdf 83.

(1) presence of moisture and water vapor; (2) impurities and contaminants in the air; and (3) failure to maintain optimal temperature and pressure.[93]

These hazards are typically caused by unanticipated changes in intake air quality. However, the IS/MND fails to disclose the nature of these "hazards" and fails to evaluate their impact on operational workers at the facility and off-site sensitive receptors, thus failing as an informational document under CEQA.

5.1.1. Accidents at Existing Facilities

Some of the accidents that have been reported in published sources are reviewed in this section to illustrate the hazards of air separation plants.

First, on December 25, 1997, a major explosion occurred at an air separation plant (2,500 t/d oxygen at 99.8% purity) in Malaysia. The explosion resulted in blast damage to a distance of 5 km. A total of 12 people were injured. The major elements of the ASU were destroyed, and severe damage was done to surrounding facilities. The incident was caused by "considerable hydrocarbon ingress . . ., stemming from forest fires, passing the air purification system, and vaporizer fouling due to nitrous oxide crystals, giving rise to the accumulation of combustible deposit in the closed cycle cores. Once hydrocarbon combustion was triggered, it led to aluminum combustion."[94] A similar explosion occurred a few months earlier in China.[95] The authors concluded as follows:[96]

> We conclude that the accident was due to the coincidence of considerable hydrocarbon ingress in the form of carbonaceous aerosol material, stemming from forest fires, passing the air purification system, and vaporiser fouling due to nitrous oxide crystals, giving rise to the accumulation of combustible deposits in the closed cycle cores. Once hydrocarbon combustion was triggered, it led to aluminium combustion. A low activation energy, a chemical mechanism involving radical reactions to provide …

As smoke from forest fires is likely to be present in the Project area, a hazard analysis is critically important to assure the safety of the Project. Molecular sieves are

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[93] Common Challenges in Air Separation Plants: How Molecular Sieves Can Help, October 28, 2023; https://www.molecularsievedesiccants.com/blogs/common-challenges-in-air-separation-plants-how-molecular-sieves-can-help.

[94] R. M. van Hardeveld, M. J. Groeneveld, J.-Y. Lehman, and D. C. Bull, Investigation of an Air Separation Unit Explosion, *Journal of Loss Prevention in the Process Industries*, v. 14, issue 3, pp. 167-180, 2001; https://www.sciencedirect.com/science/article/abs/pii/S0950423000000450.

[95] ARIA, Explosion in an Air Distillation Unit, 12/25/1997; https://www.aria.developpement-durable.gouv.fr/accident/23132_en/?lang=en.

[96] Ibid.

very efficient at the adsorption of impurities and contaminants in air,[97] such as smoke and other air contaminants likely present at the site due to its industrial character.

Two very serious accidents involving large manually actuated isolation valves occurred at air separation plants in liquid oxygen service. In both incidents there were two fatalities.[98]

A July 19, 2019 explosion at a plant in China's Henan Province caused 15 fatalities, many more injuries, and enormous plant damage.[99,100] Figure 11.

Figure 11: Air Separation Plant Accident in Yima City, Central China, July 7, 2019[101]



[97] Common Challenges in Air Separation Plants: How Molecular Sieves Can Help, October 28, 2023; https://www.molecularsievedesiccants.com/blogs/common-challenges-in-air-separation-plants-how-molecular-sieves-can-help.

[98] EIGA, Experiences and Lessons, Air Separation Unit Accidents, November 28, 2022; https://www.molecularsievedesiccants.com/blogs/common-challenges-in-air-separation-plants-how-molecular-sieves-can-help; https://www.linkedin.com/pulse/experiences-lessons-air-separation-unit-accident-airseparationunit/.

[99] Emerson, How to Improve Reliability and Safety of Air Separation Units; https://www.emerson.com/documents/automation/air-separation-e-book-web-en-8092214.pdf. .

[100] WION, China: Blast Occurred I the Air Separation Unit; https://www.youtube.com/watch?v=gfmDjLQ_vuI.

[101] Yima City, Central China, July 20, 2019; https://www.euronews.com/video/2019/07/20/aerial-footage-reveals-ruins-of-gas-plant-after-powerful-blast.

5.1.2. Ambient Air Quality

Air contains many trace impurities that can cause plugging, corrosion, or which are reactive, leading to accidents. Tables 2 and 3. The AIGA discloses intake air quality impacts as follows (emphasis in original):[102]

> Air quality can have an impact on the air separation plant site selection and shall be evaluated. The air separation plant typically is located in an industrial area and thus a degree of contamination released from industrial and/or chemical plant operations can be expected to be present in the air. Trace contaminants in the atmospheric air, particularly hydrocarbons, have a direct bearing on the safe operation of an air separation plant. It is important to identify these contaminants and their levels of concentration in the atmospheric air. Short-term air quality analyses are not representative of long-term air contaminant levels. Changing site conditions can have an impact on air quality and should be evaluated periodically or when the surrounding industries change.

Table 2: Trace Contaminants in Air[103]

Species	Class C=Corrosive R=Reactive P=Plugging	Typical Design Basis for concentration air[(a)] (ppm)	Typical % removal in PPU[(b)]
CO_2	P	400	>99%
SO_2	C, P	0.1	100%
HCl	C	0.05	100%
H_2O	P	10,000 (approx.)	100%
N_2O	P	0.3	30-70%
NO_x ($NO+NO_2$)	P, R	0.05	100%
O_3	R	0.2	100%
CH_4	R	10	0%
C_2H_6	R	0.1	0%
C_2H_4	R	0.3	50%
C_2H_2	R	1.0	100%
C_3H_8	R	0.05	67%
C_3H_6	R	0.2	100%
C_4^+	R	1.0	100%

(a) This is a typical design basis. For most components, the actual value will be lower.

(b) Approximate breakthrough order for conventional PPU's (first to last):
$CH_4 > C_2H_6 > NO > C_3H_8 > N_2O > C_2H_4 > CO_2 >> C_3H_6$, NO_2, HCl, SO_2, C_2H_2, $C_4+ > H_2O$.

[102] Asia Industrial Gases Association (AIGA), Safe Practices Guide for Cryogenic Air Separation Plants, Based on CGA P-8-2013, Fifth Edition, Section 7, pdf 18; https://asiaiga.org/uploaded_docs/AIGA_056_14%20Safe%20practices%20guide%20for%20cryogenic%20air%20separation%20plants.pdf.

[103] Schmidt et al., 2001, p. 14.

Table 3: Plugging, Reactive, and Corrosive Contaminants in Air[104]

Plugging		Reactive		Corrosive	
Chemical name	**Symbol**	**Chemical name**	**Symbol**	**Chemical name**	**Symbol**
Water	H_2O	Methane	CH_4	Sulfur dioxide	SO_2
Carbon dioxide	CO_2	Acetylene	C_2H_2	Sulfur trioxide	SO_3
Nitrous oxide	N_2O	Ethylene	C_2H_4	Hydrogen sulfide	H_2S
		Ethane	C_2H_6	Chlorine	Cl_2
		Propylene	C_3H_6	Hydrochloric acid	HCl
		Propane	C_3H_8	Ammonia	NH_3
		Other hydrocarbons		Other sulfur compounds	
		Oxides of nitrogen	NO_x	Other chlorides	
		Ozone	O_3		

NOTE—This table was originally developed for CGA P-8.4, *Safe Operation of Reboilers/Condensers in Air Separation Units* [43].

Plugging contaminants concentrate, precipitate out as a solid, or both. While this is an operating problem, it can also lead to dry boiling or pool boiling, which can concentrate the reactive contaminant to form flammable mixtures. The plugging contaminants of most concern are water, carbon dioxide, and nitrous oxide,[105] which are all present at the site. Tables 2, 3.

Reactive contaminants can concentrate in the ASU and form flammable mixtures with oxygen or enriched air. The most important reactive contaminants in air are methane, ethane, ethylene, acetylene, propane, and propylene. Hydrocarbon aerosols from smoke and haze are a special type of reactive contaminant. Corrosive contaminants (acid gases and ammonia) can react with equipment and piping, causing operating problems and impacting equipment life.[106] Tables 2, 3.

These contaminants are a particular concern at the selected location due to the proximity of industrial facilities that emit pollutants. The evaluation of potential impacts from existing and future changes in air quality is essential for the safe operation of an air separation plant. This requires detailed information on existing ambient air quality and routine monitoring of air quality over the lifetime of the facility. The IS/MND fails to disclose the impact of air quality on facility operation. Further, the IS/MND is silent on existing air quality that affects the operation of an air separation

[104] AIGA 056/14, Table 2, pdf 18.

[105] AIGA 2013, pdf 18.

[106] Ibid.

plant. The IS/MND also fails to require ambient air quality monitoring during facility operation. Thus, the IS/MND fails as an informational document under CEQA.

The Project will be located in an industrial area. Thus, contaminants can reasonably be expected in the intake air, which should have been disclosed and should be routinely monitored during Project operation:[107]

> Air quality can have an impact on the air separation plant site selection and shall be evaluated. The air separation plant typically is located in an industrial area and thus a degree of contamination released from industrial and / or chemical plant operations can be expected to be present in the air. Trace contaminants in the atmospheric air, particularly hydrocarbons, have a direct bearing on the safe operation of an air separation plant. It is important to identify these contaminants and their levels of concentration in the atmospheric air. Short-term air quality analyses are not representative of long-term air contaminant levels. Changing site conditions can have an impact on air quality and should be evaluated periodically or when the surrounding industries change.

Trace contaminants in the intake air can cause problems in the ASU, including plugging, undesired reactions, or corrosion. Table 3. Acetylene, for example, is a very hazardous and reactive contaminant. It can concentrate in liquid oxygen and precipitate out as a solid. The resulting solid is unstable and requires little energy to ignite. The IS/MND is silent on the composition of the ambient air that would be processed in the facility and on whether this facility will be designed to remove acetylene and other contaminants from the processed air, thus failing as an informational document under CEQA. Further, the IS/MND is silent on the impact of ambient air quality on facility operation and hence the impact on on-site workers and off-site workers, residents, students, and other sensitive receptors. These hazards are typically evaluated in a design hazard review to ensure that all hazards are addressed, using the HAZOP process.

Further, once the plant is operational, regular safety training and safety meetings are required to protect on-site workers and assure the plant is operated to current standards and practices. The IS/MND is silent on worker safety training. When nearby sensitive receptors are present, as here (Comment 4.3), a Quantitative Risk Assessment (QRA) is also required. The IS/MND is silent on the hazards of air separation plants on workers and nearby sensitive receptors and does not include a HAZOP or QRA, which are serious omissions rendering the IS/MND invalid.

The safety of an ASU depends upon the local air quality. Air contains many trace impurities (other than criteria pollutants, e.g., NOx, SOx, CO, PM10, PM2.5) that can cause plugging, corrosion, or which are reactive, leading to accidents and safety problems. Table 2 and 3. The local air quality ultimately determines the design basis of

[107] EIGA Doc 147/22, Section 7, pdf 22.

an air separation plant. As air quality ultimately determines the safety of air separation plants and can change over time, the IS/MND must disclose existing ambient air quality and require routine air quality monitoring over the lifetime of the Project.

This is a particular concern at the selected location due to the proximity of industrial facilities that emit pollutants that will be present in the air that the plant processes (Tables 2, 3). The evaluation of potential impacts from existing and future changes in air quality is essential for the safe operation of an air separation plant. This requires detailed information on existing ambient air quality and routine monitoring of air quality over the operation of the facility. Molecular sieves, for example, are an effective method to remove contaminants in the air feed.[108] The IS/MND is silent on the impact of air quality on the operation of the Project and measures that will be taken to monitor it during operation. The IS/MND also does not include any noncriteria pollutant ambient air quality data, thus failing as an informational document under CEQA.

In sum, industry literature discloses that the hazards of air separation plants include the proximity of electricity, gases under pressure, very low temperatures, the ability of oxygen to accelerate combustion, and the asphyxiant properties of nitrogen, argon, and the rare gases.[109] The four primary hazards associated with an ASU are: (1) the potential for rapid oxidation; (2) interfaces between the ASU and the downstream systems; (3) pressure excursions due to vaporizing liquids, and (4) oxygen enriched or deficient atmospheres. The IS/MND fails to disclose accidents that have occurred at similar facilities and to impose mitigation to protect on-site workers and off-site workers and residents,[110] thus failing as an informational document under CEQA.

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[108] Common Challenges in Air Separation Plants: How Molecular Sieves Can Help, October 28, 2023; https://www.molecularsievedesiccants.com/blogs/common-challenges-in-air-separation-plants-how-molecular-sieves-can-help.

[109] Schmidt et al., 2001.

[110] Experiences and Lessons, Air Separation Unit Accident, November 28, 2022; https://www.linkedin.com/pulse/experiences-lessons-air-separation-unit-accident-airseparationunit/; R. M. van Hardeveld et al., Investigation of an Air Separation Unit Explosion, *Journal of Loss Prevention in the Process Industries*, v. 14, issue 3, pp. 167-180, 2001; https://www.sciencedirect.com/science/article/abs/pii/S0950423000000450; Rich Gottwald, Lessons Learned: 2019 Yima City ASU Incident, *Gas World*, October 8, 2021; https://www.gasworld.com/story/lessons-learned-2019-yima-city-asu-incident/.

5.2. Mitigation

The plant should be designed and operated to minimize the risk of accidents. Important safety features not mentioned in the IS/MND include:

- Analysis of CO_2 at the PPU exit to verify proper operation;
- Measure LOX purge >/= 0.2% of the air to ensure no contaminant buildup in the reboiler sump;
- Analysis of hydrocarbons to assure < 450 ppm as C_1 equivalent to ensure no hydrocarbon building in reboiler sump;
- Batch analysis to verify that each component is present at acceptable level;
- Periodic defrost to remove trace components from low flow areas;
- Downflow reboiler exist CO_2 concentration < 6% solubility to ensure CO2 and N_2O do not accumulate at too high of a rate.

Workers must wear protective clothing and personal protective equipment (PPE) to minimize the risk of injury due to fire hazards when working with oxygen or burns when working with cryogenic liquids or gases. Insulated or leather gloves are required when handling anything cooled with cryogenic liquids and during cryogenic liquid loading and unloading. Safety glasses with side shields and a face shield shall be worn at all times when handling cryogenic liquids. Flame retardant materials such as Nomex should be used for work clothing and footwear should not include exposed metallic protectors that could cause sparking.[111]

6. LOADING/TRANSPORTATION IMPACTS

The products will be stored on site in three large tanks and transferred into bulk trucks for delivery into smaller tanks at customer locations.[112] The products would be sent to market using trucks,[113] starting at six to seven per day and ramping up to 16 to 20 per day.[114]

The IS/MND does not discuss impacts of filling the trucks and transporting the products to market, including safety issues arising from loading transport vehicles, impacts from accidents that may occur enroute, and impacts from unloading products

[111] EIGA Doc 147/22, Section 5.5, pdf 18.

[112] IS/MND, pdf 5, 7, 26, 85.

[113] IS/MND, pdf 318.

[114] IS/MND, pdf 85.

into customer tanks, thus failing as an informational document under CEQA. Accidents have occurred during filling and transporting these products.

For example, a major uncontrolled release of high-pressure hydrogen occurred in Santa Clara, California, on June 1, 2019, during a gaseous hydrogen fill of a modular multicylinder trailer. The Air Products transfill facility pressurizes liquid hydrogen from an on-site storage tank, warms it to ambient temperature, and transfers the gaseous hydrogen into high-pressure trailer assemblies, which deliver the hydrogen to retails fueling locations. Curtailment of hydrogen deliveries to vehicle refueling stations in northern California occurred while the accident investigation was under way. The post-accident causal analysis concluded as follows:[115]

> Air Products conducted a Root Cause Analysis as part of its incident investigation and reported the following results at a Center for Hydrogen Safety meeting and an HSP meeting in October 2019.
>
> - **Initial Leak** – The initial hydrogen leak was caused by either a cracked O-ring or leaking cone and thread fitting on the front module hydrogen isolation valve.
> - **Unauthorized Maintenance** – The trailer driver attempted an unauthorized repair of the leaking valve without properly isolating the hydrogen supply piping using standard Lockout/Tagout procedures. The system controls, hydrogen fill hose, and instrument airlines (for valve actuation) were still configured for an automated system fill.
> - **Miscommunication** – There was a misunderstanding of the senior driver's instructions to the trainee. The senior driver told the trainee to stop the trailer fill, but the fill control process had been stopped ten minutes previously. When the trainee attempted to stop the fill a second time, the trainee accidentally actuated the "Purge/Enable Trailer" control button which opened the pneumatic valves and allowed hydrogen flow into the disconnected manifold pipe.
> - **Hydrogen Explosion** – The hydrogen explosion was caused by the accumulation and subsequent ignition of hydrogen released into the front module. Confinement by the module walls and vessels prevented free dispersal of the released hydrogen. The open module roof did not provide adequate venting to prevent damaging overpressures from developing upon ignition of the accumulated flammable mixture within the module.
> - **Hydrogen Jet Fires** – Hydrogen jet fires originating from the disconnected piping burned for a few seconds until the pneumatic lines controlling hydrogen flow either melted or were shut by ES actuation. Other hydrogen fires continued from multiple leaking PRD seals and damaged O-rings. This ultimately led to multiple PRD actuations, several broken cylinder PRDs, and fire impingement on the trailer cab and the adjacent trailers. These hydrogen fires caused subsequent diesel fuel fires and tire fires.
> - **Subsequent Fires** – Subsequent tractor fuel fires, tire fires, and cab fires were extinguished by aerial streams from responding firefighters.

[115] Hydrogen Safety Panel, Report on the June 2019 Hydrogen Explosion and Fire Incident in Santa Clara, California, June 2021; https://h2tools.org/sites/default/files/2021-06/AP_Santa_Clara_Incident_Review_Report_Rev1.pdf.

Based on their root cause analysis, Air Products implemented the following measures.

- **Improved Training and Retraining of Drivers**
- **Improved Trailer Filling Procedures**
- **Equipment Evaluations and Modifications**

One limitation of the Air Products' initial causal analysis as presented to the HSP is that there was no discussion of how or why the relief devices on the incident trailer were damaged, although the analysis acknowledged that it occurred and showed where it occurred per a diagram. The HSP later received a more complete analysis from Air Products and had discussion with Air Products about how the PRDs and breached piping influenced the subsequent damage. However, the more complete analysis and follow-up discussion did not address the absence of installed facility fire protection and the effect of close trailer spacing. These gaps are addressed in the HSP analysis below, with issues related to PRDs, trailer module design and construction, and hydrogen piping and fittings.

In response, Air Products implemented improved training and retraining of drivers, improved trailer filling procedures, and equipment evaluations and modifications.

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Dr. Fox has over 40 years of experience in the field of environmental engineering, including air pollution control (BACT, BART, MACT, LAER, RACT), greenhouse gas emissions and control, cost effectiveness analyses, water quality and water supply investigations, hydrology, hazardous waste investigations, environmental permitting, nuisance investigations (odor, noise), environmental impact reports, CEQA/NEPA documentation, risk assessments, and litigation support.

EDUCATION

Ph.D. Environmental/Civil Engineering, University of California, Berkeley, 1980.
M.S. Environmental/Civil Engineering, University of California, Berkeley, 1975.
B.S. Physics (with high honors), University of Florida, Gainesville, 1971.

REGISTRATION

Registered Professional Engineer: Arizona (2001-2014: #36701; retired), California (2002-present; CH 6058), Florida (2001-2016; #57886; retired), Georgia (2002-2014; #PE027643; retired), Washington (2002-2014; #38692; retired), Wisconsin (2005-2014; #37595-006; retired)
Board Certified Environmental Engineer, American Academy of Environmental Engineers, Certified in Air Pollution Control (DEE #01-20014), 2002-2014; retired)
Qualified Environmental Professional (QEP), Institute of Professional Environmental Practice (QEP #02-010007, 2001-2015: retired).

PROFESSIONAL HISTORY

Environmental Management, Principal, 1981-present
Lawrence Berkeley National Laboratory, Principal Investigator, 1977-1981
University of California, Berkeley, Program Manager, 1976-1977
Bechtel, Inc., Engineer, 1971-1976, 1964-1966

PROFESSIONAL AFFILIATIONS

American Chemical Society (1981-2010)
Phi Beta Kappa (1970-present)
Sigma Pi Sigma (1970-present)
Who's Who Environmental Registry, PH Publishing, Fort Collins, CO, 1992.
Who's Who in the World, Marquis Who's Who, Inc., Chicago, IL, 11th Ed., p. 371, 1993-present.

Who's Who of American Women, Marquis Who's Who, Inc., Chicago, IL, 13th Ed., p. 264, 1984-present.
Who's Who in Science and Engineering, Marquis Who's Who, Inc., New Providence, NJ, 5th Ed., p. 414, 1999-present.
Who's Who in America, Marquis Who's Who, Inc., 59th Ed., 2005.
Guide to Specialists on Toxic Substances, World Environment Center, New York, NY, p. 80, 1980.
National Research Council Committee on Irrigation-Induced Water Quality Problems (Selenium), Subcommittee on Quality Control/Quality Assurance (1985-1990).
National Research Council Committee on Surface Mining and Reclamation, Subcommittee on Oil Shale (1978-80)

REPRESENTATIVE EXPERIENCE

Performed environmental and engineering investigations, as outlined below, for a wide range of industrial and commercial facilities including: biomass, gas, and oil-fire boilers; petroleum refineries and upgrades thereto; reformulated fuels projects; refinery upgrades to process heavy sour crudes, including tar sands and light sweet crudes from the Eagle Ford and Bakken Formations; petroleum, gasoline and ethanol distribution terminals; coal, coke, and ore/mineral export terminals; LNG export, import, and storage terminals; crude-by-rail projects; shale oil plants; crude oil/condensate marine and rail terminals; coal gasification and liquefaction plants; oil and gas production, including conventional, thermally enhanced, hydraulic fracking, and acid stimulation techniques; underground storage tanks; pipelines; compressor stations; gasoline stations; landfills; railyards; hazardous waste treatment facilities; nuclear, hydroelectric, geothermal, wood, biomass, waste, tire-derived fuel, gas, oil, coke and coal-fired power plants; wind farms; solar energy facilities; battery energy storage systems (BESS); transmission lines; airports; hydrogen plants; petroleum coke calcining plants; coke plants; activated carbon manufacturing facilities; asphalt plants; cement plants; incinerators; flares; manufacturing facilities (e.g., semiconductors, electronic assembly, aerospace components, printed circuit boards, amusement park rides); lanthanide processing plants; ammonia plants; nitric acid plants; urea plants; food processing plants; wineries; almond hulling facilities; composting facilities; grain processing facilities; grain elevators; ethanol production facilities; soy bean oil extraction plants; biodiesel plants; paint formulation plants; wastewater treatment plants; marine terminals and ports; gas processing plants; steel mills; iron nugget production facilities; pig iron plant, based on blast furnace technology; direct reduced iron plant; acid regeneration facilities; railcar refinishing facility; battery manufacturing plants; pesticide manufacturing and repackaging facilities; pulp and paper mills; olefin plants; methanol plants; ethylene crackers; alumina plants, desalination plants; data centers; covered lagoon anaerobic digesters with biogas generators and upgrading equipment to produce renewable natural gas and electricity; selective catalytic reduction (SCR) systems; selective noncatalytic reduction (SNCR) systems; halogen acid

furnaces; contaminated property redevelopment projects (e.g., Mission Bay, Southern Pacific Railyards, Moscone Center expansion, San Diego Padres Ballpark); residential developments; commercial office parks, campuses, and shopping centers; server farms; transportation plans; and a wide range of mines including sand and gravel, hard rock, limestone, nacholite, coal, molybdenum, gold, zinc, and oil shale.

EXPERT WITNESS/LITIGATION SUPPORT

- For plaintiffs-intervenors (Sierra Club), in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications at Rush Island Units 1 and 2 and Labadie Energy Center, assist counsel in evaluating best available control technology (BACT) to reduce SO2 emissions, including wet and dry scrubbing, sorbent injection, and offsets. Case settled. *U.S. and Sierra Club vs. Ameren Missouri*, Case No. 4-11 CV 77 RWS, U.S. District Court, Eastern District of Missouri, Eastern Division, September 30, 2019.
- For the California Attorney General, assist in determining compliance with probation terms in the matter of People v. Chevron USA.
- For plaintiffs, assist in developing Petitioners' proof brief for National Parks Conservation Association et al v. U.S. EPA, Petition for Review of Final Administrative Action of the U.S. EPA, In the U.S. Court of Appeals for the Third Circuit, Docket No. 14-3147.
- For plaintiffs, expert witness in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1997-2000) at the Cemex cement plant in Lyons, Colorado. Reviewed produced documents, prepared expert and rebuttal reports on PSD applicability based on NOx emission calculations for a collection of changes considered both individually and collectively. Deposed August 2011. *United States v. Cemex, Inc.*, In U.S. District Court for the District of Colorado (Civil Action No. 09-cv-00019-MSK-MEH). Case settled June 13, 2013.
- For plaintiffs, in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1988 – 2000) at James De Young Units 3, 4, and 5. Reviewed produced documents, analyzed CEMS and EIA data, and prepared netting and BACT analyses for NOx, SO2, and PM10 (PSD case). Expert report February 24, 2010 and affidavit February 20, 2010. *Sierra Club v. City of Holland, et al.*, U.S. District Court, Western District of Michigan (Civil Action 1:08-cv-1183). Case settled. Consent Decree 1/19/14.
- For plaintiffs, in civil action alleging failure to obtain MACT permit, expert on potential to emit hydrogen chloride (HCl) from a new coal-fired boiler. Reviewed record, estimated HCl emissions, wrote expert report June 2010 and March 2013 (Cost to Install a Scrubber at the Lamar Repowering Project Pursuant to Case-by-Case MACT), deposed August 2010 and

March 2013. *Wildearth Guardian et al. v. Lamar Utilities Board*, Civil Action No. 09-cv-02974, U.S. District Court, District of Colorado. Case settled August 2013.

- For plaintiffs, expert witness on permitting, emission calculations, and wastewater treatment for coal-to-gasoline plant. Reviewed produced documents. Assisted in preparation of comments on draft minor source permit. Wrote two affidavits on key issues in case. Presented direct and rebuttal testimony 10/27 - 10/28/10 on permit enforceability and failure to properly calculate potential to emit, including underestimate of flaring emissions and omission of VOC and CO emissions from wastewater treatment, cooling tower, tank roof landings, and malfunctions. *Sierra Club, Ohio Valley Environmental Coalition, Coal River Mountain Watch, West Virginia Highlands Conservancy v. John Benedict, Director, Division of Air Quality, West Virginia Department of Environmental Protection and TransGas Development System, LLC*, Appeal No. 10-01-AQB. Virginia Air Quality Board remanded the permit on March 28, 2011 ordering reconsideration of potential to emit calculations, including: (1) support for assumed flare efficiency; (2) inclusion of startup, shutdown and malfunction emissions; and (3) inclusion of wastewater treatment emissions in potential to emit calculations.
- For plaintiffs, expert on BACT emission limits for gas-fired combined cycle power plant. Prepared declaration in support of CBE's Opposition to the United States' Motion for Entry of Proposed Amended Consent Decree. Assisted in settlement discussions. *U.S. EPA, Plaintiff, Communities for a Better Environment, Intervenor Plaintiff, v. Pacific Gas & Electric Company, et al.*, U.S. District Court, Northern District of California, San Francisco Division, Case No. C-09-4503 SI.
- Technical expert in confidential settlement discussions with large coal-fired utility on BACT control technology and emission limits for NOx, SO2, PM, PM2.5, and CO for new natural gas fired combined cycle and simple cycle turbines with oil backup. (July 2010). Case settled.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1998-99) at Gallagher Units 1 and 3. Reviewed produced documents, prepared expert and rebuttal reports on historic and current-day BACT for SO2, control costs, and excess emissions of SO2. Deposed 11/18/09. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Settled 12/22/09.
- For plaintiffs, expert witness on MACT, BACT for NOx, and enforceability in an administrative appeal of draft state air permit issued for four 300-MW pet-coke-fired CFBs. Reviewed produced documents and prepared prefiled testimony. Deposed 10/8/09 and 11/9/09. Testified 11/10/09. *Application of Las Brisas Energy Center, LLC for State Air Quality Permit*; before the State Office of Administrative Hearings, Texas. Permit remanded 3/29/10 as LBEC failed to meet burden of proof on a number of issues including MACT.

Texas Court of Appeals dismissed an appeal to reinstate the permit. The Texas Commission on Environmental Quality and Las Brisas Energy Center, LLC sought to overturn the Court of Appeals decision but moved to have their appeal dismissed in August 2013.

- For defense, expert witness in unlawful detainer case involving a gasoline station, minimart, and residential property with contamination from leaking underground storage tanks. Reviewed agency files and inspected site. Presented expert testimony on July 6, 2009, on causes of, nature and extent of subsurface contamination. *A. Singh v. S. Assaedi,* in Contra Costa County Superior Court, CA. Settled August 2009.
- For plaintiffs, expert witness on netting and enforceability for refinery being upgraded to process tar sands crude. Reviewed produced documents. Prepared expert and rebuttal reports addressing use of emission factors for baseline, omitted sources including coker, flares, tank landings and cleaning, and enforceability. Deposed. *In the Matter of Objection to the Issuance of Significant Source Modification Permit No. 089-25484-00453 to BP Products North America Inc., Whiting Business Unit, Save the Dunes Council, Inc., Sierra Club., Inc., Hoosier Environmental Council et al., Petitioners, B. P. Products North American, Respondents/Permittee,* before the Indiana Office of Environmental Adjudication. Case settled.
- For plaintiffs, expert witness on BACT, MACT, and enforceability in appeal of Title V permit issued to 600 MW coal-fired power plant burning Powder River Basin coal. Prepared technical comments on draft air permit. Reviewed record on appeal, drafted BACT, MACT, and enforceability pre-filed testimony. Drafted MACT and enforceability pre-filed rebuttal testimony. Deposed March 24, 2009. Testified June 10, 2009. *In Re: Southwestern Electric Power Company*, Arkansas Pollution Control and Ecology Commission, Consolidated Docket No. 08-006-P. Recommended Decision issued December 9, 2009 upholding issued permit. Commission adopted Recommended Decision January 22, 2010.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1989-1992) at Wabash Units 2, 3 and 5. Reviewed produced documents, prepared expert and rebuttal report on historic and current-day BACT for NOx and SO2, control costs, and excess emissions of NOx, SO2, and mercury. Deposed 10/21/08. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Testified 2/3/09. Memorandum Opinion & Order 5-29-09 requiring shutdown of Wabash River Units 2, 3, 5 by September 30, 2009, run at baseline until shutdown, and permanently surrender SO2 emission allowances.
- For plaintiffs, expert witness in liability phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for three historic modifications (1997-2001) at two portland cement plants involving three cement kilns. Reviewed produced documents, analyzed CEMS data covering subject period, prepared netting analysis for NOx, SO_2 and CO, and prepared expert and rebuttal reports. *United States v. Cemex California*

Cement, In U.S. District Court for the Central District of California, Eastern Division, Case No. ED CV 07-00223-GW (JCRx). Settled 1/15/09.

- For intervenors Clean Wisconsin and Citizens Utility Board, prepared data requests, reviewed discovery and expert report. Prepared prefiled direct, rebuttal and surrebuttal testimony on cost to extend life of existing Oak Creek Units 5-8 and cost to address future regulatory requirements to determine whether to control or shutdown one or more of the units. Oral testimony 2/5/08. Application for a Certificate of Authority to Install Wet Flue Gas Desulfurization and Selective Catalytic Reduction Facilities and Associated Equipment for Control of Sulfur Dioxide and Nitrogen Oxide Emissions at Oak Creek Power Plant Units 5, 6, 7 and 8, WPSC Docket No. 6630-CE-299.
- For plaintiffs, expert witness on alternatives analysis and BACT for NOx, SO2, total PM10, and sulfuric acid mist in appeal of PSD permit issued to 1200 MW coal fired power plant burning Powder River Basin and/or Central Appalachian coal (Longleaf). Assisted in drafting technical comments on NOx on draft permit. Prepared expert disclosure. Presented 8+ days of direct and rebuttal expert testimony. Attended all 21 days of evidentiary hearing from 9/5/07 – 10/30/07 assisting in all aspects of hearing. *Friends of the Chatahooche and Sierra Club v. Dr. Carol Couch, Director, Environmental Protection Division of Natural Resources Department, Respondent, and Longleaf Energy Associates, Intervener*. ALJ Final Decision 1/11/08 denying petition. ALJ Order vacated & remanded for further proceedings, Fulton County Superior Court, 6/30/08. Court of Appeals of GA remanded the case with directions that the ALJ's final decision be vacated to consider the evidence under the correct standard of review, July 9, 2009. The ALJ issued an opinion April 2, 2010 in favor of the applicant. Final permit issued April 2010.
- For plaintiffs, expert witness on diesel exhaust in inverse condemnation case in which Port expanded maritime operations into residential neighborhoods, subjecting plaintiffs to noise, light, and diesel fumes. Measured real-time diesel particulate concentrations from marine vessels and tug boats on plaintiffs' property. Reviewed documents, depositions, DVDs, and photographs provided by counsel. Deposed. Testified October 24, 2006. *Ann Chargin, Richard Hackett, Carolyn Hackett, et al. v. Stockton Port District*, Superior Court of California, County of San Joaquin, Stockton Branch, No. CV021015. Judge ruled for plaintiffs.
- For plaintiffs, expert witness on NOx emissions and BACT in case alleging failure to obtain necessary permits and install controls on gas-fired combined-cycle turbines. Prepared and reviewed (applicant analyses) of NOx emissions, BACT analyses (water injection, SCR, ultra low NOx burners), and cost-effectiveness analyses based on site visit, plant operating records, stack tests, CEMS data, and turbine and catalyst vendor design information. Participated in negotiations to scope out consent order. *United States v. Nevada Power.* Case settled June 2007, resulting in installation of dry low NOx burners (5 ppm NOx averaged over 1 hr) on four units and a separate solar array at a local business.

- For plaintiffs, expert witness in appeal of PSD permit issued to 850 MW coal fired boiler burning Powder River Basin coal (Iatan Unit 2) on BACT for particulate matter, sulfuric acid mist and opacity and emission calculations for alleged historic violations of PSD. Assisted in drafting technical comments, petition for review, discovery requests, and responses to discovery requests. Reviewed produced documents. Prepared expert report on BACT for particulate matter. Assisted with expert depositions. Deposed February 7, 8, 27, and 28, 2007. *In Re PSD Construction Permit Issued to Great Plains Energy, Kansas City Power & Light – Iatan Generating Station, Sierra Club v. Missouri Department of Natural Resources, Great Plains Energy, and Kansas City Power & Light.* Case settled March 27, 2007, providing offsets for over 6 million ton/yr of CO2 and lower NOx and SO_2 emission limits.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications of coal-fired boilers and associated equipment. Reviewed produced documents, prepared expert report on cost to retrofit 24 coal-fired power plants with scrubbers designed to remove 99% of the sulfur dioxide from flue gases. Prepared supplemental and expert report on cost estimates and BACT for SO2 for these 24 complaint units. Deposed 1/30/07 and 3/14/07. *United States and State of New York et al. v. American Electric Power*, In U.S. District Court for the Southern District of Ohio, Eastern Division, Consolidated Civil Action Nos. C2-99-1182 and C2-99-1250. Settlement announced 10/9/07.
- For plaintiffs, expert witness on BACT, enforceability, and alternatives analysis in appeal of PSD permit issued for a 270-MW pulverized coal fired boiler burning Powder River Basin coal (City Utilities Springfield Unit 2). Reviewed permitting file and assisted counsel draft petition and prepare and respond to interrogatories and document requests. Reviewed interrogatory responses and produced documents. Assisted with expert depositions. Deposed August 2005. Evidentiary hearings October 2005. *In the Matter of Linda Chipperfield and Sierra Club v. Missouri Department of Natural Resources.* Missouri Supreme Court denied review of adverse lower court rulings August 2007.
- For plaintiffs, expert witness in civil action relating to plume touchdowns at AEP's Gavin coal-fired power plant. Assisted counsel draft interrogatories and document requests. Reviewed responses to interrogatories and produced documents. Prepared expert report "Releases of Sulfuric Acid Mist from the Gavin Power Station." The report evaluates sulfuric acid mist releases to determine if AEP complied with the requirements of CERCLA Section 103(a) and EPCRA Section 304. This report also discusses the formation, chemistry, release characteristics, and abatement of sulfuric acid mist in support of the claim that these releases present an imminent and substantial endangerment to public health under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"). *Citizens Against Pollution v. Ohio Power Company*, In the U.S. District Court for the Southern District of Ohio, Eastern Division, Civil Action No. 2-04-cv-371. Case settled 12-8-06.

- For petitioners, expert witness in contested case hearing on BACT, enforceability, and emission estimates for an air permit issued to a 500-MW supercritical Power River Basin coal-fired boiler (Weston Unit 4). Assisted counsel prepare comments on draft air permit and respond to and draft discovery. Reviewed produced file, deposed (7/05), and prepared expert report on BACT and enforceability. Evidentiary hearings September 2005. *In the Matter of an Air Pollution Control Construction Permit Issued to Wisconsin Public Service Corporation for the Construction and Operation of a 500 MW Pulverized Coal-fired Power Plant Known as Weston Unit 4 in Marathon County, Wisconsin*, Case No. IH-04-21. The Final Order, issued 2/10/06, lowered the NOx BACT limit from 0.07 lb/MMBtu to 0.06 lb/MMBtu based on a 30-day average, added a BACT SO2 control efficiency, and required a 0.0005% high efficiency drift eliminator as BACT for the cooling tower. The modified permit, including these provisions, was issued 3/28/07. Additional appeals in progress.
- For plaintiffs, adviser on technical issues related to Citizen Suit against U.S. EPA regarding failure to update New Source Performance Standards for petroleum refineries, 40 CFR 60, Subparts J, VV, and GGG. *Our Children's Earth Foundation and Sierra Club v. U.S. EPA et al.* Case settled July 2005. CD No. C 05-00094 CW, U.S. District Court, Northern District of California – Oakland Division. Proposed revisions to standards of performance for petroleum refineries published 72 FR 27178 (5/14/07).
- For interveners, reviewed proposed Consent Decree settling Clean Air Act violations due to historic modifications of boilers and associated equipment at two coal-fired power plants. In response to stay order, reviewed the record, selected one representative activity at each of seven generating units, and analyzed to identify CAA violations. Identified NSPS and NSR violations for NOx, SO_2, PM/PM10, and sulfuric acid mist. Summarized results in an expert report. *United States of America, and Michael A. Cox, Attorney General of the State of Michigan, ex rel. Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors, v. Wisconsin Electric Power Company, Defendant*, U.S. District Court for the Eastern District of Wisconsin, Civil Action No. 2:03-CV-00371-CNC. Order issued 10-1-07 denying petition.
- For a coalition of Nevada labor organizations (ACE), reviewed preliminary determination to issue a Class I Air Quality Operating Permit to Construct and supporting files for a 250-MW pulverized coal-fired boiler (Newmont). Prepared about 100 pages of technical analyses and comments on BACT, MACT, emission calculations, and enforceability. Assisted counsel draft petition and reply brief appealing PSD permit to U.S. EPA Environmental Appeals Board (EAB). Order denying review issued 12/21/05. *In re Newmont Nevada Energy Investment, LLC, TS Power Plant*, PSD Appeal No. 05-04 (EAB 2005).
- For petitioners and plaintiffs, reviewed and prepared comments on air quality and hazardous waste based on negative declaration for refinery ultra low sulfur diesel project located in SCAQMD. Reviewed responses to comments and prepared responses. Prepared declaration and presented oral testimony before SCAQMD Hearing Board on exempt sources (cooling towers) and calculation of potential to emit under NSR. Petition for writ of mandate filed

March 2005. Case remanded by Court of Appeals to trial court to direct SCAQMD to re-evaluate the potential environmental significance of NOx emissions resulting from the project in accordance with court's opinion. California Court of Appeals, Second Appellate Division, on December 18, 2007, affirmed in part (as to baseline) and denied in part. *Communities for a Better Environment v. South Coast Air Quality Management District and ConocoPhillips and Carlos Valdez et al v. South Coast Air Quality Management District and ConocoPhillips.* Certified for partial publication 1/16/08. Appellate Court opinion upheld by CA Supreme Court 3/15/10. *(2010) 48 Cal.4th 310*.

- For amici seeking to amend a proposed Consent Decree to settle alleged NSR violations at Chevron refineries, reviewed proposed settlement, related files, subject modifications, and emission calculations. Prepared declaration on emission reductions, identification of NSR and NSPS violations, and BACT/LAER for FCCUs, heaters and boilers, flares, and sulfur recovery plants. *U.S. et al. v. Chevron U.S.A.*, Northern District of California, Case No. C 03-04650. Memorandum and Order Entering Consent Decree issued June 2005. Case No. C 03-4650 CRB.
- For petitioners, prepared declaration on enforceability of periodic monitoring requirements, in response to EPA's revised interpretation of 40 CFR 70.6(c)(1). This revision limited additional monitoring required in Title V permits. 69 FR 3203 (Jan. 22, 2004). *Environmental Integrity Project et al. v. EPA* (U.S. Court of Appeals for the District of Columbia). Court ruled the Act requires all Title V permits to contain monitoring requirements to assure compliance. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).
- For interveners in application for authority to construct a 500 MW supercritical coal-fired generating unit before the Wisconsin Public Service Commission, prepared pre-filed written direct and rebuttal testimony with oral cross examination and rebuttal on BACT and MACT (Weston 4). Prepared written comments on BACT, MACT, and enforceability on draft air permit for same facility.
- For property owners in Nevada, evaluated the environmental impacts of a 1,450-MW coal-fired power plant proposed in a rural area adjacent to the Black Rock Desert and Granite Range, including emission calculations, air quality modeling, comments on proposed use permit to collect preconstruction monitoring data, and coordination with agencies and other interested parties. Project cancelled.
- For environmental organizations, reviewed draft PSD permit for a 600-MW coal-fired power plant in West Virginia (Longview). Prepared comments on permit enforceability; coal washing; BACT for SO_2 and PM10; Hg MACT; and MACT for HCl, HF, non-Hg metallic HAPs, and enforceability. Assist plaintiffs draft petition appealing air permit. Retained as expert to develop testimony on MACT, BACT, offsets, enforceability. Participate in settlement discussions. Case settled July 2004.
- For petitioners, reviewed record produced in discovery and prepared affidavit on emissions of carbon monoxide and volatile organic compounds during startup of GE 7FA combustion

turbines to successfully establish plaintiff standing. *Sierra Club et al. v. Georgia Power Company* (Northern District of Georgia).

- For building trades, reviewed air quality permitting action for 1500-MW coal-fired power plant before the Kentucky Department for Environmental Protection (Thoroughbred).
- For petitioners, expert witness in administrative appeal of the PSD/Title V permit issued to a 1500-MW coal-fired power plant. Reviewed over 60,000 pages of produced documents, prepared discovery index, identified and assembled plaintiff exhibits. Deposed. Assisted counsel in drafting discovery requests, with over 30 depositions, witness cross examination, and brief drafting. Presented over 20 days of direct testimony, rebuttal and sur-rebuttal, with cross examination on BACT for NOx, SO_2, and PM/PM10; MACT for Hg and non-Hg metallic HAPs; emission estimates for purposes of Class I and II air modeling; risk assessment; and enforceability of permit limits. Evidentiary hearings from November 2003 to June 2004. *Sierra Club et al. v. Natural Resources & Environmental Protection Cabinet, Division of Air Quality and Thoroughbred Generating Company et al.* Hearing Officer Decision issued August 9, 2005 finding in favor of plaintiffs on counts as to risk, BACT (IGCC/CFB, NOx, SO_2, Hg, Be), single source, enforceability, and errors and omissions. Assist counsel draft exceptions. Cabinet Secretary issued Order April 11, 2006 denying Hearing Offer's report, except as to NOx BACT, Hg, 99% SO2 control and certain errors and omissions.
- For citizens group in Massachusetts, reviewed, commented on, and participated in permitting of pollution control retrofits of coal-fired power plant (Salem Harbor).
- Assisted citizens group and labor union challenge issuance of conditional use permit for a 317,000 ft^2 discount store in Honolulu without any environmental review. In support of a motion for preliminary injunction, prepared 7-page declaration addressing public health impacts of diesel exhaust from vehicles serving the Project. In preparation for trial, prepared 20-page preliminary expert report summarizing results of diesel exhaust and noise measurements at two big box retail stores in Honolulu, estimated diesel PM10 concentrations for Project using ISCST, prepared a cancer health risk assessment based on these analyses, and evaluated noise impacts.
- Assisted environmental organizations to challenge the DOE Finding of No Significant Impact (FONSI) for the Baja California Power and Sempra Energy Resources Cross-Border Transmissions Lines in the U.S. and four associated power plants located in Mexico (DOE EA-1391). Prepared 20-page declaration in support of motion for summary judgment addressing emissions, including CO_2 and NH_3, offsets, BACT, cumulative air quality impacts, alternative cooling systems, and water use and water quality impacts. Plaintiff's motion for summary judgment granted in part. U.S. District Court, Southern District decision concluded that the Environmental Assessment and FONSI violated NEPA and the APA due to their inadequate analysis of the potential controversy surrounding the project, water impacts, impacts from NH_3 and CO_2, alternatives, and cumulative impacts. *Border Power Plant Working Group v. Department of Energy and Bureau of Land Management*, Case No. 02-CV-513-IEG (POR) (May 2, 2003).

- For Sacramento school, reviewed draft air permit issued for diesel generator located across from playfield. Prepared comments on emission estimates, enforceability, BACT, and health impacts of diesel exhaust. Case settled. BUG trap installed on the diesel generator.
- Assisted unions in appeal of Title V permit issued by BAAQMD to carbon plant that manufactured coke. Reviewed District files, identified historic modifications that should have triggered PSD review, and prepared technical comments on Title V permit. Reviewed responses to comments and assisted counsel draft appeal to BAAQMD hearing board, opening brief, motion to strike, and rebuttal brief. Case settled.
- Assisted California Central Coast city obtain controls on a proposed new city that would straddle the Ventura-Los Angeles County boundary. Reviewed several environmental impact reports, prepared an air quality analysis, a diesel exhaust health risk assessment, and detailed review comments. Governor intervened and State dedicated the land for conservation purposes April 2004.
- Assisted Central California city to obtain controls on large alluvial sand quarry and asphalt plant proposing a modernization. Prepared comments on Negative Declaration on air quality, public health, noise, and traffic. Evaluated process flow diagrams and engineering reports to determine whether proposed changes increased plant capacity or substantially modified plant operations. Prepared comments on application for categorical exemption from CEQA. Presented testimony to County Board of Supervisors. Developed controls to mitigate impacts. Assisted counsel draft Petition for Writ. Case settled June 2002. Substantial improvements in plant operations were obtained including cap on throughput, dust control measures, asphalt plant loadout enclosure, and restrictions on truck routes.
- Assisted oil companies on the California Central Coast in defending class action citizen's lawsuit alleging health effects due to emissions from gas processing plant and leaking underground storage tanks. Reviewed regulatory and other files and advised counsel on merits of case. Case settled November 2001.
- Assisted oil company on the California Central Coast in defending property damage claims arising out of a historic oil spill. Reviewed site investigation reports, pump tests, leachability studies, and health risk assessments, participated in design of additional site characterization studies to assess health impacts, and advised counsel on merits of case. Prepare health risk assessment.
- Assisted unions in appeal of Initial Study/Negative Declaration ("IS/ND") for an MTBE phaseout project at a Bay Area refinery. Reviewed IS/ND and supporting agency permitting files and prepared technical comments on air quality, groundwater, and public health impacts. Reviewed responses to comments and final IS/ND and ATC permits and assisted counsel to draft petitions and briefs appealing decision to Air District Hearing Board. Presented sworn direct and rebuttal testimony with cross examination on groundwater impacts of ethanol spills on hydrocarbon contamination at refinery. Hearing Board ruled 5 to 0 in favor of appellants, remanding ATC to district to prepare an EIR.

- Assisted Florida cities in challenging the use of diesel and proposed BACT determinations in prevention of significant deterioration (PSD) permits issued to two 510-MW simple cycle peaking electric generating facilities and one 1,080-MW simple cycle/combined cycle facility. Reviewed permit applications, draft permits, and FDEP engineering evaluations, assisted counsel in drafting petitions and responding to discovery. Participated in settlement discussions. Cases settled or applications withdrawn.
- Assisted large California city in federal lawsuit alleging peaker power plant was violating its federal permit. Reviewed permit file and applicant's engineering and cost feasibility study to reduce emissions through retrofit controls. Advised counsel on feasible and cost-effective NOx, SOx, and PM10 controls for several 1960s diesel-fired Pratt and Whitney peaker turbines. Case settled.
- Assisted coalition of Georgia environmental groups in evaluating BACT determinations and permit conditions in PSD permits issued to several large natural gas-fired simple cycle and combined-cycle power plants. Prepared technical comments on draft PSD permits on BACT, enforceability of limits, and toxic emissions. Reviewed responses to comments, advised counsel on merits of cases, participated in settlement discussions, presented oral and written testimony in adjudicatory hearings, and provided technical assistance as required. Cases settled or won at trial.
- Assisted construction unions in review of air quality permitting actions before the Indiana Department of Environmental Management ("IDEM") for several natural gas-fired simple cycle peaker and combined cycle power plants.
- Assisted coalition of towns and environmental groups in challenging air permits issued to 523 MW dual fuel (natural gas and distillate) combined-cycle power plant in Connecticut. Prepared technical comments on draft permits and 60 pages of written testimony addressing emission estimates, startup/shutdown issues, BACT/LAER analyses, and toxic air emissions. Presented testimony in adjudicatory administrative hearings before the Connecticut Department of Environmental Protection in June 2001 and December 2001.
- Assisted various coalitions of unions, citizens groups, cities, public agencies, and developers in licensing and permitting of over 110 coal, gas, oil, biomass, and pet coke-fired power plants generating over 75,000 MW of electricity. These included base-load, combined cycle, simple cycle, and peaker power plants in Alaska, Arizona, Arkansas, California, Colorado, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Oregon, Texas, West Virginia, Wisconsin, and elsewhere. Prepared analyses of and comments on applications for certification, preliminary and final staff assessments, and various air, water, wastewater, and solid waste permits issued by local agencies. Presented written and oral testimony before various administrative bodies on hazards of ammonia use and transportation, health effects of air emissions, contaminated property issues, BACT/LAER issues related to SCR and SCONOx, criteria and toxic pollutant emission estimates, MACT analyses, air quality modeling, water supply and water quality issues, and methods to reduce

water use, including dry cooling, parallel dry-wet cooling, hybrid cooling, and zero liquid discharge systems.

- Assisted unions, cities, and neighborhood associations in challenging an EIR issued for the proposed expansion of the Oakland Airport. Reviewed two draft EIRs and prepared a health risk assessment and extensive technical comments on air quality and public health impacts. The California Court of Appeals, First Appellate District, ruled in favor of appellants and plaintiffs, concluding that the EIR "2) erred in using outdated information in assessing the emission of toxic air contaminants (TACs) from jet aircraft; 3) failed to support its decision not to evaluate the health risks associated with the emission of TACs with meaningful analysis," thus accepting my technical arguments and requiring the Port to prepare a new EIR. See *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (August 30, 2001) 111 Cal.Rptr.2d 598.
- Assisted lessor of former gas station with leaking underground storage tanks and TCE contamination from adjacent property. Lessor held option to purchase, which was forfeited based on misrepresentation by remediation contractor as to nature and extent of contamination. Remediation contractor purchased property. Reviewed regulatory agency files and advised counsel on merits of case. Case not filed.
- Advised counsel on merits of several pending actions, including a Proposition 65 case involving groundwater contamination at an explosives manufacturing firm and two former gas stations with leaking underground storage tanks.
- Assisted defendant foundry in Oakland in a lawsuit brought by neighbors alleging property contamination, nuisance, trespass, smoke, and health effects from foundry operation. Inspected and sampled plaintiff's property. Advised counsel on merits of case. Case settled.
- Assisted business owner facing eminent domain eviction. Prepared technical comments on a negative declaration for soil contamination and public health risks from air emissions from a proposed redevelopment project in San Francisco in support of a CEQA lawsuit. Case settled.
- Assisted neighborhood association representing residents living downwind of a Berkeley asphalt plant in separate nuisance and CEQA lawsuits. Prepared technical comments on air quality, odor, and noise impacts, presented testimony at commission and council meetings, participated in community workshops, and participated in settlement discussions. Cases settled. Asphalt plant was upgraded to include air emission and noise controls, including vapor collection system at truck loading station, enclosures for noisy equipment, and improved housekeeping.
- Assisted a Fortune 500 residential home builder in claims alleging health effects from faulty installation of gas appliances. Conducted indoor air quality study, advised counsel on merits of case, and participated in discussions with plaintiffs. Case settled.

- Assisted property owners in Silicon Valley in lawsuit to recover remediation costs from insurer for large TCE plume originating from a manufacturing facility. Conducted investigations to demonstrate sudden and accidental release of TCE, including groundwater modeling, development of method to date spill, preparation of chemical inventory, investigation of historical waste disposal practices and standards, and on-site sewer and storm drainage inspections and sampling. Prepared declaration in opposition to motion for summary judgment. Case settled.
- Assisted residents in east Oakland downwind of a former battery plant in class action lawsuit alleging property contamination from lead emissions. Conducted historical research and dry deposition modeling that substantiated claim. Participated in mediation at JAMS. Case settled.
- Assisted property owners in West Oakland who purchased a former gas station that had leaking underground storage tanks and groundwater contamination. Reviewed agency files and advised counsel on merits of case. Prepared declaration in opposition to summary judgment. Prepared cost estimate to remediate site. Participated in settlement discussions. Case settled.
- Consultant to counsel representing plaintiffs in two Clean Water Act lawsuits involving selenium discharges into San Francisco Bay from refineries. Reviewed files and advised counsel on merits of case. Prepared interrogatory and discovery questions, assisted in deposing opposing experts, and reviewed and interpreted treatability and other technical studies. Judge ruled in favor of plaintiffs.
- Assisted oil company in a complaint filed by a resident of a small California beach community alleging that discharges of tank farm rinse water into the sanitary sewer system caused hydrogen sulfide gas to infiltrate residence, sending occupants to hospital. Inspected accident site, interviewed parties to the event, and reviewed extensive agency files related to incident. Used chemical analysis, field simulations, mass balance calculations, sewer hydraulic simulations with SWMM44, atmospheric dispersion modeling with SCREEN3, odor analyses, and risk assessment calculations to demonstrate that the incident was caused by a faulty drain trap and inadequate slope of sewer lateral on resident's property. Prepared a detailed technical report summarizing these studies. Case settled.
- Assisted large West Coast city in suit alleging that leaking underground storage tanks on city property had damaged the waterproofing on downgradient building, causing leaks in an underground parking structure. Reviewed subsurface hydrogeologic investigations and evaluated studies conducted by others documenting leakage from underground diesel and gasoline tanks. Inspected, tested, and evaluated waterproofing on subsurface parking structure. Waterproofing was substandard. Case settled.
- Assisted residents downwind of gravel mine and asphalt plant in Siskiyou County, California, in suit to obtain CEQA review of air permitting action. Prepared two declarations analyzing

air quality and public health impacts. Judge ruled in favor of plaintiffs, closing mine and asphalt plant.

- Assisted defendant oil company on the California Central Coast in class action lawsuit alleging property damage and health effects from subsurface petroleum contamination. Reviewed documents, prepared risk calculations, and advised counsel on merits of case. Participated in settlement discussions. Case settled.
- Assisted defendant oil company in class action lawsuit alleging health impacts from remediation of petroleum contaminated site on California Central Coast. Reviewed documents, designed and conducted monitoring program, and participated in settlement discussions. Case settled.
- Consultant to attorneys representing irrigation districts and municipal water districts to evaluate a potential challenge of USFWS actions under CVPIA section 3406(b)(2). Reviewed agency files and collected and analyzed hydrology, water quality, and fishery data. Advised counsel on merits of case. Case not filed.
- Assisted residents downwind of a Carson refinery in class action lawsuit involving soil and groundwater contamination, nuisance, property damage, and health effects from air emissions. Reviewed files and provided advice on contaminated soil and groundwater, toxic emissions, and health risks. Prepared declaration on refinery fugitive emissions. Prepared deposition questions and reviewed deposition transcripts on air quality, soil contamination, odors, and health impacts. Case settled.
- Assisted residents downwind of a Contra Costa refinery who were affected by an accidental release of naphtha. Characterized spilled naphtha, estimated emissions, and modeled ambient concentrations of hydrocarbons and sulfur compounds. Deposed. Presented testimony in binding arbitration at JAMS. Judge found in favor of plaintiffs.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects from several large accidents as well as routine operations. Reviewed files and prepared analyses of environmental impacts. Prepared declarations, deposed, and presented testimony before jury in one trial and judge in second. Case settled.
- Assisted business owner claiming damages from dust, noise, and vibration during a sewer construction project in San Francisco. Reviewed agency files and PM10 monitoring data and advised counsel on merits of case. Case settled.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects. Prepared declaration in opposition to summary judgment, deposed, and presented expert testimony on accidental releases, odor, and nuisance before jury. Case thrown out by judge, but reversed on appeal and not retried.

- Presented testimony in small claims court on behalf of residents claiming health effects from hydrogen sulfide from flaring emissions triggered by a power outage at a Contra Costa County refinery. Analyzed meteorological and air quality data and evaluated potential health risks of exposure to low concentrations of hydrogen sulfide. Judge awarded damages to plaintiffs.
- Assisted construction unions in challenging PSD permit for an Indiana steel mill. Prepared technical comments on draft PSD permit, drafted 70-page appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analysis for electric arc furnace and reheat furnace and faulty permit conditions, among others, and drafted briefs responding to four parties. EPA Region V and the EPA General Counsel intervened as amici, supporting petitioners. EAB ruled in favor of petitioners, remanding permit to IDEM on three key issues, including BACT for the reheat furnace and lead emissions from the EAF. Drafted motion to reconsider three issues. Prepared 69 pages of technical comments on revised draft PSD permit. Drafted second EAB appeal addressing lead emissions from the EAF and BACT for reheat furnace based on European experience with SCR/SNCR. Case settled. Permit was substantially improved. See *In re: Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5 (EAB June 22, 2000).
- Assisted defendant urea manufacturer in Alaska in negotiations with USEPA to seek relief from penalties for alleged violations of the Clean Air Act. Reviewed and evaluated regulatory files and monitoring data, prepared technical analysis demonstrating that permit limits were not violated, and participated in negotiations with EPA to dismiss action. Fines were substantially reduced and case closed.
- Assisted construction unions in challenging PSD permitting action for an Indiana grain mill. Prepared technical comments on draft PSD permit and assisted counsel draft appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analyses for heaters and boilers and faulty permit conditions, among others. Case settled.
- As part of a consent decree settling a CEQA lawsuit, assisted neighbors of a large west coast port in negotiations with port authority to secure mitigation for air quality impacts. Prepared technical comments on mobile source air quality impacts and mitigation and negotiated a $9 million CEQA mitigation package. Represented neighbors on technical advisory committee established by port to implement the air quality mitigation program. Program successfully implemented.
- Assisted construction unions in challenging permitting action for a California hazardous waste incinerator. Prepared technical comments on draft permit, assisted counsel prepare appeal of EPA permit to the Environmental Appeals Board. Participated in settlement discussions on technical issues with applicant and EPA Region 9. Case settled.

- Assisted environmental group in challenging DTSC Negative Declaration on a hazardous waste treatment facility. Prepared technical comments on risk of upset, water, and health risks. Writ of mandamus issued.
- Assisted several neighborhood associations and cities impacted by quarries, asphalt plants, and cement plants in Alameda, Shasta, Sonoma, and Mendocino counties in obtaining mitigations for dust, air quality, public health, traffic, and noise impacts from facility operations and proposed expansions.
- For over 100 industrial facilities, commercial/campus, and redevelopment projects, developed the record in preparation for CEQA and NEPA lawsuits. Prepared technical comments on hazardous materials, solid wastes, public utilities, noise, worker safety, air quality, public health, water resources, water quality, traffic, and risk of upset sections of EIRs, EISs, FONSIs, initial studies, and negative declarations. Assisted counsel in drafting petitions and briefs and prepared declarations.
- For several large commercial development projects and airports, assisted applicant and counsel prepare defensible CEQA documents, respond to comments, and identify and evaluate "all feasible" mitigation to avoid CEQA challenges. This work included developing mitigation programs to reduce traffic-related air quality impacts based on energy conservation programs, solar, low-emission vehicles, alternative fuels, exhaust treatments, and transportation management associations.

SITE INVESTIGATION/REMEDIATION/CLOSURE

- Technical manager and principal engineer for characterization, remediation, and closure of waste management units at former Colorado oil shale plant. Constituents of concern included BTEX, As, 1,1,1-TCA, and TPH. Completed groundwater monitoring programs, site assessments, work plans, and closure plans for seven process water holding ponds, a refinery sewer system, and processed shale disposal area. Managed design and construction of groundwater treatment system and removal actions and obtained clean closure.
- Principal engineer for characterization, remediation, and closure of process water ponds at a former lanthanide processing plant in Colorado. Designed and implemented groundwater monitoring program and site assessments and prepared closure plan.
- Advised the city of Sacramento on redevelopment of two former railyards. Reviewed work plans, site investigations, risk assessment, RAPS, RI/FSs, and CEQA documents. Participated in the development of mitigation strategies to protect construction and utility workers and the public during remediation, redevelopment, and use of the site, including buffer zones, subslab venting, rail berm containment structure, and an environmental oversight plan.

- Provided technical support for the investigation of a former sanitary landfill that was redeveloped as single family homes. Reviewed and/or prepared portions of numerous documents, including health risk assessments, preliminary endangerment assessments, site investigation reports, work plans, and RI/FSs. Historical research to identify historic waste disposal practices to prepare a preliminary endangerment assessment. Acquired, reviewed, and analyzed the files of 18 federal, state, and local agencies, three sets of construction field notes, analyzed 21 aerial photographs and interviewed 14 individuals associated with operation of former landfill. Assisted counsel in defending lawsuit brought by residents alleging health impacts and diminution of property value due to residual contamination. Prepared summary reports.
- Technical oversight of characterization and remediation of a nitrate plume at an explosives manufacturing facility in Lincoln, CA. Provided interface between owners and consultants. Reviewed site assessments, work plans, closure plans, and RI/FSs.
- Consultant to owner of large western molybdenum mine proposed for NPL listing. Participated in negotiations to scope out consent order and develop scope of work. Participated in studies to determine premining groundwater background to evaluate applicability of water quality standards. Served on technical committees to develop alternatives to mitigate impacts and close the facility, including resloping and grading, various thickness and types of covers, and reclamation. This work included developing and evaluating methods to control surface runoff and erosion, mitigate impacts of acid rock drainage on surface and ground waters, and stabilize nine waste rock piles containing 328 million tons of pyrite-rich, mixed volcanic waste rock (andesites, rhyolite, tuff). Evaluated stability of waste rock piles. Represented client in hearings and meetings with state and federal oversight agencies.

REGULATORY (PARTIAL LIST)

- In November 2021, researched and wrote 46 pages of comments on the IS/MND for the California Renewable Carbon Williams Production Facility on: (a) construction air quality impacts; (b) operational emissions; and (c) construction and operational health risks.
- In November 2021, researched and wrote 11 pages of comments on the Final Supplemental Impact Report for the ExxonMobil Interim Trucking Phased Restart Project on: (a) crude oil truck NOx emissions; (b) tanker transport fire impacts; and (c) impacts of and mitigation for off-site accidental spills.
- In October 2021, researched and wrote 13 pages of technical comments on the Draft Supplemental Environmental Impact Report for the Casa Diablo IV geothermal power plant on the proposed LDAR program.

- In June 2021, researched and wrote 26 pages of technical comments on IS/MND for the Regional San BioGeneration Facility on: (a) significant construction air quality impacts; (b) significant operational air quality impacts; and (d) cumulative impacts.
- In May 2021, researched and wrote 64 pages of comments on the IS/MND for the Heber 1 Geothermal Repower Project on: (a) construction air quality impacts; (b) operational air quality impacts; (c) cumulative air quality impacts; (d) health impacts; (d) Valley Fever; (e) hazard and hazardous materials; (f) geologic impacts; and (g) impacts of extended operational lifetime.
- In February 2021, researched and wrote 41 pages of technical comment on the IS/MND for the Heber 2 Geothermal Repower Project on: (a) risk of upset impacts; (b) tanker truck accidents; (c) valley fever impacts; (d) construction and operational air quality impacts; (d) water use; and (e) cumulative impacts.
- In December 2020, researched and wrote 23 pages of comments on the Draft Supplemental Recirculated Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2020 A, Focused on Oil and Gas Local Permitting on: (a) significant and unmitigated construction emissions; (b) significant and unmitigated operational emissions; (c) public health and biological impacts of criteria pollutants emissions and ozone; (d) offsets not valid CEQA mitigation.
- In October and December 2020, researched and wrote 46 pages of comments on underestimated and unsupported construction emissions, omitted construction emission sources, failure to consider unique site geotechnical conditions; revised construction emissions; significant construction and operational GHG emissions; GHG mitigation; construction and operational health risks; risk of upset; and cumulative impacts for a facility proposed to upgrade landfill gas to pipeline quality natural gas.
- In October and November 2020, researched and wrote 37 pages of comments on significant construction impacts, significant operational VOC emissions, and significant public health impacts of new internal floating roof storage tanks at a marine terminal at the Port of Long Beach.
- In September to November 2020, review proposed permit amendment to add HCN emissions from the FCCU to Title V permit for a Houston Refinery and research and write report on methods to measure HCN from FCCUs in situ and remotely.
- In September and October 2020, researched and wrote 14 pages of comments on proposed Leak Detection and Repair (LDAR) program for controlling VOC emissions from a geothermal power plant.
- In August to October 2020, researched and wrote comments on grid-based impacts of San Francisco's proposed building code mandating that new construction be all electric.

- In July and August 2020, researched and wrote comments on groundwater impacts of sea level rise for Final SEIR on crude oil trucking proposal.
- In June to August 2020, researched and wrote 69 pages of comments on inadequate project description, construction impacts, operational air quality impacts, cumulative air quality impacts, public health impacts, valley fever, hazards, geologic impacts, water use, CEC licensing, and extended lifetime impacts for the repower of a geothermal power plant in Imperial County.
- In June 2020, review revised quarry reclamation plan and draft 27 pages of comments on proposed modification.
- In June and July 2020, researched and wrote 23 pages of comments on cement terminal at Port of Stockton on construction impacts, emission baseline, operational emissions, and greenhouse gas mitigation.
- In May to June 2020, review reclamation plan amendment for quarry and research and write 17 page report on hydrology and water quality impacts of proposed amendment.
- In May 2020, researched and wrote 10 pages of comments on FEIR for a new apartment project in Contra Costa County on GHG emissions from vegetation removal, mobile sources, and water use and mitigation for same.
- In March/April 2020, researched and wrote 50 pages of comments on IS/MND for battery energy storage project in San Jose (Hummingbird) on inadequate project description, criteria pollutant and GHG emissions, significant and unmitigated energy impacts, cumulative impacts, construction impacts, public health impacts from BESS accidents, and battery handling and transportation accidents. Wrote 15 pages of responses to comments on vendor specifications, battery composition, cumulative impacts, construction impacts, fire control methods, and battery accidents.
- In April 2020, researched and wrote 47 pages of comments on IS/MND for data center in Santa Clara (SV1) on operational NOx emissions; out-of-district emissions; interbasin pollutant transport; omitted emission sources; GHG compliance with plans, policies and regulations; indirect GHG emissions; air quality impacts; construction emissions; cumulative impacts; and risk of upset from battery accidents.
- In March 2020, researched and wrote 30 pages of comments on IS/MND for data center in San Jose (Hummingbird) on operational GHG and criteria pollutant emissions, cumulative impacts, and public health risks. Research and write responses to comments.
- In February-March 2020, researched and wrote 30 pages on an IS/MND for a data center in San Jose (Stack) on operational NOx and GHG emissions, cumulative impacts, heath risks, and odor.

- In February 2020, researched and wrote 33 pages of comments on Initial Study for a battery storage facility in Ventura County (Orni) on criteria pollutant and GHG emissions, worker and public health impacts, cumulative impacts, valley fever, and consistency with general plan.
- In February 2020, researched and wrote 20 pages of comments on valley fever in response to applicant's global response to comments on Valley Fever for a wind project in San Diego County.
- In January 2020, researched and wrote 32 pages of comments on the Orni battery storage facility (BESS) on incomplete project description, cumulative GHG and NOx impacts, BESS accidents, and health impacts, including soil contamination and valley fever.
- In January 2020, research and wrote 41 pages of comments on the DEIR for the NuStar Port of Stockton Liquid Bulk Terminal on operational emission calculations, significant NOx emissions, significant GHG emissions. GHG mitigation, and cumulative impacts.
- In December 2019, researched and wrote 3 pages of comments on the Silverstrand Grid battery storage facility on greenhouse gas emissions.
- In December 2019, researched and wrote 15 pages of comments on the Initial Study for the K2 Pure – Chlorine Rail Transportation Curtailment Project, including on air quality baseline, project description, emissions, cancer risks, risk of upset.
- In November 2019, reviewed agency files and researched and wrote 42 pages of comments on the Belridge Solar Project on compliance with local zoning ordinances, water quality impacts, air quality impacts, and worker and public health impacts due to soil contamination and valley fever.
- In October 2019, researched and wrote 49 pages of comments on IS/MND for data center in Santa Clara, CA on operational criteria pollutants (mobile sources, off-site electricity generation, emergency generators), ambient air quality impacts, greenhouse gas emissions and mitigation, and cumulative impacts.
- In October 2019, researched and wrote 9 pages of comments on the Application, Statement of Basis and draft Permit to Construct and Temporary Permit to Operate for proposed changes at the Paramount Refinery to facilitate refining of biomass-based feedstock to produce renewable fuels.
- In September 2019, reviewed City of Sunnyvale's file on Google's proposed Central Utility Plant and researched and wrote 34 pages of comments on construction and operational air quality impacts, cumulative impacts, and battery fire and explosion impacts. In October 2019, researched and wrote 15 pages of responses to comments.

- In August 2019, research and wrote 37 pages of comments on the DSEIR for the Le Conte Battery Energy Storage System on GHG emissions, hazards and hazardous material impacts, and health impacts.
- In August 2019, researched and wrote 38 pages of comments on IS/MND for the Hanford-Lakeside Dairy digester Project, Kings County, on project description (piecemealing), cumulative impacts, construction impacts, air quality impacts, valley fever and risk of upset.
- In July 2019, researched and wrote 48 pages of comments on IS/MND for the Five Points Pipeline Dairy Digester Cluster Project, including on air quality, cumulative impacts, worker and public health impacts (including on pesticide-contaminated soils), Valley Fever, construction air quality impacts, and risk of upset.
- In June 2019, researched and wrote 15 pages of responses to comments on IS/MND for SV1 Data Center, including operational NOx emissions, air quality analyses, construction emissions, battery hazards, and mitigation plans for noise, vibration, risk management, storm water pollution, and emergency response and evacuation plans.
- In June 2019, researched and wrote 30 pages of comments on DEIR for the Humboldt Wind Energy Project on fire and aesthetic impacts of transmission line, construction air quality impacts and mitigation, and greenhouse gas emissions.
- In May 2019, researched and wrote 25 pages of comments on the DEIR for the ExxonMobil Interim Trucking for Santa Ynez Phased Restart Project on project description, baseline, and mitigation.
- In April 2019, researched and wrote a 16 page letter critiquing the adequacy of the FEIR for CalAm Desalination Project to support a Monterey County Combined Development Permit, consisting of a Use Permit, an Administrative Permit, and Design Approval for the Desalination Plant and Carmel Valley Pump Station.
- In April 2019, researched and wrote 22 pages of comments on DEIR for the Eco-Energy Liquid Bulk Terminal at the Port of Stockton on emissions, air quality impact mitigation, and health risk assessment.
- In March 2019, researched and wrote 43 pages of comments on DEIR for Contanda Renewable Diesel Bulk Liquid Terminal at the Port of Stockton on operational emissions, air quality impacts and mitigation and health risks.
- In February 2019, researched and wrote 36 pages of comments on general cumulative impacts, air quality, accidents, and valley fever for IS/MND for biogas cluster project in Kings County.
- In January 2019, researched and wrote 30 pages of comments on air quality and valley fever for IS/MND for energy storage facility in Kings County.

- In December 2018, researched and wrote 11 pages of comments on air quality for IS/MND for biomass gasification facility in Madera County.
- In December 2018, researched and wrote 10 pages of responses to comments on IS/MND for a wind energy project in Riverside County.
- In December 2018, researched and wrote 12 pages of responses to comments on IS/MND for a large Safeway fueling station in Petaluma. The Planning Commission voted unanimously to require an EIR.
- In November 2018, researched and wrote 30 pages of comments on IS/MND on wind energy project in Riverside County on construction health risks, odor impacts, waste disposal, transportation, construction emissions and mitigation and Valley Fever.
- In November 2018, researched and wrote 32 pages of comments on the DEIR for a solar energy generation and storage project in San Bernardino County on hazards, health risks, odor, construction emissions and mitigation, and Valley Fever.
- In September 2018, researched and wrote 36 pages of comments on the FEIR for the Newland Sierra Project including on greenhouse gas emissions, construction emissions, and cumulative impacts.
- In August 2018, researched and wrote 20 pages of comments on the health risk assessment in the IS/MND for a large Safeway fueling station in Petaluma.
- In August 2018, researched and wrote responses to comments on DEIR for the Newland Sierra Project, San Diego County on greenhouse gas emissions, construction emissions, odor, and Valley Fever.
- In July/August 2018, researched and wrote 12 pages of comments on DEIR for proposed Doheny Desal Project, on GHG, criteria pollutant, and TAC emissions and public health impacts during construction and indirect emissions during operation.
- In June 2018, researched and wrote 12 pages of technical comments rebutting NDDH responses to comments on Meridian Davis Refinery.
- In April 2018, researched and wrote 26 pages of comments on greenhouse gas emissions and mitigation as proposed in the San Diego County Climate Action Plan.
- In April 2018, researched and wrote 24 pages of comments on the FEIR for Monterey County water supply project, including GHG mitigation, air quality impacts and mitigation, and Valley Fever.
- In March-June 2018, researched and wrote 37 pages of comments on the IS/MND for the 2305 Mission College Boulevard Data Center, Santa Clara, California and responded to responses to comments.

- In March 2018, researched and wrote 40 pages of comments on the IS/MND for the Diablo Energy Storage Facility in Pittsburg, California.
- In March 2018, researched and wrote 19 pages of comments on Infill Checklist/Mitigated Negative Declaration for the Legacy@Livermore Project on CalEEMod emission calculations, including NOx and PM10 and construction health risk assessment, including Valley Fever.
- In January 2018, researched and wrote 28 pages of comments on draft Permit to Construct for the Davis Refinery Project, North Dakota, as a minor source of criteria pollutants and HAPs.
- In December 2017, researched and wrote 19 pages of comments on DEIR for the Rialto Bioenergy Facility, Rialto, California.
- In November and December 2017, researched and wrote 6 pages of comments on the Ventura County Air Pollution Control District's Preliminary Determination if Compliance (PDOC) for Mission Rock Energy Center.
- In November 2017, researched and wrote 11 pages of comments on control technology evaluation for the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Residual Risk and Technology Review.
- In September and November 2017, prepared comments on revised Negative Declaration for Delicato Winery in San Joaquin County, California.
- In October and November 2017, researched and wrote comments on North City Project Pure Water San Diego Program DEIR/DEIS to reclaim wastewater for municipal use.
- In August 2017, reviewed DEIR on a new residential community in eastern San Diego County (Newland Sierra) and research and wrote 60 pages of comments on air quality, greenhouse gas emissions and health impacts, including Valley Fever.
- In August 2017, reviewed responses to comments on Part 70 operating permit for IGP Methanol's Gulf Coast Methanol Complex, near Myrtle Grove, Louisiana, and researched and wrote comments on metallic HAP issues.
- In July 2017, reviewed the FEIS for an expansion of the Port of Gulfport and researched and wrote 10 pages of comments on air quality and public health.
- In June 2017, reviewed and prepared technical report on an Application for a synthetic minor source construction permit for a new Refinery in North Dakota.
- In June 2017, reviewed responses to NPCA and other comments on the BP Cherry Point Refinery modifications and assisted counsel in evaluating issues to appeal, including GHG BACT, coker heater SCR cost effectiveness analysis, and SO_2 BACT.

- In June 2017, reviewed Part 70 Operating Permit Renewal/Modification for the Noranda Alumina LC/Gramercy Holdings I, LLC alumina processing plant, St. James, Louisiana, and prepared comments on HAP emissions from bauxite feedstock.
- In May and June 2017, reviewed FEIR on Tesoro Integration Project and prepared responses to comments on the DEIR.
- In May 2017, prepared comments on tank VOC and HAP emissions from Tesoro Integration Project, based on real time monitoring at the Tesoro and other refineries in the SCAQMD.
- In April 2017, prepared comments on Negative Declaration for Delicato Winery in San Joaquin County, California.
- In March 2017, reviewed Negative Declaration for Ellmore geothermal facility in Imperial County, California and prepared summary of issues.
- In March 2017, prepared response to Phillips 66 Company's Appeal of the San Luis Obispo County Planning Commission's Decision Denying the Rail Spur Extension Project Proposed for the Santa Maria Refinery.
- In February 2017, researched and wrote comments on Kalama draft Title V permit for 10,000 MT/day methanol production and marine export facility in Kalama, Washington.
- In January 2017, researched and wrote 51 pages of comments on proposed Title V and PSD permits for the St. James Methanol Plant, St. James Louisiana, on BACT and enforceability of permit conditions.
- In December 2016, researched and wrote comments on draft Title V Permit for Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana, responding to EPA Order addressing enforceability issues.
- In November 2016, researched and wrote comments on Initial Study/Mitigated Negative Declaration for the AES Battery Energy Storage Facility, Long Beach, CA.
- In November 2016, researched and wrote comments on Campo Verde Battery Energy Storage System Draft Environmental Impact Report.
- In October 2016, researched and wrote comments on Title V Permit for NuStar Terminal Operations Partnership L.P, Stockton, CA.
- In October 2016, prepared expert report, Technical Assessment of Achieving the 40 CFR Part 423 Zero Discharge Standard for Bottom Ash Transport Water at the Belle River Power Plant, East China, Michigan. Reported resulted in a 2 year reduction in compliance date for elimination of bottom ash transport water. 1/30/17 DEQ Letter.
- In September 2016, researched and wrote comments on Proposed Title V Permit and Environmental Assessment Statement, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana.

- In September 2016, researched and wrote response to "Further Rebuttal in Support of Appeal of Planning Commission Resolution No. 16-1, Denying Use Permit Application 12PLN-00063 and Declining to Certify Final Environmental Impact Report for the Valero Benicia Crude-by-Rail Project.
- In August 2016, reviewed and prepared comments on manuscript: Hutton et al., Freshwater Flows to the San Francisco Bay-Delta Estuary over Nine Decades: Trends Evaluation.
- In August/September 2016, researched and wrote comments on Mitigated Negative Declaration for the Chevron Long Wharf Maintenance and Efficiency Project.
- In July 2016, researched and wrote comments on the Ventura County APCD Preliminary Determination of Compliance and the California Energy Commission Revised Preliminary Staff Assessment for the Puente Power Project.
- In June 2016, researched and wrote comments on an Ordinance (1) Amending the Oakland Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout the City of Oakland and (2) Adopting CEQA Exemption Findings and supporting technical reports. Council approved Ordinance on an 8 to 0 vote on June 27, 2016.
- In May 2016, researched and wrote comments on Draft Title V Permit and Draft Environmental Impact Report for the Tesoro Los Angeles Refinery Integration and Compliance Project.
- In March 2016, researched and wrote comments on Valero's Appeal of Planning Commission's Denial of Valero Crude-by-Rail Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Santa Maria Rail Spur Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Valero Benicia Crude by Rail Project.
- In January 2016, researched and wrote comments on Draft Programmatic Environmental Impact Report for the Southern California Association of Government's (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy.
- In November 2015, researched and wrote comments on Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015(C) (Focused on Oil and Gas Local Permitting), November 2015.
- In October 2015, researched and wrote comments on Revised Draft Environmental Report, Valero Benicia Crude by Rail Project.
- In September 2015, prepared report, "Environmental, Health and Safety Impacts of the Proposed Oakland Bulk and Oversized Terminal, and presented oral testimony on September 21, 2015 before Oakland City Council on behalf of the Sierra Club.

- In September 2015, researched and wrote comments on revisions to two chapters of EPA's Air Pollution Control Cost Manual: Docket ID No. EPA-HQ-OAR-2015-0341.
- In June 2015, researched and wrote comments on DEIR for the CalAm Monterey Peninsula Water Supply Project.
- In April 2015, researched and wrote comments on proposed Title V Operating Permit Revision and Prevention of Significant Deterioration Permit for Arizona Public Service's Ocotillo Power Plant Modernization Project (5 GE LMS100 105-MW simple cycle turbines operated as peakers), in Tempe, Arizona; Final permit appealed to EAB.
- In March 2015, researched and wrote "Comments on Proposed Title V Air Permit, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana". Client filed petition objecting to the permit. EPA granted majority of issues. In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana, Permit No. 2560-00295-V0, Issued by the Louisiana Department of Environmental Quality, Petition No. VI-2015-03, Order Responding to the Petitioners' Request for Objection to the Issuance of a Title V Operating Permit, September 1, 2016.
- In February 2015, prepared compilation of BACT cost effectiveness values in support of comments on draft PSD Permit for Bonanza Power Project.
- In January 2015, prepared cost effectiveness analysis for SCR for a 500-MW coal fire power plant, to address unpermitted upgrades in 2000.
- In January 2015, researched and wrote comments on Revised Final Environmental Impact Report for the Phillips 66 Propane Recovery Project. *Communities for a Better Environment et al. v. Contra Costa County et al. Contra Costa County (Superior Court, Contra Costa County, Case No. MSN15-0301, December 1, 2016).*
- In December 2014, researched and wrote "Report on Bakersfield Crude Terminal Permits to Operate." In response, the U.S. EPA cited the Terminal for 10 violations of the Clean Air Act. The Fifth Appellate District Court upheld the finding in this report in CBE et al v. San Joaquin Valley Unified Air Pollution Control District and Bakersfield Crude Terminal LLC et al, Super. Ct. No. 284013, June 23, 2017.
- In December 2014, researched and wrote comments on Revised Draft Environmental Impact Report for the Phillips 66 Propane Recovery Project.
- In November 2014, researched and wrote comments on Revised Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project and Crude Unloading Project, Santa Maria, CA to allow the import of tar sands crudes.
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for Phillips 66 Ultra Low Sulfur Diesel Project, responding to the California Supreme Court

Decision, *Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310.*

- In November 2014, researched and wrote comments on Draft Environmental Impact Report for the Tesoro Avon Marine Oil Terminal Lease Consideration.
- In October 2014, prepared: "Report on Hydrogen Cyanide Emissions from Fluid Catalytic Cracking Units", pursuant to the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 79 FR 36880.
- In October 2014, researched and wrote technical comments on Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In October 2014, researched and wrote technical comments on the Title V Permit Renewal and three De Minimus Significant Revisions for the Tesoro Logistics Marine Terminal in the SCAQMD.
- In September 2014, researched and wrote technical comments on the Draft Environmental Impact Report for the Valero Crude by Rail Project.
- In August 2014, for EPA Region 6, prepared technical report on costing methods for upgrades to existing scrubbers at coal-fired power plants.
- In July 2014, researched and wrote technical comments on Draft Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In June 2014, researched and wrote technical report on Initial Study and Draft Negative Declaration for the Tesoro Logistics Storage Tank Replacement and Modification Project.
- In May 2014, researched and wrote technical comments on Intent to Approve a new refinery and petroleum transloading operation in Utah.
- In March and April 2014, prepared declarations on air permits issued for two crude-by-rail terminals in California, modified to switch from importing ethanol to importing Bakken crude oils by rail and transferring to tanker cars. Permits were issued without undergoing CEQA review. One permit was upheld by the San Francisco Superior Court as statute of limitations had run. The Sacramento Air Quality Management District withdrew the second one due to failure to require BACT and conduct CEQA review.
- In March 2014, researched and wrote technical report on Negative Declaration for a proposed modification of the air permit for a bulk petroleum and storage terminal to the allow the import of tar sands and Bakken crude oil by rail and its export by barge, under the New York State Environmental Quality Review Act (SEQRA).

- In February 2014, researched and wrote technical report on proposed modification of air permit for midwest refinery upgrade/expansion to process tar sands crudes.
- In January 2014, prepared cost estimates to capture, transport, and use CO2 in enhanced oil recovery, from the Freeport LNG project based on both Selexol and Amine systems.
- In January 2014, researched and wrote technical report on Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project, Santa Maria, CA. Comments addressed project description (piecemealing, crude slate), risk of upset analyses, mitigation measures, alternative analyses and cumulative impacts.
- In November 2013, researched and wrote technical report on the Phillips 66 Propane Recovery Project, Rodeo, CA. Comments addressed project description (piecemealing, crude slate) and air quality impacts.
- In September 2013, researched and wrote technical report on the Draft Authority to Construct Permit for the Casa Diablo IV Geothermal Development Project Environmental Impact Report and Declaration in Support of Appeal and Petition for Stay, U.S. Department of the Interior, Board of Land Appeals, Appeal of Decision Record for the Casa Diablo IV Geothermal Development Project.
- In September 2013, researched and wrote technical report on Effluent Limitation Guidelines for Best Available Technology Economically Available (BAT) for Bottom Ash Transport Waters from Coal-Fired Power Plants in the Steam Electric Power Generating Point Source Category.
- In July 2013, researched and wrote technical report on Initial Study/Mitigated Negative Declaration for the Valero Crude by Rail Project, Benicia, California, Use Permit Application 12PLN-00063.
- In July 2013, researched and wrote technical report on fugitive particulate matter emissions from coal train staging at the proposed Coyote Island Terminal, Oregon, for draft Permit No. 25-0015-ST-01.
- In July 2013, researched and wrote technical comments on air quality impacts of the Finger Lakes LPG Storage Facility as reported in various Environmental Impact Statements.
- In July 2013, researched and wrote technical comments on proposed Greenhouse Gas PSD Permit for the Celanese Clear Lake Plant, including cost analysis of CO2 capture, transport, and sequestration.
- In June/July 2013, researched and wrote technical comments on proposed Draft PSD Preconstruction Permit for Greenhouse Gas Emission for the ExxonMobil Chemical Company Baytown Olefins Plant, including cost analysis of CO2 capture, transport, and sequestration.

- In June 2013, researched and wrote technical report on a Mitigated Negative Declaration for a new rail terminal at the Valero Benicia Refinery to import increased amounts of "North American" crudes. Comments addressed air quality impacts of refining increased amounts of tar sands crudes.
- In June 2013, researched and wrote technical report on Draft Environmental Impact Report for the California Ethanol and Power Imperial Valley 1 Project.
- In May 2013, researched and wrote comments on draft PSD permit for major expansion of midwest refinery to process 100% tar sands crudes, including a complex netting analysis involving debottlenecking, piecemealing, and BACT analyses.
- In April 2013, researched and wrote technical report on the Draft Supplemental Environmental Impact Statement (DSEIS) for the Keystone XL Pipeline on air quality impacts from refining increased amount of tar sands crudes at Refineries in PADD 3.
- In October 2012, researched and wrote technical report on the Environmental Review for the Coyote Island Terminal Dock at the Port of Morrow on fugitive particulate matter emissions.
- In October 2012-October 2014, review and evaluate Flint Hills West Application for an expansion/modification for increased (Texas, Eagle Ford Shale) crude processing and related modification, including netting and BACT analysis. Assist in settlement discussions.
- In February 2012, researched and wrote comments on BART analysis in PA Regional Haze SIP, 77 FR 3984 (Jan. 26, 2012). On Sept. 29, 2015, a federal appeals court overturned the U.S. EPA's approval of this plan, based in part on my comments, concluding "..we will vacate the 2014 Final Rule to the extent it approved Pennsylvania's source-specific BART analysis and remand to the EPA for further proceedings consistent with this Opinion." Nat'l Parks Conservation Assoc. v. EPA, 3d Cir., No. 14-3147, 9/19/15.
- Prepared cost analyses and comments on New York's proposed BART determinations for NOx, SO2, and PM and EPA's proposed approval of BART determinations for Danskammer Generating Station under New York Regional Haze State Implementation Plan and Federal Implementation Plan, 77 FR 51915 (August 28, 2012).
- Prepared cost analyses and comments on NOx BART determinations for Regional Haze State Implementation Plan for State of Nevada, 77 FR 23191 (April 18, 2012) and 77 FR 25660 (May 1, 2012).
- Prepared analyses of and comments on New Source Performance Standards for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 FR 22392 (April 13, 2012).
- Researched and wrote comments on CASPR-BART emission equivalency and NOx and PM BART determinations in EPA proposed approval of State Implementation Plan for Pennsylvania Regional Haze Implementation Plan, 77 FR 3984 (January 26, 2012).

- Researched and wrote comments and statistical analyses on hazardous air pollutants (HAPs) emission controls, monitoring, compliance methods, and the use of surrogates for acid gases, organic HAPs, and metallic HAPs for proposed National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 76 FR 24976 (May 3, 2011).
- Prepared cost analyses and comments on NOx BART determinations and emission reductions for proposed Federal Implementation Plan for Four Corners Power Plant, 75 FR 64221 (October 19, 2010).
- Prepared cost analyses and comments on NOx BART determinations for Colstrip Units 1- 4 for Montana State Implementation Plan and Regional Haze Federal Implementation Plan, 77 FR 23988 (April 20, 2010).
- For EPA Region 8, prepared report: Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative Leland Olds Station Unit 2 Final Report, March 2011, in support of 76 FR 58570 (Sept. 21, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, in support of 76 FR 52388 (Aug. 22, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Flue Gas Desulfurization at Coal-Fired Electric Generating Units in Oklahoma: Sooner Units 1 & 2, Muskogee Units 4 & 5, Northeastern Units 3 &4, October 2010, in support of 76 FR 16168 (March 26, 2011). My work was upheld in: *State of Oklahoma v. EPA*, App. Case 12-9526 (10th Cri. July 19, 2013).
- Identified errors in N_2O emission factors in the Mandatory Greenhouse Gas Reporting Rule, 40 CFR 98, and prepared technical analysis to support Petition for Rulemaking to Correct Emissions Factors in the Mandatory Greenhouse Gas Reporting Rule, filed with EPA on 10/28/10.
- Assisted interested parties develop input for and prepare comments on the Information Collection Request for Petroleum Refinery Sector NSPS and NESHAP Residual Risk and Technology Review, 75 FR 60107 (9/29/10).
- Technical reviewer of EPA's "Emission Estimation Protocol for Petroleum Refineries," posted for public comments on CHIEF on 12/23/09, prepared in response to the City of Houston's petition under the Data Quality Act (March 2010).
- Researched and wrote comments on SCR cost effectiveness for EPA's Advanced Notice of Proposed Rulemaking, Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station, 74 FR 44313 (August 28, 2009).

- Researched and wrote comments on Proposed Rule for Standards of Performance for Coal Preparation and Processing Plants, 74 FR 25304 (May 27, 2009).
- Prepared comments on draft PSD permit for major expansion of midwest refinery to process up to 100% tar sands crudes. Participated in development of monitoring and controls to mitigate impacts and in negotiating a Consent Decree to settle claims in 2008.
- Reviewed and assisted interested parties prepare comments on proposed Kentucky air toxic regulations at 401 KAR 64:005, 64:010, 64:020, and 64:030 (June 2007).
- Prepared comments on proposed Standards of Performance for Electric Utility Steam Generating Units and Small Industrial-Commercial-Industrial Steam Generating Units, 70 FR 9706 (February 28, 2005).
- Prepared comments on Louisville Air Pollution Control District proposed Strategic Toxic Air Reduction regulations.
- Prepared comments and analysis of BAAQMD Regulation, Rule 11, Flare Monitoring at Petroleum Refineries.
- Prepared comments on Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electricity Utility Steam Generating Units (MACT standards for coal-fired power plants).
- Prepared Authority to Construct Permit for remediation of a large petroleum-contaminated site on the California Central Coast. Negotiated conditions with agencies and secured permits.
- Prepared Authority to Construct Permit for remediation of a former oil field on the California Central Coast. Participated in negotiations with agencies and secured permits.
- Prepared and/or reviewed hundreds of environmental permits, including NPDES, UIC, Stormwater, Authority to Construct, Prevention of Significant Deterioration, Nonattainment New Source Review, Title V, and RCRA, among others.
- Participated in the development of the CARB document, *Guidance for Power Plant Siting and Best Available Control Technology*, including attending public workshops and filing technical comments.
- Performed data analyses in support of adoption of emergency power restoration standards by the California Public Utilities Commission for "major" power outages, where major is an outage that simultaneously affects 10% of the customer base.
- Drafted portions of the Good Neighbor Ordinance to grant Contra Costa County greater authority over safety of local industry, particularly chemical plants and refineries.

- Participated in drafting BAAQMD Regulation 8, Rule 28, Pressure Relief Devices, including participation in public workshops, review of staff reports, draft rules and other technical materials, preparation of technical comments on staff proposals, research on availability and costs of methods to control PRV releases, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and cost of low-leak technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pumps and Compressors, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak and seal-less technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 5, Storage of Organic Liquids, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of controlling tank emissions, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors at Petroleum Refinery Complexes, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 22, Valves and Flanges at Chemical Plants, etc, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pump and Compressor Seals, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability of low-leak technology, and presentation of testimony before the Board.
- Participated in the development of the BAAQMD Regulation 2, Rule 5, Toxics, including participation in public workshops, review of staff proposals, and preparation of technical comments.
- Participated in the development of SCAQMD Rule 1402, Control of Toxic Air Contaminants from Existing Sources, and proposed amendments to Rule 1401, New Source Review of

Toxic Air Contaminants, in 1993, including review of staff proposals and preparation of technical comments on same.

- Participated in the development of the Sunnyvale Ordinance to Regulate the Storage, Use and Handling of Toxic Gas, which was designed to provide engineering controls for gases that are not otherwise regulated by the Uniform Fire Code.
- Participated in the drafting of the Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries, including participation in workshops, review of draft plans, preparation of technical comments on draft plans, and presentation of testimony before the SWRCB.
- Participated in developing Se permit effluent limitations for the five Bay Area refineries, including review of staff proposals, statistical analyses of Se effluent data, review of literature on aquatic toxicity of Se, preparation of technical comments on several staff proposals, and presentation of testimony before the Bay Area RWQCB.
- Represented the California Department of Water Resources in the 1991 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on a striped bass model developed by the California Department of Fish and Game.
- Represented the State Water Contractors in the 1987 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on natural flows, historical salinity trends in San Francisco Bay, Delta outflow, and hydrodynamics of the South Bay.
- Represented interveners in the licensing of over 20 natural-gas-fired power plants and one coal gasification plant at the California Energy Commission and elsewhere. Reviewed and prepared technical comments on applications for certification, preliminary staff assessments, final staff assessments, preliminary determinations of compliance, final determinations of compliance, and prevention of significant deterioration permits in the areas of air quality, water supply, water quality, biology, public health, worker safety, transportation, site contamination, cooling systems, and hazardous materials. Presented written and oral testimony in evidentiary hearings with cross examination and rebuttal. Participated in technical workshops.
- Represented several parties in the proposed merger of San Diego Gas & Electric and Southern California Edison. Prepared independent technical analyses on health risks, air quality, and water quality. Presented written and oral testimony before the Public Utilities Commission administrative law judge with cross examination and rebuttal.
- Represented a PRP in negotiations with local health and other agencies to establish impact of subsurface contamination on overlying residential properties. Reviewed health studies

prepared by agency consultants and worked with agencies and their consultants to evaluate health risks.

WATER QUALITY/RESOURCES

- Directed and participated in research on environmental impacts of energy development in the Colorado River Basin, including contamination of surface and subsurface waters and modeling of flow and chemical transport through fractured aquifers.
- Played a major role in Northern California water resource planning studies since the early 1970s. Prepared portions of the Basin Plans for the Sacramento, San Joaquin, and Delta basins including sections on water supply, water quality, beneficial uses, waste load allocation, and agricultural drainage. Developed water quality models for the Sacramento and San Joaquin Rivers.
- Conducted hundreds of studies over the past 40 years on Delta water supplies and the impacts of exports from the Delta on water quality and biological resources of the Central Valley, Sacramento-San Joaquin Delta, and San Francisco Bay. Typical examples include:
    1. Evaluate historical trends in salinity, temperature, and flow in San Francisco Bay and upstream rivers to determine impacts of water exports on the estuary;
    2. Evaluate the role of exports and natural factors on the food web by exploring the relationship between salinity and primary productivity in San Francisco Bay, upstream rivers, and ocean;
    3. Evaluate the effects of exports, other in-Delta, and upstream factors on the abundance of salmon and striped bass;
    4. Review and critique agency fishery models that link water exports with the abundance of striped bass and salmon;
    5. Develop a model based on GLMs to estimate the relative impact of exports, water facility operating variables, tidal phase, salinity, temperature, and other variables on the survival of salmon smolts as they migrate through the Delta;
    6. Reconstruct the natural hydrology of the Central Valley using water balances, vegetation mapping, reservoir operation models to simulate flood basins, precipitation records, tree ring research, and historical research;
    7. Evaluate the relationship between biological indicators of estuary health and down-estuary position of a salinity surrogate (X2);
    8. Use real-time fisheries monitoring data to quantify impact of exports on fish migration;
    9. Refine/develop statistical theory of autocorrelation and use to assess strength of relationships between biological and flow variables;

10. Collect, compile, and analyze water quality and toxicity data for surface waters in the Central Valley to assess the role of water quality in fishery declines;
11. Assess mitigation measures, including habitat restoration and changes in water project operation, to minimize fishery impacts;
12. Evaluate the impact of unscreened agricultural water diversions on abundance of larval fish;
13. Prepare and present testimony on the impacts of water resources development on Bay hydrodynamics, salinity, and temperature in water rights hearings;
14. Evaluate the impact of boat wakes on shallow water habitat, including interpretation of historical aerial photographs;
15. Evaluate the hydrodynamic and water quality impacts of converting Delta islands into reservoirs;
16. Use a hydrodynamic model to simulate the distribution of larval fish in a tidally influenced estuary;
17. Identify and evaluate non-export factors that may have contributed to fishery declines, including predation, shifts in oceanic conditions, aquatic toxicity from pesticides and mining wastes, salinity intrusion from channel dredging, loss of riparian and marsh habitat, sedimentation from upstream land alternations, and changes in dissolved oxygen, flow, and temperature below dams.

- Developed, directed, and participated in a broad-based research program on environmental issues and control technology for energy industries including petroleum, oil shale, coal mining, and coal slurry transport. Research included evaluation of air and water pollution, development of novel, low-cost technology to treat and dispose of wastes, and development and application of geohydrologic models to evaluate subsurface contamination from in-situ retorting. The program consisted of government and industry contracts and employed 45 technical and administrative personnel.
- Coordinated an industry task force established to investigate the occurrence, causes, and solutions for corrosion/erosion and mechanical/engineering failures in the waterside systems (e.g., condensers, steam generation equipment) of power plants. Corrosion/erosion failures caused by water and steam contamination that were investigated included waterside corrosion caused by poor microbiological treatment of cooling water, steam-side corrosion caused by ammonia-oxygen attack of copper alloys, stress-corrosion cracking of copper alloys in the air cooling sections of condensers, tube sheet leaks, oxygen in-leakage through condensers, volatilization of silica in boilers and carry over and deposition on turbine blades, and iron corrosion on boiler tube walls. Mechanical/engineering failures investigated included: steam impingement attack on the steam side of condenser tubes, tube-to-tube-sheet joint leakage,

flow-induced vibration, structural design problems, and mechanical failures due to stresses induced by shutdown, startup and cycling duty, among others. Worked with electric utility plant owners/operators, condenser and boiler vendors, and architect/engineers to collect data to document the occurrence of and causes for these problems, prepared reports summarizing the investigations, and presented the results and participated on a committee of industry experts tasked with identifying solutions to prevent condenser failures.

- Evaluated the cost effectiveness and technical feasibility of using dry cooling and parallel dry-wet cooling to reduce water demands of several large natural-gas fired power plants in California and Arizona.
- Designed and prepared cost estimates for several dry cooling systems (e.g., fin fan heat exchangers) used in chemical plants and refineries.
- Designed, evaluated, and costed several zero liquid discharge systems for power plants.
- Evaluated the impact of agricultural and mining practices on surface water quality of Central Valley steams. Represented municipal water agencies on several federal and state advisory committees tasked with gathering and assessing relevant technical information, developing work plans, and providing oversight of technical work to investigate toxicity issues in the watershed.

AIR QUALITY/PUBLIC HEALTH

- Prepared or reviewed the air quality and public health sections of hundreds of EIRs and EISs on a wide range of industrial, commercial and residential projects.
- Prepared or reviewed hundreds of NSR and PSD permits for a wide range of industrial facilities.
- Designed, implemented, and directed a 2-year-long community air quality monitoring program to assure that residents downwind of a petroleum-contaminated site were not impacted during remediation of petroleum-contaminated soils. The program included real-time monitoring of particulates, diesel exhaust, and BTEX and time integrated monitoring for over 100 chemicals.
- Designed, implemented, and directed a 5-year long source, industrial hygiene, and ambient monitoring program to characterize air emissions, employee exposure, and downwind environmental impacts of a first-generation shale oil plant. The program included stack monitoring of heaters, boilers, incinerators, sulfur recovery units, rock crushers, API separator vents, and wastewater pond fugitives for arsenic, cadmium, chlorine, chromium, mercury, 15 organic indicators (e.g., quinoline, pyrrole, benzo(a)pyrene, thiophene, benzene), sulfur gases, hydrogen cyanide, and ammonia. In many cases, new methods had to be developed or existing methods modified to accommodate the complex matrices of shale plant gases.

- Conducted investigations on the impact of diesel exhaust from truck traffic from a wide range of facilities including mines, large retail centers, light industrial uses, and sports facilities. Conducted traffic surveys, continuously monitored diesel exhaust using an aethalometer, and prepared health risk assessments using resulting data.
- Conducted indoor air quality investigations to assess exposure to natural gas leaks, pesticides, molds and fungi, soil gas from subsurface contamination, and outgasing of carpets, drapes, furniture and construction materials. Prepared health risk assessments using collected data.
- Prepared health risk assessments, emission inventories, air quality analyses, and assisted in the permitting of over 70 1 to 2 MW emergency diesel generators.
- Prepare over 100 health risk assessments, endangerment assessments, and other health-based studies for a wide range of industrial facilities.
- Developed methods to monitor trace elements in gas streams, including a continuous real-time monitor based on the Zeeman atomic absorption spectrometer, to continuously measure mercury and other elements.
- Performed nuisance investigations (odor, noise, dust, smoke, indoor air quality, soil contamination) for businesses, industrial facilities, and residences located proximate to and downwind of pollution sources.

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Design of Gas Turbine Combined Cycle and Cogeneration Systems, Thermoflow, 12/00
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CEQA Update, UC Berkeley Extension, 3/02
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Noise Exposure Assessment: Sampling Strategy and Data Acquisition, AIHA PDC 205, 6/02
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Webinar: Coal-to-Gas Switching: What You Need to Know to Make the Investment, sponsored by PennWell Power Engineering Magazine, March 14, 2013. Available at: https://event.webcasts.com/viewer/event.jsp?ei=1013472.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Approving a Rate Increase Requested by Contra Costa Waste Service, Inc. for the Operation of the Recycling Center and Transfer Station

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

Contra Costa Waste Service, Inc. (Operator) operates the Recycling Center and Transfer Station (RCTS) on Loveridge Road under an Exclusive Operating Agreement (Agreement) between the Operator and the City of Pittsburg. The Agreement requires that the Operator obtain City Council approval prior to modifying the authorized mixed waste rate charged at the RCTS. The Operator has requested a Consumer Price Index (CPI) increase of 3.41% effective January 1, 2025.

FISCAL IMPACT

Approval of this Resolution will have no fiscal impact on the City's General Fund.

RECOMMENDATION

City Council adopt the attached Resolution approving the rate increase requested by the Operator for operation of the RCTS, effective January 1, 2025.

BACKGROUND

The RCTS on Loveridge Road receives and processes municipal solid waste whilst separating recyclable raw materials to reduce overall waste from being landfilled in accordance with the City's waste diversion requirements. The Agreement allows for the modification of the mixed-waste rate charged to customers following prior review and approval by the City Council.

On September 9, 2021, City Council approved a $16.25 incremental increase at $5.41 per year for three years for costs associated with new infrastructure, equipment and processing of municipal solid waste for the recovery of organic materials in accordance with State mandates under SB 1383 the Organic Waste Reductions law, as well as the increased cost for processing recyclables to meet the new strict near zero contaminate criteria.

This year, 2024, is the third and final year of this three-year incremental increase. The City Council also approved a CPI increase based on the All-Urban Consumers, San Francisco-Oakland-San Jose from August 2022 to August 2023, and allowed the City Manager to approve subsequent annual CPI requests as long as they were not to exceed 4%.

On October 1, 2024, the City received a letter from the Operator requesting a 3.41% CPI rate increase at the RCTS.

SUBCOMMITTEE FINDINGS

This item was presented to the Finance Management Subcommittee on November 15, 2024.

STAFF ANALYSIS

In 2016, Governor Edmund Brown signed into law SB 1383 to reduce emissions of short-lived climate pollutants, in particular methane emissions, by reducing the disposal of organic materials into landfills. The law seeks a reduction of organic waste disposal by 50% by 2020 and 75% by 2025, and to divert edible food from landfill to food rescue organizations like food banks by at least 20% by 2025. The regulations to implement the law were finalized in November 2020.

The Operator is required to comply with the law. To meet these high diversion and regulatory requirements, the Operator has set forth a long-term Master Plan within its amended Land Use Permit which the Planning Commission approved on August 24, 2021. The construction of a maintenance building to service the needs of the RCTS and MDRR, and a building to manage and process organic materials, a key requirement for compliance with the law, is currently underway in Pittsburg.

During periods of significant investment as described above, annual rate adjustments according to annual CPI help avoid large one-time increases in the rates in order to cover costs. Staff has reviewed the Operator's financials and determined the increase is justified and reasonable. In addition, as shown on page 3 of Attachment 2, staff reviewed a list of rates charged at other transfer stations in the region. The Operator's new rate requested is comparable to rates charged by other operators. The Bay Area average is $150.68 per ton and the new proposed rate of $147.25 is just below the average. Pittsburg ranks 6th of 11 Bay Area transfer stations in cost.

ATTACHMENTS: Resolution
Request letter dated October 1, 2024 from CCWS

Report Prepared By: Sara Bellafronte, Assistant to the City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter Of:

Approving a Rate Increase Requested by Contra Costa Waste Services, Inc. for the Operation of the Recycling Center and Transfer Station	))))	RESOLUTION NO. 24-

WHEREAS, Contra Costa Waste Service, Inc. (Operator) operates the Recycling Center and Transfer Station (RCTS) on Loveridge Road under an Exclusive Operating Agreement (Agreement) between the Operator and the City of Pittsburg; and

WHEREAS, the RCTS, receives and processes municipal solid waste and separates recyclable raw materials to reduce overall waste from being landfilled in accordance with the City's waste diversion requirements; and

WHEREAS, to meet high diversion and regulatory requirements of Senate Bill 1383, the Operator has set forth a long-term Master Plan within its amended Land Use Permit which the Planning Commission approved on August 24, 2021. As such, the construction of a maintenance building to service the needs of the RCTS and the City's franchised hauler, Mount Diablo Resource Recovery, and a building to manage and process organic materials, a key requirement for compliance with SB 1383, is currently underway in Pittsburg; and

WHEREAS, especially during periods of unfunded mandates and significant investment, consistent rate adjustments according to annual CPI help avoid large increases in the rates to recover costs; and

WHEREAS, the Agreement requires that the Operator obtain City Council approval prior to modifying the authorized mixed waste rate charged at the RCTS and the Operator has requested a CPI increase of 3.41% effective January 1, 2025; and

WHEREAS, the Operator's new rate requested is comparable to rates charged by other operators as the Bay Area average is $150.68 per ton and the new proposed rate of $147.25 is below the average, ranking the 6th least expensive of eleven Bay Area transfer stations; and

WHEREAS, staff has reviewed the Operator's financials and determined the increase is justified and reasonable.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby approves the rate increase requested by the Operator for the Operation of the RCTS.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Mt. Diablo Resource Recovery
Trusted + Proven + Essential

October 1, 2024

Mr. Garrett Evans
City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

VIA EMAIL

RE: Request for CPI Rate adjustment at the Recycling Center & Transfer Station

Dear Mr. Evans,

Contra Costa Waste Service, Inc., DBA *Mt. Diablo Resource Recovery (collectively MDRR)*, respectfully requests consideration of a 3.41% CPI rate adjustment to our current tip fee at the Recycling Center & Transfer Station (RCTS). This adjustment is consistent with the 5-year rate adjustment strategy which was previously approved by the City Council in 2021 and would result in our tip fee adjusting to $147.25 per ton, from the current $142.50 per ton.

This proposed CPI rate adjustment has been determined using the San Francisco, Oakland, and Hayward CPI-U Index from August 2022 to August 2023 as shown in Tab 1 of the attached Excel workbook file. The derived dollar amounts were then rounded to the nearest quarter to facilitate change calculations. Applying the aforementioned methodology would result in the newly proposed adjusted rates as shown in Tab 2. For your convenience, we have also included a list of comparable rates for other transfer stations as shown in Tab 3 which shows the Bay Area average at $148.74.

As is customary and keeping in line with prior approvals, we intend that these newly adjusted rates would become effective as of January 1st, 2025, provided we have received approval from the City Manager (*prior Council approval allows for the City Manager to approve adjustments up to a 4% CPI)*.

We sincerely value our long-term partnership with the City and appreciate the ongoing support of our diversion programs and strategies, as well as our shared vision for environmental best management practices. As always please do not

hesitate to contact either Sarah Davis or myself should you have any questions or need additional information regarding this request.

Sincerely,

Salvatore N. Evola

Salvatore N. Evola
Executive Director, External Affairs

Enc: Excel Workbook File:
Tab / Attach 1: Rate Sheet (current & new)
Tab / Attach 2: CPI Table
Tab / Attach 3: Bay Area Comparable Gate Rates

CC: Sara Bellafronte - City of Pittsburg
Kish Rajan – CEO, Contra Costa Waste Service
Gary Lazdowski – COO, Contra Costa Waste Service
Patrick Dolim – CFO, Contra Costa Waste Service

	Solid Waste Facility	Location	Compacted Rate Per Ton	Operator	Minimum Fee
1	Fremont Transfer Station	Fremont	$ 118.62	BLT	$ 55.00
2	Contra Costa Trasfer and Recovery	Martinez	$ 125.50	Republic Services	$ 37.50
3	Central Disposal Site & Transfer Station	Petaluma	$ 135.00	Republic Services	$ 33.00
4	Shoreway Environmental Center	San Carlos	$ 136.00	Rethink Waste	$ 54.00
5	Golden Bear	Richmond	$ 136.80	Republic Services	$ 36.05
6	**RCTS** (*Proposed as of January 1, 2025*)	Pittsburg	**$ 147.25**	MDRR / Contra Costa Waste Service	$ 45.00
7	Davis St. Transfer Station	San Leandro	$ 145.47	Waste Management	$ 37.20
8	Berkeley Transfer Station	Berkeley	$ 154.00	City of Berkeley	$ 42.00
9	Pleasanton Transfer Station	Pleasanton	$ 168.93	Pleasanton Garbage Service	$ 33.78
10	Marin Resource Recovery Center	Marin	$ 170.00	Marin Sanitary Service	$ 50.00
11	Recology San Francisco	San Francisco	$ 219.86	Recology	$ 50.00

$ 150.68	**Bay Area Average**

Contra Costa Waste Services

reduce • reuse • recycle • respect • recover

www.ContraCostaWaste.com

Standard Rates	Current Pricing	Pricing Effective January 1, 2025	
Minimum Charge	$ 43.50	$ 45.00	Minimum
Cubic Yard Charge	$ 38.75	$ 40.00	Per Yard
Bulk & Compacted Loads (Mixed Waste Rate)	**$ 142.50**	**$ 147.25**	**Per Ton**

Appliances and Misc.

Refrigerators, A.C. Units	$ 75.25	$ 77.75	Each
Washers & Stoves	$ 75.25	$ 77.75	Each
All Other Appliances	$ 55.25	$ 57.25	Each
Small Size Propane Tanks (5 Gallon)	$ 13.75	$ 14.25	Each
Medium Size Propane Tanks (6-10 Gallon)	$ 22.50	$ 23.25	Each
Large Size Propane Tanks (< 10 Gallon)	$ 55.25	$ 57.25	Each
Mattress or Box Spring - Twin Size	$ 32.50	$ 33.50	Each
Larger Than Twin Size	$ 47.75	$ 49.50	Each

Construction & Demolition (C&D) Material

Minimum Charge	$ 43.50	$ 45.00	Minimum
Cubic Yard Charge	$ 38.75	$ 40.00	Per Yard
Bulk & Compacted Loads	$ 142.50	$ 147.25	Per Ton

Wood/Green

Clean Wood Minimum Charge	$ 43.50	$ 45.00	Minimum
Clean Wood Loads	$ 142.50	$ 147.25	Per Ton
Clean Green Minimum Charge	$ 43.50	$ 45.00	Minimum
Clean Green Loads	$ 142.50	$ 147.25	Per Ton
Wood Stumps Larger Than 24 Inches	$ 142.50	$ 147.25	Per Ton

Treated Wood Waste

Treated Wood Waste (TWW)	$ 221.25	$ 228.75	Per Ton
Mixed Treated Wood Waste	$ 252.75	$ 261.25	Per Ton

Electronic Waste

Cell Phones	$ 8.75	$ 9.00	Each
VCRs Printers Small Items	$ 13.75	$ 14.25	Each
Medium e-waste	$ 23.00	$ 23.75	Each
Microwaves	$ 32.50	$ 33.50	Each
TVs & CRTs	$ 55.25	$ 57.25	Each
Copy Machines Large Items Special Handling	$ 172.00	$ 177.75	& Up

Tires

Wheel Attachments	$ 7.25	$ 7.50	Each
Cars Tires	$ 13.75	$ 14.25	Each
Truck Tires	$ 32.50	$ 33.50	Each
Tractor Tires	$ 88.75	$ 91.75	Each
Motorcycle Tires	$ 13.75	$ 14.25	Each
Car Tires with Rims Attached	$ 21.00	$ 21.75	Each
Truck Tires with Rims Attached	$ 39.75	$ 41.00	Each
Tractors with Rims Attached	$ 96.00	$ 99.25	Each

***rounded to nearest 25 cents**

We do NOT accept Hazardous, Infectious or Liquid Waste. All loads must be covered and will be inspected before disposal as provided by State Law. R.C.T.S. reserves the right to reject any load. Cash, Local Business Check, Visa, Master Card, American Express & Discover cards are accepted. Thank you for your business. Contra Costa Waste Service, Inc.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a Resolution Approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

This is a public hearing on a request to adopt a resolution (Attachment 1) approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743). On October 22, 2024, the Planning Commission voted unanimously 5-0 to adopt Resolution No. 10258 (Attachment 2) recommending approval of the proposal in its entirety.

FISCAL IMPACT

There is no impact to the General Fund if this project is approved.

RECOMMENDATION

City Council open the public hearing; take public comment; close the public hearing and take the following action:

> Adopt a resolution (Attachment 1) approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743).

BACKGROUND

In 2013, California Senate Bill (SB 743) established a reform process to the California Environmental Quality Act (CEQA) that resulted in a major change to how cities and counties must evaluate transportation impacts. SB 743 changed the focus of transportation impact analysis under CEQA Guidelines from Level of Service (LOS) to

Vehicle Miles of Travel (VMT) as the preferred transportation impact metric. As such, this shift in the focus of transportation impacts is expected to better align impact analyses and mitigation outcomes with the State's goals to reduce greenhouse gas emissions, encourage infill, and improve public health through more active transportation.

On December 12, 2022, the City of Pittsburg entered into a Consulting Services Agreement with Fehr & Peers, Inc., to provide transportation planning services to support the City in achieving SB 743 compliance. As part of this process, the City established a VMT Technical Advisory Committee (TAC), comprised of City staff from both the Community and Economic Development and Public Works Departments. The primary responsibility of the VMT TAC was to work together to develop a set of procedures and requirements pertaining to if, and when, an applicant for a development project in the City would be required to provide a Transportation Impact Analysis (TIA) as part of the development review process.

The City's VMT TAC convened four times (on December 6, 2022, January 17, 2023, on February 21, 2023, and on March 29, 2023) and provided input regarding VMT metrics, calculation methods, VMT-based CEQA thresholds, screening criteria, and mitigation options to guide the City's evaluation of transportation-related environmental impacts for new projects in accordance with SB 743. This effort led to the development of the proposed City TIA Guidelines (Attachment 1 – Exhibit A).

VMT TAC FINDINGS:

The focus of the Committee's discussion at the first VMT TAC meeting was to determine the most appropriate methodology to use to evaluate the significance of a projects transportation impacts by determining the vehicle miles traveled, i.e., the amount and distance of automobile travel attributable to a project. In particular, the Committee considered what model the City should use, what metrics should be analyzed, and how VMT should be calculated.

Methodology
VMT TAC members agreed that the City should rely upon the Contra Costa Transportation Authority's (CCTA) Travel Demand Model for VMT assessments. Committee members concurred that the CCTA model was most suitable for use because it provides best available trip data, is routinely maintained, and allows for future opportunities to take advantage of regional VMT reduction programs.

Metrics
VMT TAC members also generally concurred on the metric to be used opting to focus on home-based trips as opposed to commuter-based trips for residential uses. The home-based metric was preferred in part due to the desire to capture a majority of local trips such as to schools, shopping, and services in the City and greater region.

The second VMT TAC meeting focused on the key decision points related to what thresholds of significance should be used to determine if a project's transportation impacts would have a significant effect on the environment, what type of criteria should be used to "screen out" projects that would not exceed VMT thresholds, and what measures should be used to mitigate VMT impacts.

Thresholds
VMT TAC members agreed unanimously to establish a VMT threshold consistent with the Governor's Office of Land Use and Climate Innovation (LCI), formerly the Office of Planning and Research (OPR), recommendation of 15 percent below existing VMT per capita. For example, a project would be considered to cause substantial additional VMT if it exceeds 15 percent of the existing countywide household average (for residential projects) or VMT per employee average (for office projects).

Screening Criteria
There was general consensus among VMT TAC members regarding the types of development projects that would generally "screen out" from having to provide a detailed VMT analysis.

- Small Projects (projects generating/attracting less than 110 trips per day, i.e., non-residential 10,000 square feet or less, single-family residential 10 dwelling units or less)
- CEQA-Exempt Projects (any project that is exempt from CEQA)
- Small-Scale, Local-Serving Retail (commercial 50,000 square feet or less)
- Active Transportation Projects (transit, bicycle and pedestrian and roadway)
- Certain Public Services (police and fire stations, public utilities, and parks)
- Residential and Employment-Generating Projects in Low-VMT Areas
- Residential, Retail, Office or Mixed-Use Projects within Transit Priority Areas

Exceptions to Screening Criteria
VMT TAC members agreed that exceptions to the screening criteria listed above would include projects:

- that are inconsistent with existing land uses/densities in the surrounding area,
- expected to alter travel patterns or increase vehicle capacity,
- with a Floor Area Ratio of less than 0.75,
- that exceed adopted parking standards,
- that are inconsistent with the City's Sustainability Plan or Sustainable Communities Strategy/Plan Bay Area,
- that conflict with City programs, plans, ordinances or policies addressing the circulation system,
- that replace affordable housing with market-rate residential units,
- with retail components that exceed 50,000 square feet, or
- that substantially increase hazards due to geometric design features.

Projects not meeting the screening criteria or that include elements listed in the list of exceptions above would be required to complete a VMT Analysis and forecasting through the CCTA model to determine if they have a significant VMT impact.

VMT Analysis
Section 5.2.3 of the TIA Guidelines provide guidance for the preparation of a VMT Analysis that transportation engineers, project applicants, and City staff can utilize in assessing transportation impacts. Depending on the nature of the project, location, and other factors, a VMT Analysis may be limited in scope, due to screening thresholds, or may require a full assessment that evaluates VMT, discloses VMT impacts, and identifies

mitigation measures. The VMT Analysis would inform the necessary level of CEQA review and provide substantial evidence to support a CEQA determination regarding environmental impacts to transportation and circulation. The process of determining the level of VMT analysis needed is outlined in the TIA Guidelines.

Mitigation
The Committee's discussion around VMT mitigation explored various options at the project, citywide and regional scale. Options for mitigation generally included modifications to project design to reduce project trips or trip length, relocation of the project to a more travel-efficient area, and/or implementation of Transportation Demand Management (TDM) measures to reduce VMT generation. There was consensus among VMT TAC members that all new projects should be incorporating VMT reduction strategies into the project design and contributing towards reducing automobile dependence among all City residents and business owners.

Implementation
As the TIA Guidelines are implemented, staff may identify inefficiencies or challenges and administrative updates may be made at the discretion of the Directors of the Community and Economic Development or Public Works Departments or his/her designee. Future changes to the VMT thresholds or significance criteria in the TIA Guidelines will be at the sole discretion of the City Council and informed by State mandates and CEQA case law.

GENERAL PLAN/CODE COMPLIANCE:

The proposed TIA Guidelines are consistent with the following 2040 General Plan Circulation and Transportation Element Goals and Policies.

> Goal-7-1: Provide a multimodal transportation network that enhances safety, access, comfort, and convenience for all users and minimizes vehicle miles travelled (VMT).
>
> Policy-7-P-1.5: Implement and continue to increase efforts to reduce regional vehicle miles traveled (VMT) by supporting land use patterns and site designs that promote active modes of transportation, and public transit.

2040 General Plan Implementation Measures 7-A-1.a and 7-A-1.b related specifically to adoption of the proposed TIA Guidelines as follows:

> 7-A-1.a: Evaluate projects traffic and Vehicle Miles Traveled (VMT) impacts of development projects based on the City's Transportation Impact Analysis Guidelines to determine transportation impacts to all users, including pedestrians, bicyclists, transit riders, and motorists, and to require projects to address impacts consistent with the requirements of CEQA.
>
> 7-A-1.b: Require proposed development projects with VMT levels above the City's threshold to consider reasonable and feasible project modifications and other measures during the project design and review stage and the environmental review stage that would reduce VMT effects in a manner consistent with the City's

sustainability goals, the City's Transportation Impact Analysis Guidelines, and with State guidance on VMT reduction.

Environmental Determination:
The proposed TIA Guidelines are exempt from CEQA for the following reasons: 1) they do not meet the definition of a "project" pursuant to CEQA Guidelines section 15378(a)), 2) they do not constitute an activity covered by CEQA pursuant to CEQA Guidelines section 15060(c)(2), 3) they do not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines section 15061(b)(3), and 4) they consist of an action taken by a regulatory agency to enhance and protect the environment pursuant to Government Code Section 15308 (Class 8).

As such, the TIA Guidelines are strictly a policy document to improve the City's resilience to reduce greenhouse gas emissions and improve public health through more active transportation. Additionally, the TIA Guidelines do not provide entitlements to any specific land use projects, nor does it make any changes to the 2040 General Plan land use map or modify land use designations, densities, or land use intensities.

Public Notice:
On or prior to Friday, December 6, 2024, notice of the December 16, 2024, public hearing on this item was published in the East County Times, posted at City Hall, at the Pittsburg Library, on the 'Public Notices' section of the city's website and on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in all city neighborhoods.

See Attachment 3 for the Notice of Public Hearing.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

The proposed TIA Guidelines are the culmination of input received from the VMT TAC, guidance from transportation consultant, Fehr & Peers, Inc., and is informed by publications from the California Governor's Office of Land Use and Climate Innovation (LCI), formerly Office of Planning and Research (OPR), the California Air Pollution Control Officers Association (CAPCOA), Contra Costa Transportation Authority (CCTA), and other jurisdictions throughout the State that have established VMT programs.

In the interim, while the City's TIA Guidelines have been under development, the City has used the recommended screening methodology and thresholds set forth in LCI's Technical Advisory on Evaluating Transportation Impacts in CEQA to evaluate VMT impacts for discretionary projects as part of required environmental review.

On October 22, 2024, the Planning Commission after a duly public noticed hearing voted 5-0 recommending the City Council adopt the TIA Guidelines. Adoption of the proposed TIA Guidelines would establish a local framework under which discretionary projects are reviewed and evaluated to assess VMT impacts in accordance with CEQA and SB 743. Additionally, adoption would help make meaningful progress toward achieving the goals and policies in the 2040 General Plan and the City's Sustainability Plan related to VMT.

ATTACHMENTS:

1. Proposed Resolution
   a. Exhibit A - TIA Guidelines
2. Planning Commission Resolution No. 10258
3. Public Hearing Notice

Prepared by: Alison Spells, Associate Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adopting the City of Pittsburg Transportation)
Impact Analysis Guidelines and Thresholds to) RESOLUTION NO. 24-
Evaluate Transportation Impacts Under CEQA)

WHEREAS, in 2013, California Senate Bill (SB) 743 established a reform process to the California Environmental Quality Act (CEQA) that resulted in a major change to how cities and counties must evaluate transportation impacts. SB 743 changed the focus of transportation impact analysis in CEQA from Level of Service (LOS) to Vehicle Miles of Travel (VMT) as the preferred transportation impact metric; and

WHEREAS, on December 12, 2022, the City of Pittsburg entered into a Consulting Services Agreement with Fehr & Peers, Inc., to provide transportation planning services to support the City in achieving SB 743 compliance; and

WHEREAS, the City's VMT TAC convened four times (on December 6, 2022, January 17, 2023, on February 21, 2023, and on March 29, 2023) to provide input regarding VMT metrics, calculation methods, VMT-based CEQA thresholds, screening criteria, and mitigation options in an effort to develop Transportation Impact Analysis Guidelines in accordance with SB 743; and

WHEREAS, 2040 General Plan Implementation Measure 7-A-1.a requires the City evaluate the traffic and VMT impacts of development projects based on the City's Transportation Impact Analysis Guidelines to determine transportation impacts to all users, including pedestrians, bicyclists, transit riders, and motorists, and to require projects to address impacts consistent with the requirements of CEQA; and

WHEREAS, adoption of the City's TIA Guidelines would establish a local framework under which discretionary projects are reviewed and evaluated to assess VMT impacts in accordance with 2040 General Plan Goals, Policies and Implementation Measures, CEQA and SB 743; and

WHEREAS, the project is exempt from CEQA because it does not meet the definition of a "project" pursuant to CEQA Guidelines section 15378(a)), it does not constitute an activity covered by CEQA pursuant to CEQA Guidelines section 15060(c)(2), it does not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines section 15061(b)(3), and it consists of an action taken by a regulatory agency to enhance and protect the environment pursuant to Government Code Section 15308 (Class 8); and

WHEREAS, on October 22, 2024, after conducting a duly noticed public hearing, the Planning Commission adopted Resolution No. 10258, recommending the City Council adopt the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743) for Planning Application No. AP-24-0047; and

WHEREAS, on or prior to December 6, 2024, notice of the December 16, 2024, public hearing was posted in the East County Times, at City Hall, at the Pittsburg Library, on the 'Public Notices' section of the city's website and on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in all city neighborhoods.

Section 1. Findings

A. Based on the City Council Staff Report entitled, "Adoption of a Resolution Approving the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047," and based on all the information contained in the Planning Division files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the December 16, 2024, meeting, the City Council finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

Section 2. Decision

Based on the findings and the authority set forth above, the City Council hereby takes the following action:

A. Adopts the Final Draft of the City of Pittsburg Transportation Impact Analysis Guidelines, as written in the attached "Exhibit A".

Section 3. Adoption

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

City of Pittsburg

Transportation Impact Analysis Guidelines

October 2024

Final Draft

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1. Introduction

The purpose of these Transportation Impact Analysis (TIA) Guidelines is to establish general procedures and requirements for the preparation of transportation impact studies for development projects within the City of Pittsburg. In general, they are designed for use by transportation engineering and California Environmental Quality Act (CEQA) professionals because of their technical contents. The term "guideline" is important in that the City recognizes that every project and study context is unique. The guidelines are intended as a checklist for study preparers to be sure that all required study items are included. They establish a uniform approach, methodology, and tool set to evaluate the effects of land use decisions and related transportation projects on the city transportation system. They are not intended to eliminate professional judgment or creativity. However, the need for and final scope of a TIA shall be determined by the City of Pittsburg. This is intended to be a "living document" and will be updated periodically to reflect newly acquired data and relevant policies.

The primary objectives of these guidelines are to provide:

- Guidance in determining if and when a Transportation Impact Analysis is needed;
- Consistency and uniformity in the identification of transportation impacts of proposed land uses;
- An early guidance to establish assumptions, data requirements, study scenarios and analysis methodologies prior to beginning the TIA; and
- Early coordination during the planning phases of a project to facilitate the preparation of a TIA.

These guidelines are intended to ensure that a TIA will address the potential effects of a proposed development on the transportation system of the city, giving equal attention to all modes of travel, in accordance with the goals of the City of Pittsburg's General Plan. Note that these are only guidelines, and the information provided herein does not constitute a complete scope of work for any particular transportation analysis. The guidelines provide a broad overview of analysis procedures, while a tailored scope of work is required to match the size and complexity of transportation issues associated with a particular project. The City Engineer, under the authority of the Public Works Director and recommendations from the Traffic Engineer, will make the final decision on the need for a transportation study.

1.1 SB 743 and the Updated CEQA Guidelines

Senate Bill 743 (SB 743), signed by the Governor in 2013, changed the way transportation impacts are identified. Specifically, the legislation directed the Office of Planning and Research (OPR) to consider different metrics for identifying transportation impacts under the California Environmental

Quality Act. OPR finalized updates to the CEQA Guidelines in December 2018; the updated Guidelines identify vehicle miles of travel (VMT) as the preferred transportation impact metric. The updated Guidelines state that, as of July 2020, all lead agencies must use VMT as the new transportation metric for identifying impacts of land use projects.

The updated guidelines include revised Appendix G Checklist questions for transportation impact evaluation. The four questions are:

Would the project:

1. *Conflict with a program, plan, ordinance or policy addressing the circulation system, including public transit, roadway, bicycle and pedestrian facilities?*
2. *Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?*
3. *Substantially increase hazards due to a geometric design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?*
4. *Result in inadequate emergency access?*

Criteria 2 is the implementation of the SB 743 requirement. CEQA Guidelines section 15064.3(b) reads, in part, as follows:

(1) Land Use Projects. Vehicle-miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high-quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.

(2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

1.2 CEQA Transportation Impact Analysis and City Development Review

One of the fundamental roles of government agencies is the construction and maintenance of public infrastructure facilities including roadways, rail and bus facilities, bicycle and pedestrian infrastructure, water lines, sanitary sewer lines, stormwater treatment facilities, parks, and other public facilities. When private development occurs, it is the responsibility of government to ensure that there are adequate public facilities to serve incremental population and employment growth. For the transportation system, one way to address this issue has been the preparation of a Transportation Impact Analysis.

For the past several decades, the preparation of a TIA within the City of Pittsburg was integrated into the CEQA process, in which the TIA was used primarily to analyze a project's impacts under CEQA. However, with the passage of SB 743, changes to this process are necessary. Specifically, a TIA may need to be prepared as a stand-alone document, as part of the project approval process, including information for the decision makers that is not required as part of the CEQA process (e.g. Level of Service assessments).

The purpose of this TIA Guidelines document is to provide instructions for analyzing the potential transportation impacts of proposed development projects, for purposes of both the CEQA and non-CEQA transportation evaluations. These guidelines present the recommended methodology that should generally be utilized in the preparation of TIAs. These recommendations are general guidelines, and the City of Pittsburg may modify the TIA requirements based on the unique characteristics of a particular project.

1.2.1 Non-CEQA Analysis

SB 743 does not prevent a city from continuing to analyze delay or Level of Service (LOS) outside of CEQA review for other transportation planning or analysis purposes (i.e., general plans, impact fee programs, corridor studies, congestion mitigation, or ongoing network monitoring); but these metrics may no longer constitute the sole basis for CEQA impacts.

The City of Pittsburg's General Plan 2040 provides for the following policies relating to the calculation and assessment of intersection LOS:

- Levels of Service shall be calculated using the latest version of the Transportation Research Board's Highway Capacity Manual available at the time the analysis is prepared.
- The City shall strive to maintain LOS D for motor vehicle traffic as the minimum acceptable service standard for all signalized and stop controlled intersections during peak periods. In the designated Downtown core, LOS E would be considered as an acceptable service standard to account for the more urban, pedestrian-oriented character of the area.

LOS can continue to be assessed relative to this standard during development review, to promote the City's interest in maintaining and operating a functional roadway network. However, assessment of a development project's effect on intersection level of service must be conducted outside the CEQA process. The assessment can be performed as part of a General Plan consistency assessment. City planning and traffic engineering staff will define the scope and methodology for project-level of service analysis as part of the development review process.

2. Developing the Scope of Work

A transportation impact analysis will be required by the City to assess the transportation effects of development projects on the existing and/or planned street system under the conditions described below.

2.1 Transportation Impact Analysis

1. Projects that do not meet any of the Vehicle Miles Traveled screening criteria outlined in section 5.2.2 of these guidelines,
2. When project-generated traffic is expected to be greater than 100 vehicle trips during the morning or evening peak hour,
3. When project-generated traffic is expected to be greater than 1,000 vehicle trips per day, or
4. When a project includes a General Plan Amendment (GPA) that changes the land use and is expected to generate greater than 50 vehicle trips during the morning or evening peak hour.

2.2 Focused Transportation Impact Analysis

The City may require a focused transportation analysis in lieu of a full transportation analysis under any of the following circumstances:

- When project traffic will affect an intersection or roadway segment where there are known traffic concerns in the vicinity of the project site.
- Any project that contains a “drive through” function.
- When the project will substantially change the off-site transportation system or result in diversion of traffic to other routes, including physical changes such as street closures or access restrictions, lane reductions, new traffic signals or stop signs, disruption of sidewalk or bikeway continuity or safety, relocation or obstruction of transit stops, etc.
- When the project produces between 50 to 100 morning or evening peak hour trips.
- When the project is within 1,000 feet of a freeway on-ramp.
- When the proposed project may be presumed to have a less-than-significant VMT impact through screening criteria, but the presumption needs to be verified.

The scope of the focused traffic analysis would be reviewed by City staff, but at minimum should show that the project would not result in any significant effect on any transportation facility or mode.

3. Transportation Impact Study Format

The content and level of analysis necessary to evaluate a project will vary and are dependent on the scope of land use proposal and location within the city. All transportation impact studies will be generally organized and contain the information provided in the following outline. Additional study elements may be required by the City Traffic Engineer.

1. Executive Summary
    a. Project Description and Analysis Parameters
    b. Key Findings and Recommendations
        i. CEQA Findings
        ii. Non-CEQA Findings and Recommendations
2. Introduction
    a. Study Purpose
    b. Project Description
    c. Site Location and Study Area Boundaries
    d. Analysis Scenarios
    e. Analysis Methods
    f. Regulatory Setting – Applicable Plans and Policies
    g. Significance Criteria
3. Existing Conditions
    a. Existing Roadway System
    b. Existing Pedestrian Facilities
    c. Existing Bicycle Facilities
    d. Existing Transit Service
    e. Existing Traffic Counts
    f. Existing Operations Assessment
4. Project Characteristics
    a. Project Description
    b. Project Trip Generation
    c. Project Trips Distribution and Assignment
5. Existing with Project Conditions
    a. Existing with Project Traffic Volumes
    b. Analysis of Existing with Project Conditions

6. Near-Term Traffic Conditions
    a. Approved and Pending Near-Term Projects
    b. Near-Term Traffic Forecasts
    c. Near-Term Roadway Assumptions
    d. Analysis of Near-Term Conditions
7. Cumulative Traffic Conditions
    a. Cumulative Traffic Forecasts
    b. Cumulative Roadway Assumptions
    c. Analysis of Cumulative Conditions
8. Site Plan Review
    a. Vehicular Circulation
    b. Bicycle and Pedestrian Facilities
    c. Emergency Vehicle Access
    d. Transit Facilities
    e. Construction Traffic Assessment
    f. Parking
        i. City Code Requirements
        ii. Parking Demand
9. Environmental Assessment
    a. Vehicle Miles Traveled
    b. Pedestrian System Impacts
    c. Bicycle System Impacts
    d. Transit System Impacts
    e. Emergency Vehicle Access Impacts
    f. Vehicular Circulation/Hazardous Features
10. Summary of Findings
11. Appendix
    a. Traffic Counts
    b. Intersection Operations Calculations
    c. Traffic Signal Warrant Calculations

4. Non-CEQA Assessment

4.1 Level of Service Analysis

When evaluating the effects of development projects on the performance of the City of Pittsburg's transportation facilities, the City applies operational standards to ensure the levels of growth and development provided in the City of Pittsburg's General Plan Land Use Element are sufficiently accommodated.

4.1.1 LOS Analysis Methodologies

The method used for evaluating LOS at signalized and unsignalized intersections shall be the method defined in the latest version of the Transportation Research Board's *Highway Capacity Manual* (HCM), unless directed otherwise by the City. This method bases intersection operations on the average vehicular control delay. Control delay includes initial deceleration delay, queue move-up time, stopped delay, and acceleration delay. The average delay for intersections should be calculated using the latest version of Synchro analysis software, unless directed otherwise by the City.

Roundabout intersections should be analyzed using the latest version of the SIDRA software. Freeway mainline segment LOS and ramp junction LOS shall be analyzed using the latest HCM operational analysis consistent with Caltrans' Traffic Impact Analysis Guidelines.

4.1.2 Multimodal Transportation Service Objectives

As necessary, projects shall evaluate their effects on the appropriate Multimodal Transportation Service Objectives (MTSO) as defined in the latest version of CCTA's technical guidance. For freeway segments, the *East County Action Plan for Routes of Regional Significance,* CCTA has established the delay index as the Multimodal Transportation Service Objective for State Route 4 (SR 4) through Pittsburg. The delay index is the ratio of travel time on a facility divided by the travel times that occur during non-congested free-flow periods. Should the delay index exceed 2.5 during either the AM or PM peak period, freeway operations would be considered deficient. This would equate to peak hour travel taking 2.5 times as long as off-peak travel or an average travel speed below 26 miles per hour assuming a non-congested free-flow speed of 65 miles per hour. The number of vehicles traveling in the high-occupancy vehicle (HOV) lane is also an MTSO.

4.1.3 Selection of Study Intersections

The scope of the transportation analysis shall include the following intersections:

- All intersections adjacent to the project site;
- All signalized or all-way stop controlled intersections that operate at LOS E or F to which the project would add 30 or more peak hour trips;
- All signalized or all-way stop controlled intersections to which the project would add 50 or more peak hour trips; and
- All side-street stop-controlled intersection(s) where 50 or more peak hour trips are added by the project to any individual movement other than the major-street through movement.

Study intersections should be selected without consideration of jurisdictional boundaries. Additional study intersections may be selected after City staff has reviewed the trip generation, distribution, and assignment of a proposed project.

Study intersections should also include arterial and ramp intersections along defined Routes of Regional Significance, as appropriate. When the proposed project adds more than 50 net new vehicle trips to a freeway ramp, the project should be evaluated against the freeway multi-modal transportation service objectives (MTSOs) provided *East County Action Plan for Routes of Regional Significance*.

4.1.4 Traffic Counting Protocol

Traffic counts for shall be conducted as follows:

1. Three-hour peak period transportation counts of vehicles, pedestrians, and bicyclists are required for all study intersections. Typical analysis will include both weekday morning (6a.m. – 9a.m.) and evening (4p.m. – 7p.m.) peak periods. Counts shall be recorded at 5-minute or 15-minute intervals, tallied by turning movement for vehicles and bicyclists and by crossing leg for pedestrians.

2. At saturated intersections, traffic demand shall be based on the arrival counts, queue lengths, and departure volumes. Typical intersection vehicle counts yield only the departure volumes through an intersection. For saturated intersections, departure volumes do not reflect actual demand because of growing queues on the intersection approaches, and thus the need for arrival counts.

3. During Fair Weather – Counts should be conducted in fair weather, without rain, flooding, heavy winds, or other adverse weather conditions that could disrupt the flow of traffic.

4. Counts shall be conducted on a Tuesday, Wednesday, or Thursday of a non-holiday week when public schools are in session.

5. Typical School Day – Counts should be taken on typical school days avoiding half days, late start days and early-dismissal days whenever possible.

6. No Major Road Closings – If temporary road closings have occurred that affect traffic flow at the count location, the count should be postponed until the road is re-opened. If the road closing is to be for an extended period, and a count needs to be conducted, the count results should be annotated to reflect the road closure conditions.

7. No Construction Activity – Counts should not be conducted in the presence of construction activity that could disrupt the arrival or departure of traffic at the count location.

8. No Incidents or Accidents – If an incident or accident has occurred in the vicinity of the count location, or if such an event occurs during the count, the count should be discarded, and repeated at a later date.

4.1.4.1 Field Observations

The transportation consultant should observe each study intersection during peak hours of analysis and document their field observations. This should the following:

- Do field observations of delay match calculated delay
- Freeway ramp effects on local streets, including ramp meter spillback
- Uneven lane demand and usage
- Presence and effect of on-street parking
- Pedestrian and bicycle safety issues
- Transit routes and location of transit stops
- Cut-through traffic in neighborhoods
- Sight distance issues
- Intersection saturation that may explain low peak period traffic counts
- Queuing and storage length
- Issues affecting transit operations
- Truck routes

For study locations where saturated conditions exist, the consultant should note the corresponding traffic queue lengths at the beginning and end of each 15-minute interval.

4.2 Level of Service Policies

Although not a CEQA metric, intersection levels of service are required to be assessed for General Plan compliance and to identify potential transportation improvements that could be implemented

as part of the project to improve the overall operations of the transportation system for all travel modes. The City of Pittsburg's General Plan 2040 provides for the following policies relating to the calculation and assessment of intersection LOS:

- Levels of Service shall be calculated using the latest version of the Transportation Research Board's Highway Capacity Manual available at the time the analysis is prepared.
- The City shall strive to maintain LOS D for motor vehicle traffic as the minimum acceptable service standard for all signalized and stop controlled intersections during peak periods. In the designated Downtown core, LOS E would be considered as an acceptable service standard to account for the more urban, pedestrian-oriented character of the area.

The project could have a noticeable effect on local and regional travel if it would cause an increase in traffic which is substantial in relation to the traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, or delay and congestion at intersections), or change the condition of an existing street (e.g., street closures, changing direction of travel) in a manner that would substantially change access or traffic load and capacity of the street system.

Recommendations will be designed to enhance mobility for all travel modes, including transit vehicles, without degrading or precluding the provision of planned bicycle, pedestrian, and transit facilities.

For the Caltrans freeway facilities, the operational standards and significance criteria are established by the Contra Costa Transportation Authority (CCTA) acting as the designated Congestion Management Agency (CMA) representing the jurisdictions of Contra Costa County. As the acting CMA, the CCTA establishes the traffic LOS standards for all state highway facilities in Contra Costa County, which supersede the general Caltrans operational standard for all state highways.[1]

4.2.1 Operational Improvements

The traffic analysis must recommend appropriate treatments for the transportation system to offset operational deficiencies that are found to have exceeded operational standards for the City of Pittsburg. Furthermore, as appropriate, the traffic analysis must disclose any secondary operational deficiencies that the proposed treatments could generate. For example, the secondary operational deficiency generated by adding approach lanes to an intersection could include an increase in pedestrian crossing time. The project should pay their proportionate share of improvements that would provide acceptable operations or participate in the East Contra Costa Regional Fee and Finance Authority (ECCRFFA) regional fee program if improvements that would result in acceptable operations at the location are added to the fee program. A reimbursement agreement could be

[1] *2013 Contra Costa Congestion Management Plan*, Contra Costa County Authority, Walnut Creek, CA, 94598, December 19, 2013.

established with the City of Pittsburg to collect proportionate shares from other developments that would benefit from the improvement.

4.3 Analysis Scenarios

The transportation operations analysis shall include, as a minimum, consideration of the following scenarios:

1. **Existing Conditions** – This scenario evaluates transportation facilities based on volumes, lane geometry and traffic controls at the time of analysis.
2. **Existing plus Project Conditions** – Existing Conditions with the addition of traffic form the proposed project.
3. **Near-term Conditions** – Existing Conditions with the addition of trips added by the buildout of approved and planned projects in the study area expected to be complete in the next 5 to 10 years.
4. **Near-term plus Project Conditions** – Near-term Conditions with the addition of traffic from the proposed project.
5. **Cumulative Conditions** (Year 2040)– This scenario evaluates horizon year conditions with the implementation of all approved land use changes and any development that is consistent with the General Plan and expected to occur within the time frame of the project. It will also include transportation projects programmed for implementation prior to the horizon year and any programmed capital improvements. Unless otherwise directed by the City, cumulative forecasts should be developed using the latest available version of the CCTA travel demand model. Currently the CCTA travel demand model has a horizon year of 2040.
6. **Cumulative plus Project Conditions** – Cumulative Conditions with the addition of traffic from the proposed project.

4.4 Project Assessment

The TIA should include a detailed description of the project, including factors which quantify traffic generation, (e.g., dwelling units, square feet of office space, persons to be employed, restaurant seats). A detailed site plan shall be provided that includes access, circulation, parking, and loading as applicable. The project description should include the following information:

1. Location of the project site, address, and cross streets; information regarding the project site's lot area, existing and proposed zoning.
2. Existing and proposed total gross square footage for each land use type and the number of units for residential uses, including the net changes for each type of use.
3. Existing and proposed estimated number of employees and/or dwelling units by type of use, including net changes.
4. Existing and proposed number of off-street parking spaces and whether any on-street or off-street parking spaces will be removed.

5. Existing and proposed number of off-street and on-street freight loading spaces as well as any proposed changes affecting on-street loading spaces.
6. Detailed plans showing vehicular and pedestrian site access, including location of curb cuts for both existing and proposed uses, and internal vehicular circulation, presented in standard architectural or engineering scale.
7. Figure identifying parking spaces, the proposed egress and ingress to the parking garage or lot, the circulation pattern within the parking facility and the number and location of parking spaces for the disabled (accessible parking spaces).
8. Figure showing the location, dimensions and access to the off-street freight loading spaces as well as the on-site location for trash and garbage storage.
9. Identification of the location, number, type of bicycle parking spaces provided, and proposed primary access.

4.4.1 Trip Generation

Trip generation refers to the process of estimating the amount of vehicular traffic a project would add to the surrounding roadway system. Trip generation estimates shall be developed using the latest version of the Institute of Transportation Engineers (ITE) *Trip Generation Manual*. Trips should be calculated using the weighted average rates or rates from the regression equations as determined according to the guidelines in the ITE *Trip Generation Manual*.

Special consideration should be given for ITE rates based on antiquated data or a small sample, which may require use of other data sources or additional data collection to determine the appropriate trip generation. (Local trip generation surveys may be required if the project site is not compatible with any ITE land use codes, the land use code has fewer than five data points, the project size does not fall within the range of ITE study site, or standard deviation is greater than 110 percent of the weighted average rate).

Other trip generation rates may be approved by the City due to unique characteristics of a proposed project. In cases where the published ITE trip generation rates are based on very limited data, rates shall be verified through alternative source documents or local peak-period field observations of similar uses. When ITE data is not available or if the available ITE categories are inadequate for a specific project, trips may be determined using other references such as the San Diego Association of Governments (SANDAG) publications and other reputable sources. Appropriate supporting information is required for the use of these other non-ITE or SANDAG data sources.

New rates may be determined from similar land uses in the community for uses not updated or included in the ITE *Trip Generation Manual* or other acceptable data sources, subject to receipt of documentation acceptable to City staff. Local trip generation studies should follow the procedures prescribed in the ITE *Trip Generation Manual*.

4.4.1.1 Other Trip Generation Adjustments

The City may consider the following adjustments to trip generation if appropriate:

1. Existing trips generated by uses at the project site to be removed are already included in existing transportation counts and thus may be subtracted from the total project trip generation. A trip generation survey of the existing site is generally required for claiming this trip reduction and the results of the survey shall determine the reduction; however, ITE Trip Generation analysis may be substituted for a survey subject to the approval of City transportation staff. If the existing and proposed site differs by land uses and/or access points, existing trips shall be distributed and reassigned separately to the network as both positive and negative trips.
2. Pass-by, diverted, and linked trips are created by intermediate stops on a through trip. Pass-by trips are existing trips that enter the project site and then exit in the same direction of travel. They are attracted to the land use – typically service stations, fast food restaurants, and convenience stores – from an adjacent roadway with direct access to the project site. Diverted and linked trips are existing trips on nearby roadways that will divert from their existing routes to access the project site, typically larger retail development. These trips change existing through movements to turning movements or vice versa at nearby intersections. The latest edition of the ITE Trip Generation Handbook shall be used as the starting point to determine these reductions. Pass-by trip reductions shall only be applied to shopping centers greater than 10,000 square feet, service stations, fast food restaurants, and convenience stores. Use of this reduction requires justification of the percent reduction based on existing volumes and an analysis of turning movements to and from the project driveways.

4.4.2 Trip Distribution and Assignment

Project trip distribution refers to the directions of approach and departure that vehicles would take to access and leave the site. A figure illustrating the percentage of peak hour project-generated traffic going to and from various destinations along the transportation network shall be included in the TIA. Trip distribution shall be based on the proposed land use, existing travel patterns, site access to major corridors, relative locations of complementary land uses, and model runs of the Contra Costa Transportation Authority travel demand model. Typically, CCTA model runs should only be used for a general trip distribution to and from the north, south, east, and west. Project trips should then be manually assigned to the driveways, intersections, and roadway segments according to the trip distribution, and account for any turning movement restrictions or other relevant roadway characteristics including relative level of congestion on available route options. The model should not be relied on for project trip assignment.

A preliminary trip distribution pattern should be submitted in the proposed project scope for review and approval by City staff. Trip distribution may be further refined after consultation with City staff, even after a transportation analysis work scope is agreed upon.

A figure illustrating the assignment of peak hour project-only trips at the driveways, study intersections, and roadway segments based on the trip distribution shall be included in the TIA. If the trip distribution is different between existing, near-term, and cumulative conditions, a figure shall be provided for each different trip distribution and/or assignment with supporting discussion and justification. All assumptions shall have proper citation and justification for their use in the TIA. The trip distribution and assignment assumptions shall be submitted with the work scope for review and approval of the City Traffic Engineer, which the consultant should obtain before proceeding with subsequent traffic analysis.

4.5 Other Analyses

The following assessments should be included in the TIA as appropriate and directed by City staff.

4.5.1 Site Plan Review

The TIA will review and evaluate the site plan for the proposed project to ensure safe and efficient circulation of vehicles, bicycles, and pedestrians through the project site and on the roadways adjacent to the project site. The site plan review section will include evaluations of the following:

1. Site access and interface with roadway network including adequacy of turn-pocket lengths, driveway throat lengths, sight distance and level of service
2. Vehicular circulation and internal intersection operations
3. Emergency vehicle access and circulation
4. Pedestrian access and circulation within and adjacent to the site
5. Bicycle access and circulation within and adjacent to the site
6. Transit and shuttle vehicle circulation within and adjacent to the site
7. Pedestrian access to and from transit stops
8. Truck circulation and loading dock access
9. Level of parking supply in relation to code requirements and expected demand
10. Construction traffic evaluation and phasing
11. Bicycle parking

5. CEQA Assessment

5.1 CEQA Significance Criteria

A project would have a significant effect on the environment if it would:

1. Conflict with a program, plan, ordinance, or policy addressing the circulation system, including public transit, roadway, bicycle, and pedestrian facilities.
2. Conflict with or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b).
3. Substantially increase hazards due to a geometric design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment).
4. Result in inadequate emergency access.

CEQA Guidelines section 15064.3, subdivision (b) details the requirements regarding the implementation of SB 743 and the use of VMT in the assessment of transportation impacts.

5.2 VMT Analysis

A key element of SB 743, signed in 2013, is the elimination of automobile delay and LOS as the sole basis of determining CEQA impacts. The most recent CEQA guidelines, released in December 2018, recommend VMT as the most appropriate measure of project transportation impacts. However, SB 743 does not prevent a city from continuing to analyze delay or LOS as part of other plans (i.e., the general plan), studies, or ongoing network monitoring. These guidelines provide technical guidance regarding the assessment of VMT, thresholds of significance, and mitigation measures for land development and transportation projects within the City of Pittsburg.

5.2.1 VMT Thresholds of Significance

The following are thresholds of significance related to substantial additional VMT:

- For residential projects, a project would cause substantial additional VMT if it exceeds existing countywide household VMT per capita minus 15 percent.
- For office projects, a project would cause substantial additional VMT if it exceeds the existing countywide VMT per employee minus 15 percent.
- For regional retail projects a project would cause substantial additional VMT if it exceeds the baseline Bay Area total VMT per service population minus 15 percent.
- Mixed-use projects – shall be divided into their individual constituent parts and evaluated against their individual components' standards.

Additional guidance is provided in below regarding review of other types of land uses.

5.2.2 Project VMT Screening

The following screening criteria may be used to identify types, characteristics, and/or locations of land use projects that would not exceed these VMT thresholds of significance. If a project or components of the project meet any of the below screening criteria, then it is presumed VMT impacts would be less than significant for the project or component of the project and a detailed VMT analysis is not required. It should be noted that City staff can deny the use of screening criteria if substantial evidence suggests that the project is not appropriate for screening.

There are three key screening criteria for projects: project type, project location in a low-VMT area, and project location near transit stations. A project only needs to meet one of the three screening criteria to "screen out". Projects that do not meet any of the identified screening criteria are required to conduct a detailed VMT assessment.

5.2.2.1 Screening Criteria 1: Project Type

Absent substantial evidence indicating that a project would generate a potentially significant level of VMT, the following types of projects should be expected to cause a less-than-significant impact under CEQA and would not require further VMT analysis.

- Small Projects: Small projects generate or attract fewer than 110 trips per day. Based on research for small project triggers, this may equate to non-residential projects of 10,000 square feet or less and single-family residential projects of 10 units or less, or otherwise generating less than 836 VMT per day.
- CEQA Exemption: Any project that is exempt from CEQA is not required to conduct a VMT analysis.
- Small Scale, Local-Serving Retail: Local-serving retail projects are defined as projects of less than 50,000 square feet in size on the basis that they attract trips that would otherwise travel longer distances. Local-serving retail generally improves the convenience of shopping and other activities close to home and has the effect of reducing vehicle travel.
- Small and Active Transportation Projects: Screened transportation projects are transit projects, bicycle and pedestrian projects, and roadway projects that do not result in an increase in vehicle capacity.
- Public services: Police stations, fire stations, public utilities, and parks do not generally generate VMT. Instead, these land uses are often built in response to development from other land uses (e.g., office and residential). Therefore, these land uses can be presumed to have less-than-significant impacts on VMT. However, this presumption would not apply if the project is sited in a location that would require employees or visitors to travel substantial distances and the project is not located within ½ mile of a major transit stop or does not meet the small project screening criterion.

5.2.2.2 Screening Criteria 2: Low VMT Area Screening

Residential and employment-generating projects located within a low-VMT generating area of the city (i.e., lower than baseline average levels, based on the significance thresholds in this document) may be presumed to have a less than significant impact absent substantial evidence to the contrary. For this screening, CCTA's Travel Demand Model shall be utilized to compare the project's characteristics to land uses currently in the low-VMT area and for individual traffic analysis zones (TAZs). TAZs are geographic polygons like Census block groups used to represent areas of homogenous travel behavior. For low VMT area screening to be satisfied, the analyst must verify that the project land uses would not alter the existing built environment in such a way as to increase the rate or length of vehicle trips (e.g. the proposed project is consistent with existing land use in the area, the project would be expected to contribute VMT consistent with existing land use in the area, and the project would not significantly alter travel patterns in the area).

A low VMT area is defined as follows:

- For housing projects: TAZs that have a baseline home-based VMT per capita that is 85% or less of the existing countywide average.
- For employment-generating projects: TAZs that have baseline home-work VMT per worker that is 85% or less of the existing countywide average.

To identify if the project is in a low VMT-generating area, the analyst may review the screening maps provided as **Figure 1** (residential project mapping) and **Figure 2** (employment-generating project mapping) attached to this document. Additionally, as noted above, the analyst must identify if the project is consistent with the existing land use (e.g., if the project is proposing single-family housing, there should be existing single-family housing of approximately the same density) within that TAZ and use professional judgement that there is nothing unique about the about the project that would otherwise be misrepresented utilizing the data from the travel demand model.

5.2.2.3 Screening Criteria 3: Proximity to Transit

Projects located within a Transit Priority Area (TPA)[2] may be presumed to have a less than significant impact absent substantial evidence to the contrary. This includes residential, retail, office projects, or

[2] A TPA is defined as a half mile area around an existing major transit stop or an existing stop along a high quality transit corridor per the definitions below. The City has discretion to measure the half-mile based on a straight radius or walking routes. The straight radius method will maximize the footprint of the TPA and allow for the greatest amount of potential project screening. Using the walking route method will decrease the land area subject to potential TPA screening but will increase the likelihood that development projects located in this area have a less than 1/2 mile walking distance to the transit station. Academic research has demonstrated that walking distance is an important factor that influences the choice to take transit and thereby reduce VMT. For more background on this, see the following article: http://www.reconnectingamerica.org/assets/Uploads/20111018UCB-ITS-VWP-2011-5.pdf).

mixed-use projects proposed within half mile of an existing major transit stop or an existing stop along a high-quality transit corridor. In Pittsburg, the existing BART Stations (Pittsburg/Bay Point and Pittsburg Center) are major transit stops and the 381 Eastbound and 381 Westbound Tri-Delta Transit Bus Routes are a high quality transit corridor. This presumption would not apply, however, if project-specific or location-specific information indicates that the project will still generate significant levels of VMT. For example, the presumption might not be appropriate if the project:

1. Has a Floor Area Ratio (FAR) of less than 0.75;
2. Includes more parking for use by residents, customers, or employees of the project than required by the City (if the City requires the project to supply parking);
3. Is inconsistent with the applicable Sustainable Communities Strategy/Plan Bay Area;
4. Replaces affordable residential units with a smaller number of moderate- or high-income residential units; or
5. Has a retail component that is greater than 50,000 square feet.

Projects in proximity to an existing major transit stop or an existing stop along a high-quality transit corridor that do not satisfy all these criteria should prepare a detailed VMT analysis.

5.2.3 VMT Assessment for Non-Screened Development

Projects not screened through the steps above should complete a VMT analysis and forecasting through the CCTA model to determine if they have a significant VMT impact. This analysis shall include "projected generated VMT" and "project effect VMT" estimates for the project TAZ(s) under the following scenarios:

- **Baseline Conditions** – This data is available from the CCTA travel demand model; analysts should use caution to ensure that the baseline values calculated are reflective of values at the time that the Notice of Preparation for a project is released (consistent with guidance from OPR). The screening maps also provide the baseline VMT per service population in the City of Pittsburg.

- **Baseline Plus Project** – The project land use would be added to the project TAZ or a separate TAZ would be created to contain the project land uses. A full base year model run would be performed and VMT changes must be isolated for the project TAZ and across the

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Pub. Resources Code, § 21064.3 – 'Major transit stop' means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.' Note that this requirement means that both intersecting routes must have the 15-minute or less frequency of service interval.

Pub. Resources Code, § 21155 – For purposes of this section, a 'high-quality transit corridor' means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

full model network. The model output must include reasonableness checks of the production and attraction balancing to ensure the project effect is accurately captured. If this scenario results in a less-than-significant impact, then additional cumulative scenario analysis may not be required.

The screening maps provide an estimate of the Baseline plus project conditions. This data could be presented in lieu of results from the full model run if the project land use is well represented in the TAZ (adding more employment to an employment center area). However, it is recommended that a base year plus project run always be performed as a check for reasonableness and consistency with the cumulative year results.

- **Cumulative No Project**– This data is available from the CCTA travel demand model. The cumulative year shall be confirmed with City staff prior to beginning the cumulative analysis.

- **Cumulative Plus Project** – The project land use would either be added to the project TAZ or a separate TAZ would be created to contain the project land uses. The addition of project land uses may need to be accompanied by a reallocation of a similar amount of land use from other TAZs; especially if the proposed project is significant in size such that it could change other future developments. Land use projects are often represented in the assumed growth of the cumulative year population and employment. It may be appropriate to remove land use growth that represents the project from the cumulative year model to represent the cumulative no project scenario. If project land uses are simply added to the cumulative no project scenario, then the analysis should reflect this limitation in the methodology and acknowledge that the analysis may overestimate the project's effect on VMT.

The model output should include total VMT, which includes all vehicle trips and trip purposes, and VMT per service population (population plus employment), home based VMT per resident for residential, and home-based-work VMT per worker for employment uses. Total VMT (by speed bin) is needed as an input for air quality, greenhouse gas (GHG), and energy impact analysis while total VMT per service population is recommended for transportation impact analysis.

Both "plus project" scenarios noted above will summarize different types of VMT: (1) project generated VMT per service population, home based VMT per resident for residential, and home-based-work VMT per worker for employment uses and comparing those back to the appropriate benchmark noted in the thresholds of significance, and (2) the project effect on VMT, comparing how the project changes VMT compared to the no project condition.

Project-generated VMT shall be extracted from the travel demand forecasting model using the origin-destination trip matrix and shall multiply that matrix by the final assignment skims. The project-effect on VMT shall be estimated using the appropriate boundary and extracting the total link-level VMT for both the no project and with project condition.

5.2.4 VMT Mitigation Measures

To mitigate VMT impacts, the following general choices are available to projects:

1. Modify the project's design features and/or land uses to reduce project trips or reduce trip length.
2. Moving the proposed development to a more travel-efficient area (i.e. area with access to high quality transit, or other transportation solutions that reduce the length/number of trips).
3. Implement Transportation Demand Management (TDM) measures to reduce VMT generated by the project.

Of the strategies included within these general categories, only a subset of the strategies is likely to be effective in a suburban setting such as Pittsburg. Proposed projects shall utilize the latest version of the California Air Pollution Control Officers Association ("CAPCOA") Quantifying Greenhouse Gas Mitigation Measures document to estimate the maximum feasible VMT mitigation. However, it should be noted that most of the data used to develop the CAPCOA mitigation strategies are based on projects from urban or relatively dense suburban areas. The effectiveness of VMT mitigations will vary from project to project based on the surrounding land use context, the combination of its uses, and the availability of alternative transportation modes. The proposed project's transportation impact analysis must quantifiably demonstrate, through the use of reliable calculation tools, proposed VMT mitigations will result in the estimated reductions when applied to the project. In the event a proposed project's characteristics render most or all the aforementioned mitigation strategies infeasible or ineffective, City staff will consider other mitigations options.

The following VMT mitigation strategies should be considered by projects for the mitigation of VMT impacts within the City.

Land Use

T-2: Increase Job Density – This measure accounts for the VMT reduction achieved by a project that is designed with a higher density of jobs compared to the average job density in the U.S. Increased densities affect the distance people travel and provide greater options for the mode of travel they choose. Increasing job density results in shorter and fewer trips by single-occupancy vehicles and thus a reduction in GHG emissions.

T-3: Provide Transit-Oriented Development – This measure would reduce project VMT in the study area relative to the same project sited in a non-transit-oriented development (TOD) location. TOD refers to projects built in compact, walkable areas that have easy access to public transit, ideally in a location with a mix of uses, including housing, retail offices, and community facilities. Project site residents, employees, and visitors would have easy access to high-quality public transit, thereby encouraging transit ridership and reducing the number of single occupancy vehicle trips and associated GHG emissions.

T-17: Improve Street Connectivity – This measure accounts for the VMT reduction achieved by a project that is designed with a higher density of vehicle intersections compared to the average intersection density in the U.S. Increased vehicle intersection density is a proxy for street connectivity improvements, which help to facilitate a greater number of shorter trips and thus a reduction in GHG emissions.

Trip Reduction Programs

T-5: Implement Commute Trip Reduction Program (Voluntary) – This measure will implement a voluntary commute trip reduction (CTR) program with employers. CTR programs discourage single occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking, thereby reducing VMT and GHG emissions. Voluntary implementation elements are described in this measure.

T-6: Implement Commute Trip Reduction Program (Mandatory Implementation and Monitoring) – This measure will implement a mandatory CTR program with employers. CTR programs discourage single-occupancy vehicle trips and encourage alternative modes of transportation such as carpooling, taking transit, walking, and biking, thereby reducing VMT and GHG emissions.

T-7: Implement Commute Trip Reduction Marketing – This measure will implement a marketing strategy to promote the project site employer's CTR program. Information sharing and marketing promote and educate employees about their travel choices to the employment location beyond driving such as carpooling, taking transit, walking, and biking, thereby reducing VMT and GHG emissions.

T-8: Provide Ridesharing Program – This measure will implement a ridesharing program and establish a permanent transportation management association with funding requirements for employers. This strategy includes measures such as designating a proportion of parking spaces exclusive to ride sharing vehicles, providing adequate loading, and unloading areas for passengers of ride-sharing vehicles and generating a web site or message board for ride coordination. The focus of this strategy is to increase the vehicle occupancy by ride sharing between people driving similar trips, which will result in fewer cars, and thus a decrease in VMT.

T-9: Implement Subsidized or Discounted Transit Program – Employees Only – This measure will provide subsidized or discounted, or free transit passes for employees and/or residents. Reducing the out-of-pocket cost for choosing transit improves the competitiveness of transit against driving, increasing the total number of transit trips and decreasing vehicle trips. This decrease in vehicle trips results in reduced VMT and thus a reduction in GHG emissions.

T-9-A: Implement Subsidized or Discounted Transit Program – Employees and Residents – This measure will provide subsidized or discounted, or free transit passes for employees and residents. Reducing the out-of-pocket cost for choosing transit improves the competitiveness of transit against driving, increasing the total number of transit trips and decreasing vehicle trips. This decrease in vehicle trips results in reduced VMT and thus a reduction in GHG emissions.

T-10: Provide End-of-Trip Bicycle Facilities – This measure will install and maintain end-of-trip facilities for employee use. End-of-trip facilities include bike parking, bike lockers, showers, and personal lockers. The provision and maintenance of secure bike parking and related facilities encourages commuting by bicycle, thereby reducing VMT and GHG emissions.

T-11: Provide Employer-Sponsored Vanpool – This measure will implement an employer-sponsored vanpool service. Vanpooling is a flexible form of public transportation that provides groups of 5 to 15 people with a cost-effective and convenient rideshare option for commuting. This strategy is appropriate for office, industrial, and mixed-use projects. In some cases, this can be employed as a community strategy with employers within a particular area pooling resources to provide shuttles to transit. The mode shift from long-distance, single-occupied vehicles to shared vehicles reduces overall commute VMT, thereby reducing GHG emissions.

T-12: Price Workplace Parking – This measure will price onsite parking at workplaces. Because free employee parking is a common benefit, charging employees to park onsite increases the cost of choosing to drive to work, so employees consider alternative modes. It may include explicitly charging for parking for its employees, implementing above market rate pricing, validating parking only for invited guests, not providing employee parking and transportation allowances, and educating employees about available alternatives. This is expected to reduce single-occupancy vehicle commute trips, resulting in decreased VMT, thereby reducing associated GHG emissions.

T-13: Implement Employee Parking Cash-Out – This measure will require project employers to offer employee parking cash-out. Cash-out is when employers provide employees with a choice of forgoing their current subsidized/free parking for a cash payment equivalent to or greater than the cost of the parking space. This encourages employees to use other modes of travel instead of single occupancy vehicles. This mode shift results in people driving less and thereby reduces VMT and GHG emissions.

T-23: Community-Based Travel Planning – This measure will target residences in the plan/community with community-based travel planning (CBTP). CBTP is a residential based approach to outreach that provides households with customized information, incentives, and support to encourage the use of transportation alternatives in place of single occupancy vehicles, thereby reducing VMT and associated GHG emissions.

Parking or Road Pricing/Management

T-15: Limit Residential Parking Supply – This measure will reduce the total parking supply available at a residential project or site. Limiting the amount of parking available creates scarcity and adds additional time and inconvenience to trips made by private auto, thus disincentivizing driving as a mode of travel. Reducing the convenience of driving results in a shift to other modes and decreased VMT and thus a reduction in GHG emissions. Evidence of the effects of reduced parking supply is strongest for residential developments.

T-16: Unbundle Residential Parking Costs from Property Cost – This strategy separates parking costs from property costs removing the burden from those who do not utilize parking spaces and requiring those who wish to do so to purchase parking spaces at an additional cost. On the assumption that parking costs are passed through to the vehicle owners/drivers utilizing the parking spaces, this measure results in decreased vehicle ownership and, therefore, a reduction in VMT and GHG emissions.

T-24: Implement Market Price Public Parking (On-Street) – This measure will price all on-street parking in a given community, with a focus on parking near central business districts, employment centers, and retail centers. Increasing the cost of parking increases the total cost of driving to a location, incentivizing shifts to other modes and thus decreasing total VMT to and from the priced areas. This VMT reduction results in a corresponding reduction in GHG emissions.

Neighborhood Design

T-18: Provide Pedestrian Network Improvements – This strategy focuses on creating a pedestrian network and connecting projects to nearby destinations via pedestrian pathways. Projects in the City of Pittsburg range in size, so the emphasis of this strategy for smaller projects would likely be the construction of network improvements that connect the project sites directly to nearby destinations. For larger projects, this strategy could focus on the development of a robust pedestrian network within the project itself or closing gaps that could connect the project to other areas. This strategy could also include improvements that improve the safety outcomes for people walking, especially walking to/from transit stops. Alternatively, implementation could occur through an impact fee program or benefit/assessment district based on local or regional plans. Providing sidewalks and an enhanced pedestrian network encourages people to walk instead of drive. This mode shift results in a reduction in VMT and GHG emissions.

T-19-A: Construct or Improve Bike Facility – This measure will construct or improve a single bicycle lane facility (only Class I, II, or IV) that connects to a larger existing bikeway network. Providing bicycle infrastructure helps to improve biking conditions within an area. This encourages a mode shift on the roadway parallel to the bicycle facility from vehicles to bicycles, displacing VMT and thus reducing GHG emissions. When constructing or improving a bicycle facility, a best practice is to consider local or state bike lane width standards. A variation of this measure is provided as T-18-B, Construct or Improve Bike Boulevard.

T-19-B: Construct or Improve Bike Boulevard – Construct or improve a single bicycle boulevard that connects to a larger existing bikeway network. Bicycle boulevards are a designation within Class III Bikeway that create safe, low-stress connections for people biking and walking on streets. This encourages a mode shift from vehicles to bicycles, displacing VMT and thus reducing GHG emissions. A variation of this measure is provided as T-18-A, Construct or Improve Bike Facility, which is for Class I, II, or IV bicycle infrastructure.

T-20: Expand Bikeway Network – This measure will increase the length of a city or community bikeway network. A bicycle network is an interconnected system of bike lanes, bike paths, bike routes, and cycle tracks. Providing bicycle infrastructure with markings and signage on appropriately sized roads with vehicle traffic traveling at safe speeds helps to improve biking conditions (e.g., safety and convenience). In addition, expanded bikeway networks can increase access to and from transit hubs, thereby expanding the "catchment area" of the transit stop or station and increasing ridership. This encourages a mode shift from vehicles to bicycles, displacing VMT and thus reducing GHG emissions. When expanding a bicycle network, a best practice is to consider bike lane width standards from local agencies, state agencies, or the National Association of City Transportation Officials' Urban Bikeway Design Guide.

T-21-A: Implement Conventional Carshare Program – This measure will increase carshare access in the user's community by deploying conventional carshare vehicles. Carsharing offers people convenient access to a vehicle for personal or commuting purposes. This helps encourage transportation alternatives and reduces vehicle ownership, thereby avoiding VMT and associated GHG emissions. A variation of this measure, electric carsharing, is described in Measure T-20-B, Implement Electric Carshare Program.

T-21-B: Implement Electric Carshare Program – This measure will increase carshare access in the user's community by deploying electric carshare vehicles. Carsharing offers people convenient access to a vehicle for personal or commuting purposes. This helps encourage transportation alternatives and reduces vehicle ownership, thereby avoiding VMT and associated GHG emissions. This also encourages a mode shift from internal combustion engine vehicles to electric vehicles, displacing the emissions-intensive fossil fuel energy with less emissions-intensive electricity. Electric carshare vehicles require more staffing support compared to conventional carshare programs for shuttling electric vehicles to and from charging points. A variation of this measure, conventional carsharing, is described in Measure T-20-A, Implement Conventional Carshare Program.

T-22-A: Implement Pedal (Non-Electric) Bikeshare Program – This measure will establish a bikeshare program. Bikeshare programs provide users with on-demand access to bikes for short-term rentals. This encourages a mode shift from vehicles to bicycles, displacing VMT and thus reducing GHG emissions. Variations of this measure are described in Measure T-21-B, Implement Electric Bikeshare Program, and Measure T-21-C, Implement Scootershare Program.

T-22-B: Implement Electric Bikeshare Programs – This measure will establish an electric bikeshare program. Electric bikeshare programs provide users with on-demand access to electric pedal assist bikes for short-term rentals. This encourages a mode shift from vehicles to electric bicycles, displacing VMT and reducing GHG emissions. Variations of this measure are described in Measure T-21-A, Implement Pedal (Non-Electric) Bikeshare Program, and Measure T-21-C, Implement Scootershare Program.

T-22-C: Implement Scootershare Program – This measure will establish a scootershare program. Scootershare programs provide users with on-demand access to electric scooters for short-term rentals. This encourages a mode shift from vehicles to scooters, displacing VMT and thus reducing GHG emissions. Variations of this measure are described in Measure T-21-A, Implement Pedal (Non-Electric) Bikeshare Program, and Measure T-21-B, Implement Electric Bikeshare Program.

Transit

T-25: Extend Transit Network Coverage or Hours – This measure will expand the local transit network by either adding or modifying existing transit service or extending the operation hours to enhance the service near the project site. Starting services earlier in the morning and/or extending services to late-night hours can accommodate the commuting times of alternative-shift workers. This will encourage the use of transit and therefore reduce VMT and associated GHG emissions.

T-26: Increase Transit Service Frequency – This measure will increase transit frequency on one or more transit lines serving the plan/community. Increased transit frequency reduces waiting and overall travel times, which improves the user experience and increases the attractiveness of transit service. This results in a mode shift from single occupancy vehicles to transit, which reduces VMT and associated GHG emissions.

T-27: Implement Transit-Supportive Roadway Treatments – This measure will implement transit-supportive treatments on the transit routes serving the plan/community. Transit-supportive treatments incorporate a mix of roadway infrastructure improvements and/or traffic signal modifications to improve transit travel times and reliability. This results in a mode shift from single occupancy vehicles to transit, which reduces VMT and the associated GHG emissions.

T-28: Provide Bus Rapid Transit – This measure will convert an existing bus route to a bus rapid transit (BRT) system. BRT includes the following additional components, compared to traditional bus service: exclusive right-of-way (e.g., busways, queue jumping lanes) at congested intersections, increased limited-stop service (e.g., express service), intelligent transportation technology (e.g., transit signal priority, automatic vehicle location systems), advanced technology vehicles (e.g., articulated buses, low-floor buses), enhanced station design, efficient fare-payment smart cards or smartphone apps, branding of the system, and use of vehicle guidance systems. BRT can increase the transit mode share in a community due to improved travel times, service frequencies, and the unique components of the BRT system. This mode shift reduces VMT and the associated GHG emissions.

T-29: Reduce Transit Fares – This measure will reduce transit fares on the transit lines serving the plan/community. A reduction in transit fares creates incentives to shift travel to transit from single-occupancy vehicles and other traveling modes, which reduces VMT and associated GHG emissions. This measure differs from Measure T-8, Implement Subsidized or Discounted Transit Program,

which can be offered through employer-based benefits programs in which the employer fully or partially pays the employee's cost of transit.

Clean Vehicles and Fuels

T-30: Use Cleaner-Fuel Vehicles – This measure requires use of cleaner-fuel vehicles (electric vehicles, natural gas and propane vehicles, and vehicles powered by biofuels) in lieu of similar vehicles powered by gasoline or diesel fuel.

The above list should not be considered exhaustive, and projects can propose other TDM measures if appropriate and desired.

5.2.4.1 VMT Mitigation Measure Effectiveness

An important consideration when combining TDM measures is whether a maximum VMT reduction should be applied based on the land use context. The CAPCOA methodology identifies VMT reduction maximums based on community types tied to land use context. The caps are applied at each step of the VMT reduction calculation (i.e., at the strategy scale, the combined strategy scale, and the global scale). However, these caps are not based on research related to the effectiveness of VMT reduction strategies in different land use contexts. The cap differences are largely based on VMT generation differences within different land use contexts and serves as a proxy for potential limits on VMT reduction strategy effectiveness. For suburban jurisdictions such as Pittsburg, CAPCOA identifies a global VMT reduction maximum of 15 percent. **Table 1** presents a summary of the maximum allowable reductions we recommend for individual VMT mitigation measures based on the available research and the City's local context. For projects adjacent to the existing BART stations (Pittsburg/Bay Point and Pittsburg Center) or a high-quality transit corridor, a higher VMT reduction is likely to be realized. However, it is not expected that projects located adjacent to a BART station or high-quality transit corridor would result in a VMT impact that would need to be mitigated.

Table 1: VMT Mitigation Measure Reduction Caps

Mitigation Measure	Maximum Allowable Reduction
Land Use	
T-2: Increase Job Density	30.0%
T-3: Provide Transit-Oriented Development	31.0%
T-17: Improve Street Connectivity	30.0%
Trip Reduction Programs	
T-5: Implement Commute Trip Reduction Program (Voluntary)	4.0%
T-6: Implement Commute Trip Reduction Program (Mandatory Implementation and Monitoring)	26.0%
T-7: Implement Commute Trip Reduction Marketing	4.0%

T-8: Provide Ridesharing Program	8.0%
T-9: Implement Subsidized or Discounted Transit Program – Employees Only	5.5%
T-9-A: Implement Subsidized or Discounted Transit Program – Employees and Residents	5.5%
T-10: Provide End-of-Trip Bicycle Facilities	4.4%
T-11: Provide Employer-Sponsored Van pool	8.1%
T-12: Price Workplace Parking	20.0%
T-13: Implement Employee Parking Cash-Out	12.0%
T-23: Community-Based Travel Planning	2.3%
Parking and Road Pricing/Management	
T-15: Limit Residential Parking Supply	13.7%
T-16: Unbundle Residential Parking Costs from Property Cost	15.7%
T-24: Implement Market Price Public Parking (On-Street)	30.0%
Neighborhood Design	
T-18: Provide Pedestrian Network Improvements	6.4%
T-19-A: Construct or Improve Bike Facility	0.8%
T-19-B: Construct or Improve Bike Boulevard	0.2%
T-20: Expand Bikeway Network	0.5%
T-21-A: Implement Conventional Carshare Program	0.15%
T-21-B: Implement Electric Carshare Program	0.18%
T-22-A: Implement Pedal (Non-Electric) Bikeshare Program	0.02%
T-22-B: Implement Electric Bikeshare Programs	0.06%
T-22-C: Implement Scootershare Program	0.07%
Transit	
T-25: Extend Transit Network Coverage or Hours	4.6%
T-26: Increase Transit Service Frequency	11.3%
T-27: Implement Transit-Supportive Roadway Treatments	0.6%
T-28: Provide Bus Rapid Transit	13.8%
T-29: Reduce Transit Fares	1.2%

Each of the TDM measures described above can be combined with others to increase the effectiveness of VMT mitigation; however, the interaction between the various TDM measures is

complex and sometimes counter intuitive. Generally, with each additional measure implemented, a VMT reduction is achieved, but the incremental benefit of VMT reduction may diminish. To quantify the VMT reduction that results from combining TDM measures, the analyst must consider multiplicative dampening as outlined in the CAPCOA documentation.

5.3 Other Environmental Considerations

As noted in the Introduction, the updated CEQA Guidelines Appendix G Checklist contains three additional criteria beyond the VMT evaluation criteria discussed in the preceding section. They are listed below.

Would the project:

1. *Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?*
3. *Substantially increase hazards due to a geometric design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?*
4. *Result in inadequate emergency access?*

TIAs should address these three questions, considering the unique characteristics of the project, including its location, size, design, use mix, transportation and urban form context, and other relevant details. TIAs should include a Multimodal Operations Analysis (MOA) to assess these environmental considerations and establish priorities for bicycles, pedestrians, transit, and other non-vehicular users. The City will determine if a proposed project reasonably and substantially affects the facilities or operations of the multimodal network and provide a list of required elements to be included in the MOA. The MOA should include the following elements.

Transit System

A description of the existing and planned transit facilities and services in the study area should be provided. The transit system evaluation will include an analysis of transit stops within the project area. Key items within the assessment should include transit operation efficiency and transit-rider amenities related to safety and comfort. The MOA should evaluate and incorporate transit improvements to existing stops located along the project frontage and/or within the site's vicinity. This should include, but is not limited to:

- Bus stops and amenities
- Sidewalk widths and ADA access
- Pedestrian crossings at intersections
- Potential improvements to reduce transit delays and improve service.

Bicycle System

A description of the existing and planned bicycle facilities in the study area should be provided. Assessments of bicycle safety in the study area should be conducted utilizing five-year collision data near the project site and site observations. The five-year collision data will include collisions that occurred on all dates and times throughout the full year. Site observations are to be recorded during typical operating conditions relative to site location and context, including but not limited to commute hours, midday peak, school hours, and other periods recommended by the City. Summaries will include but are not limited to primary collision factors, direction of travel, compliance issues, near misses, travel pattern behaviors, and other considerations recommended by the City

Pedestrian System

A description of the existing and planned pedestrian facilities in the study area should be provided. The pedestrian system assessment will include an analysis of existing uncontrolled crossings using the Federal Highway Administration's (FHWA) "Guide for Improving Pedestrian Safety at Uncontrolled Crossings". The section will include all locations within walking distance of the project area (approximately ½ mile) and any extents identified by the City. The TIA will use the guidance provided by FHWA to analyze locations where crossing opportunities would support pedestrian activity in the project area. The evaluation will include an inventory of the roadway network, existing pedestrian crossings, and recommendations for new crossings that will link paths, close gaps, and form complete networks of pedestrian-supportive infrastructure. It will include an analysis of the project's access points with recommendations for crossing locations that support safe access for pedestrians approaching from all directions.

Significance Criteria

In the assessment of transit, bicycle and pedestrian network, the following standards of significance shall be used.

Transit System – The project would create a significant impact related to transit service if the following criteria is met:

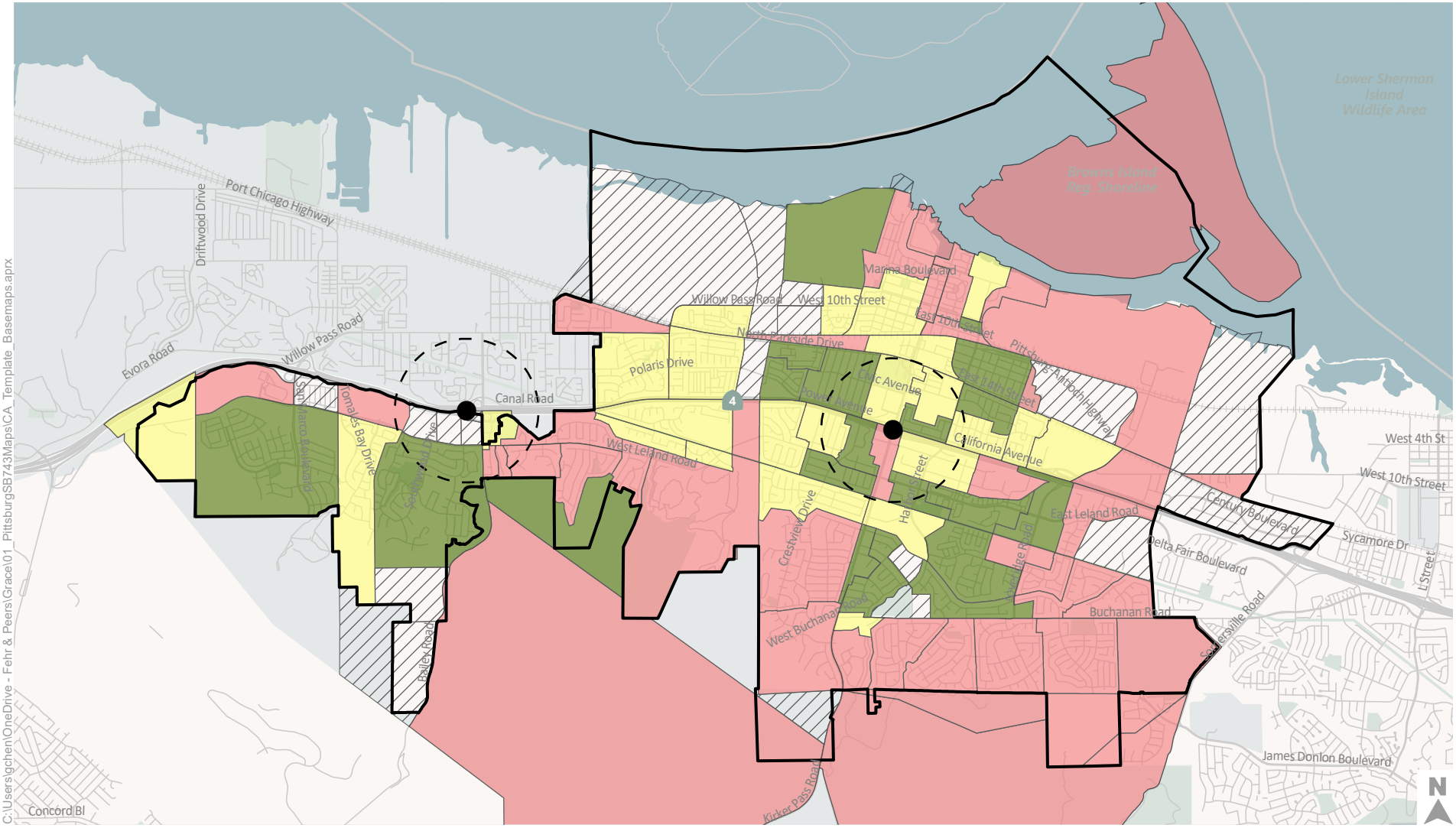
1. The project interferes with existing transit facilities or precludes the construction of planned transit facilities.

Bicycle System – The project would create a significant impact related to the bicycle system if any of the following criteria are met:

1. Disrupt existing bicycle facilities; or
2. Interfere with planned bicycle facilities; or
3. Create inconsistencies with adopted bicycle system plans, guidelines, policies, or standards.

Pedestrian System – The project would create a significant impact related to the pedestrian system if any of the following criteria are met:

1. Disrupt existing pedestrian facilities; or
2. Interfere with planned pedestrian facilities; or
3. Create inconsistencies with adopted pedestrian system plans, guidelines, policies, or standards.



Contra Costa County-Wide Average Home-Based VMT per Resident: 17.6

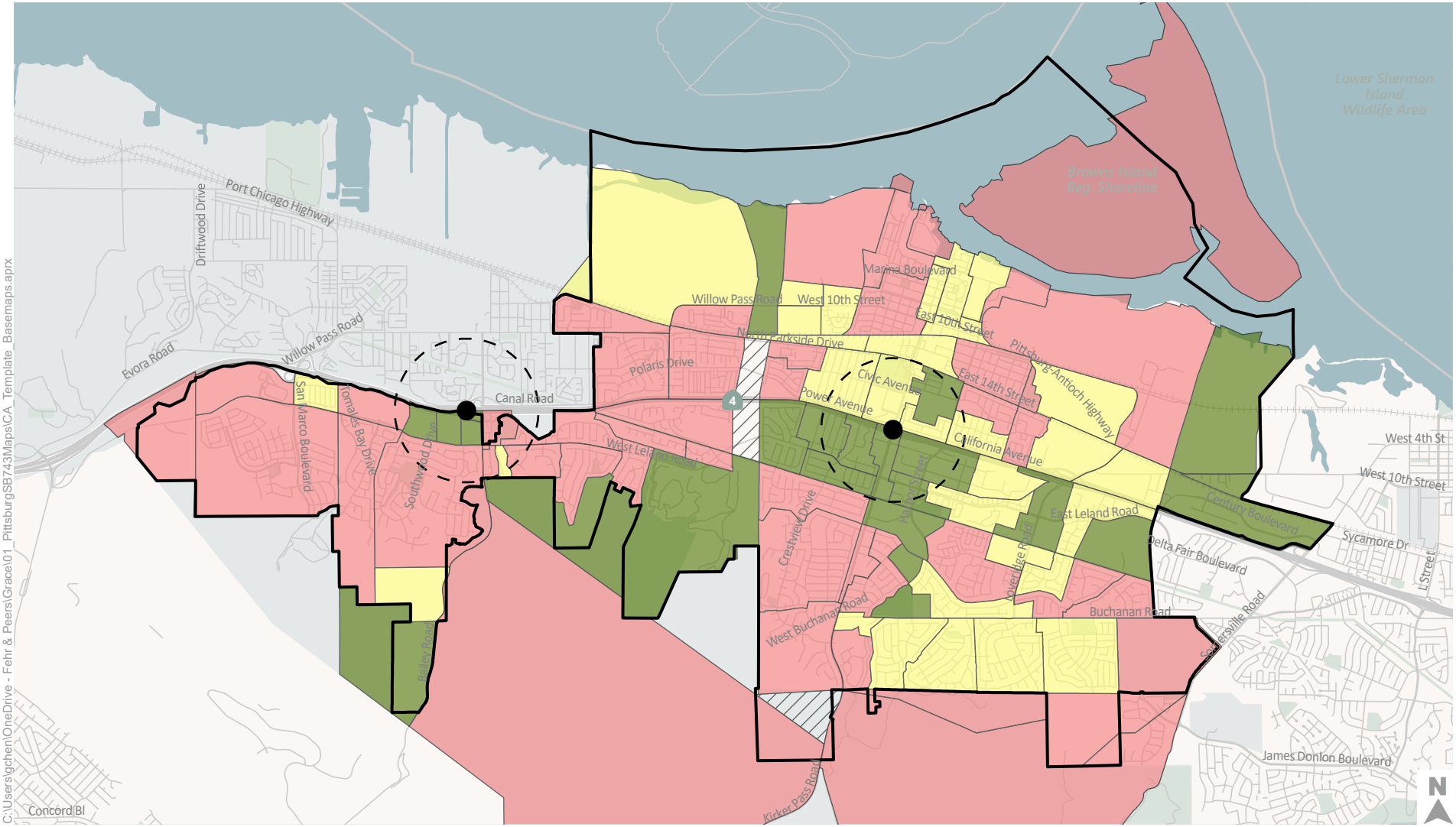
- 15% below Contra Costa County Average
- Between 15% - 0% below Contra Costa County Average
- Above Contra Costa County Average
- TAZ with no Residents
- City Boundary
- 0.5-mile BART Station Buffer

Figure 1

City of Pittsburg SB743 Implementation

Source: CCTA Travel Demand Model

City of Pittsburg - Home-Based Vehicle-Miles Traveled Per Resident (2022)



Contra Costa County-Wide Average Commute VMT per Worker: 14.9

15% Below

Between 15% - 0% below Contra Costa County Average

Above Contra Costa County Average

TAZ with no Employees

City Boundary

0.5-mile BART Station Buffer

Figure 2

City of Pittsburg SB743 Implementation

Source: CCTA Travel Demand Model

City of Pittsburg - Commute Vehicle-Miles Traveled Per Worker (2022)

BEFORE THE PLANNING COMMISSION OF THE CITY OF PITTSBURG

In the Matter of:

Recommending City Council Adoption of the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047	)	Resolution No. 10258

The Planning Commission DOES RESOLVE as follows:

Section 1. Background

A. In 2013, CA Senate Bill (SB) 743 established a reform process to the California Environmental Quality Act (CEQA) that resulted in a major change to how cities and counties must evaluate transportation impacts. SB 743 changed the focus of transportation impact analysis in CEQA from Level of Service (LOS) to Vehicle Miles of Travel (VMT) as the preferred transportation impact metric.

B. On December 12, 2022, the City of Pittsburg entered into a Consulting Services Agreement with Fehr & Peers, Inc., to provide transportation planning services to support the City in achieving SB 743 compliance.

C. The City's VMT TAC convened four times (on December 6, 2022, January 17, 2023, on February 21, 2023, and on March 29, 2023) to provide input regarding VMT metrics, calculation methods, VMT-based CEQA thresholds, screening criteria, and mitigation options in an effort to develop Transportation Impact Analysis Guidelines in accordance with SB 743.

D. 2040 General Plan Implementation Measure 7-A-1.a requires the City evaluate the traffic and VMT impacts of development projects based on the City's Transportation Impact Analysis Guidelines to determine transportation impacts to all users, including pedestrians, bicyclists, transit riders, and motorists, and to require projects to address impacts consistent with the requirements of CEQA.

E. Adoption of the City's TIA Guidelines would establish a local framework under which discretionary projects are reviewed and evaluated to assess VMT impacts in accordance with 2040 General Plan Goals, Policies and Implementation Measures, CEQA and SB 743.

F. The project is exempt from CEQA because it does not meet the definition of a "project" pursuant to CEQA Guidelines section 15378(a)), it does not constitute an activity covered by CEQA pursuant to CEQA Guidelines section 15060(c)(2), it does not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines section 15061(b)(3), and it consists of an action taken by a regulatory agency to enhance and protect the environment pursuant to Government Code Section 15308 (Class 8).

G. On or prior to October 11, 2024, notice of the October 22, 2024, public hearing was posted in the East County Times, at City Hall, at the Pittsburg Library, on the 'Public Notices' section of the city's website and on www.nextdoor.com ("Nextdoor") and was sent directly to all subscribed residents in all city neighborhoods.

H. On October 22, 2024, the Planning Commission held a public meeting on Application No. AP-24-0047, at which time oral and/or written testimony was considered.

Section 2. Findings

A. Based on the Planning Commission Staff Report entitled, "Recommendation to the City Council on Adoption of the City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047," and based on all the information contained in the Planning Division files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the October 22, 2024, meeting, the Planning Commission finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

Section 3. Decision

Based on the findings and the authority set forth above, the Planning Commission hereby recommends that the City Council adopt the Final Draft of the City of Pittsburg Transportation Impact Analysis Guidelines, as written in the attached "Exhibit A".

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

On motion by Commissioner Robinson, seconded by Commissioner Popova, the foregoing resolution was passed and adopted the 22nd day of October, 2024, by the Planning Commission of the City of Pittsburg, California by the following vote:

AYES: Stokes, Popova, Kobata, Robinson, Foster, Smith
NAYES: None
ABSTAIN: None
ABSENT: Gordon

I hereby certify that the above Resolution No. 10285 was adopted by the Planning Commission of the City of Pittsburg on October 22, 2024.

_____
JOHN FUNDERBURG, SECRETARY
PITTSBURG PLANNING COMMISSION

City of Pittsburg
California

65 Civic Avenue
Pittsburg, CA 94565
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Community and Economic Development Department – Planning Division

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the **CITY COUNCIL** of the City of Pittsburg will conduct a public hearing on:

DATE: **December 16, 2024**
TIME: **7:00 p.m.**
PLACE: **City Council Chamber at City Hall**
65 Civic Avenue, Pittsburg, California

Concerning the following matter:

City of Pittsburg Transportation Impact Analysis Guidelines and Thresholds to Evaluate Transportation Impacts Under the California Environmental Quality Act (Senate Bill 743), AP-24-0047

Project Description: At this hearing, staff will present the proposed Transportation Impact Analysis (TIA) Guidelines to the City Council. In 2013, CA Senate Bill (SB) 743 established a reform process to the California Environmental Quality Act (CEQA) that resulted in a major change to how cities and counties must evaluate transportation impacts. SB 743 changed the focus of transportation impact analysis in CEQA from Level of Service to Vehicle Miles of Travel (VMT) as the preferred transportation impact metric.

To comply with SB 743, the City developed a set of procedures and requirements pertaining to if, and when, an applicant for a development project in the City would be required to provide a TIA as part of the development review process. Adoption of the proposed TIA Guidelines would establish a local framework under which discretionary projects are reviewed and evaluated to assess VMT impacts in accordance with CEQA and SB 743. Additionally, adoption would help make meaningful progress toward achieving VMT-related goals and policies in the City's General Plan and Sustainability Plan.

Environmental Determination: The proposed TIA Guidelines are exempt from CEQA because: 1) they do not meet the definition of a "project" pursuant to CEQA Guidelines section 15378(a)), 2) they do not constitute an activity covered by CEQA pursuant to CEQA Guidelines section 15060(c)(2), 3) they do not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines section 15061(b)(3), and 4) they consist of an action taken by a regulatory agency to enhance and protect the environment pursuant to Government Code Section 15308 (Class 8).

Details specific to the proposed TIA Guidelines are available at the following location:

- OneDrive link: VMT TIA Guidelines
- OneDrive website address: https://tinyurl.com/mw5hkj36

PROJECT PLANNER: Alison Spells, (925) 252-6987 or aspells@pittsburgca.gov

What can I do if I have comments on the project?

Comments or objections to the project can be made by writing or through e-mailed testimony prior to the meeting or provided orally during the meeting. Written comments citing the project name may be emailed to the project planner listed above or may be mailed or delivered to Pittsburg Planning Division, 65 Civic Avenue, Pittsburg, CA 94565. Para informacion en Espanol: (925) 252-4920.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Minute Order Directing the Process on Filling One Vacant City Council Seat

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

A general municipal election was held in the City of Pittsburg, California, on Tuesday, November 5, 2024, as required by law. The Contra Costa County Elections Department (County) has certified its canvassing of the votes and Councilmember Shanelle Scales-Preston has been elected to serve as Contra Costa County Supervisor for District 5, which will result in one vacant seat on the Pittsburg City Council upon her resignation. Staff is seeking direction from City Council on how to fill the vacancy.

FISCAL IMPACT

Costs will depend upon direction provided on how to fill the vacancy. The cost to conduct a special election would range from $453,156 to $700,332. Having a new Council Member, whether through a special election or by appointment, will require staff resources for briefings and training to ensure the new member is prepared to assume his or her duties and responsibilities.

RECOMMENDATION

By motion, adopt a minute order providing direction on the process to fill the vacancy.

BACKGROUND

California Government Code Section 36512(b) authorizes two methods of filling a vacancy in the absence of a city ordinance. A city may appoint a person to fill the vacancy or hold a special election within a certain timeframe.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

California Government Code Section 36512(b) states the following:

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy.

(1) If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent.

The appointment scenario timeline is as follows: The Councilmember resignation date triggers the requirement to appoint a person within 60 days. If the vacancy occurs in the second half of the term of office (e.g. in December 2024 or later), the appointee holds office for the unexpired term of the former incumbent.

The special election scenario timeline is as follows: Within 60 days of the Councilmember's resignation, City Council must call a special election, and the special election must be held on the next regularly established election date at least 114 days later.

For cities with a population of up to 100,000, like Pittsburg, State law authorizes a special election to be conducted by all-mail ballot for the purpose of filling a vacancy on the legislative body. California Elections Code Section 4004 requires the legislative body to adopt a resolution authorizing the use of mailed ballots for the election. The statute prohibits the election from being held on the same date as a statewide primary or general election or consolidated with any other election.

If the City were to conduct a special election, the City would require the services of the County. Staff obtained the current cost from the County for a special election. If the City were to conduct an all-mail ballot special election, the cost would range from $11 to $14 per registered voter, regardless of how many actually vote. If the City were to conduct an in-person special election, the cost is even higher, at $14 to $17 per registered voter. With 41,196 voters, the cost would range from $453,156 to $700,332. According to the County, the next regularly established election date that would be at least 114 days after calling an election is May 6, 2025.

The City Council can agree to a process to fill the vacancy since there is no specific process required besides making sure the individual meets the following qualifications for office:

- U.S. citizen
- Pittsburg resident
- 18 years of age or older
- Registered voter at the time of application submission

Staff reviewed City records and identified three instances when a City Council seat became vacant. Historically, the vacant seat was filled by appointing a person after seeking applications and interviewing applicants.

If the vacancy will be filled by appointment through an application and interview process, the Brown Act requires the interviews be held in open session. This process is transparent and allows the City Council to engage the community to find the best possible candidate to fill the vacant seat.

Report Prepared By: Melaine Venenciano, Director of City Clerk Services

CITY OF PITTSBURG
CITY COUNCIL/AGENCY CONCURRENT MEETING MINUTES

DATE: November 18, 2024

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL/AGENCY MEMBERS
Juan Antonio Banales, Mayor/Chair
Jelani Killings, Vice-Mayor/Chair
Dionne Adams, Council/Agency Member
Angelica Lopez, Council/Agency Member
Shanelle Scales-Preston, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS
Garrett Evans, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

Mayor Banales called the regular meeting to order at 7:18 P.M. in the Council Chamber at City Hall, 65 Civic Avenue Pittsburg, CA. after having convened in Closed Session at 5:38 P.M. for the following Closed Session:

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION pursuant to Section 54957
   City Attorney and City Manager

2. CONFERENCE WITH LABOR NEGOTIATORS pursuant to Section 54957.6
   City Designated Representatives: Julie Mares, MRG, LLC
   Unrepresented Employee(s): City Attorney and City Manager

Mayor Banales mentioned there were no reportable actions and City Council would reconvene after the regular meeting was done to finish with Closed Session items.

ROLL CALL

Council Member Scales-Preston was absent and excused.

PLEDGE OF ALLEGIANCE

Mayor Banales led the Pledge of Allegiance.

PRESENTATIONS

3. Opportunity Junction

CITY MANAGER REPORTS/REMARKS

Assistant City Manager Aliotti gave an update on Community events.

PUBLIC COMMENTS

Sara Foster, Pittsburg, commented on campaign signs not being removed in a timely manner per Pittsburg Municipal Code (PMC).

Roger M, Pittsburg, commented on noise nuisances in his neighborhood.

Alvin Nelson, Pittsburg, commented on traffic enforcement in Liberty Ct.

The following spoke in opposition to a recent approval of the Planning Commission for a use permit application to expand existing martial arts studio (AP-24-0112).

Stephanie Campos
Lisa Nunley
Chris Beardsley
Clinnon Jackson
Christina Jackson
Leyda Torress
Railynn Danh-Villanueva
Jackie Felipe
John Felipe

PUBLIC HEARING

4. Adoption of a City Council Resolution Approving an Update to the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) Mitigation Fees

On Motion by Member Lopez, seconded by Vice Mayor Killings adopted by the following vote:

AYES: Adams, Killings, Lopez, Banales
ABSENT: Scales-Preston

COMBINED CITY COUNCIL AND PITTSBURG POWER COMPANY CONSIDERATION

5. Adoption of a City Council Resolution Authorizing the Development and Implementation of the Pittsburg Promise Community Scholarship and a Pittsburg Power Company Resolution Authorizing the Use of Funds

Based on City Council discussion, staff was directed to go back and find majors with a nexus in arts and computer science as well.

On Motion by Vice Mayor Killings, seconded by Member Adams adopted by the following vote:

AYES: Adams, Killings, Lopez, Banales
ABSENT: Scales-Preston

CONFLICT OF INTEREST STATEMENT

There were no conflicts of interest statements.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION,

PITTSBURG POWER COMPANY, SOUTHWEST PITTSBURG GHAD II AND SUCCESSOR AGENCY CONSENT CALENDAR

On Motion by Member Scales-Preston, seconded by Vice Mayor Killings and adopted by following vote:

AYES: Adams, Killings, Lopez, Banales
ABSENT: Scales-Preston

6. Minutes of October 21, 2024 and November 4, 2024

7. Receive and File the Treasurer's Report for the Quarter Ending September 30, 2024

8. Adoption of a City Council Resolution Accepting Project 2231-W. Leland Rd. and Loveridge Rd. Phase II Rehabilitation as Complete and Authorizing the City Engineer to File a Notice of Completion

9. Adoption of a City Council Resolution Accepting the Plans and Specifications, Reallocating Unused American Rescue Plan Act Funds, Allocating Additional Funds, and Awarding Project 3080 - Pittsburg Premier Fields

10. Adoption of a City Council Resolution Accepting Project 2040 - 2023/24 Pavement Management as Complete and Authorizing the City Engineer to File a Notice of Completion

11. Adoption of a City Council Resolution Accepting Project 2987 - East Third Street Remediation as Complete and Authorizing the City Engineer to File a Notice of Completion

12. Adoption of a City Council Resolution Authorizing the Execution of a First Amendment to an Agreement with the California Department of Transportation for Project 2019 BART Pedestrian and Bicycle Connectivity

13. Adoption of a City Council Resolution Accepting Project 2205 – West Leland Road Street Lighting as Complete and Authorizing the City Engineer to File a Notice of Completion

14. Adoption of a City Council Resolution Approving Contra Costa Transportation Authority's Measure J Growth Management Program Compliance Checklist for Calendar Years 2022 and 2023

15. Adoption of a City Council Resolution Accepting Project 3019-Reviving the Heart of Pittsburg Pride as Complete and Authorizing the City Engineer to File a Notice of Completion

16. Adoption of a City Council Resolution Authorizing the City Manager to Amend the Purchase Agreement for Meter Supplies with Badger Meter, Inc

17. Adoption of a City Council Resolution Accepting Project 3118-Corporation Yard Fueling System Replacement as Complete and Authorizing the City Engineer to File a Notice of Completion

18. Adoption of a City Council Resolution Authorizing California Beverage Container Recycling and Litter Reduction Act Funding Requests

19. Adoption of an Ordinance Assigning Zoning of Planned Development District to Properties Located Within the Pittsburg Technology Park Specific Plan Area and Adopting the Pittsburg Technology Park Specific Plan, AP-24-0028 (PD, SUBD, EIR)

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

There were no requests for Future Agenda Items.

COUNCIL MEMBER REMARKS

Vice Mayor Killings attended the Community and Economic Development Subcommittee as well as the Finance Subcommittee.

ADJOURNMENT

The meeting adjourned at 8:26 P.M. to December 9, 2024.

City Council and City Manager reconvened in closed session at 8:26 P.M. Closed session adjourned at 8:42 P.M. and there were no reportable actions taken.

Respectfully submitted,

Alice E. Evenson, City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Receive and File Report on the Review of Development Impact Fees Received by the City of Pittsburg that are Subject to AB 1600 Reporting Requirements

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

AB 1600 (Government Code Sections 66000–66008) requires cities to justify and account for developer fees which they enact, increase or impose as a condition of new development for the purposes of financing "public facilities and improvements." AB 1600 also requires an annual review of the developer fees that have been collected and spent during the previous year. This report fulfills the AB 1600 requirements.

FISCAL IMPACT

There is no fiscal impact in receiving the report on the review of the Development Impact Fees received by the City of Pittsburg.

RECOMMENDATION

Receive and file report pertaining to the review of Development Impact Fees received by the City of Pittsburg that are subject to AB 1600 reporting requirements.

BACKGROUND

Many cities charge fees on new development to fund public facilities and improvements such as streets, libraries, sewer and water systems and storm drains. These fees are commonly known as Development Impact Fees. In order to ensure that these fees are spent in a timely manner and on projects for which they were collected, the State Legislature passed a bill known as AB 1600 (Mitigation Fee Act). The law applies to developer fees increased or imposed on or after January 1, 1989. Mitigation Fee Act adds Government Code Sections 66000-66008 that generally contain the following four requirements:

1. A local jurisdiction must follow the process set forth in the statutes and make certain determinations regarding the purpose and use of the fees and establish a “nexus” or connection between a development project or class of project and the public improvement being financed with the fee.

2. The fee revenue must be segregated from the general fund in order to avoid commingling of public improvement fees and the general fund.

3. If a local jurisdiction has had possession of a developer fee for five years or more and has not committed that money to a project or actually spent that money, then it must make findings describing the continuing need for that money. In addition, an annual report must be made of fees collected, interest earned, projects on which fees were expended, and any transfers or loans from the fee account. This report is to be reviewed by the local agency assessing the fees.

4. If a local jurisdiction cannot make the findings required under Paragraph 3, the city or county must refund the fees collected.

It should be noted that Mitigation Fee Act reporting requirements do not apply to the following fees:

- Fees charged in lieu of parkland dedication
- Regulatory and processing fees
- Fees collected pursuant to development agreements
- Fees collected pursuant to a reimbursement agreement that exceeds the developer’s share of an improvement
- Assessment district proceeds or taxes

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The City of Pittsburg assesses the following Developer Impact Fees:

- Kirker Creek Drainage Fee
- Local Traffic Mitigation Fee
- Park Dedication Fee
- Inclusionary Housing In-Lieu Fee
- Traffic Impact Fair Share Fee
- Pittsburg Regional Transportation Development Impact Mitigation Fee
- Water Facility Reserve Fees
- Sewer Facility Reserve Fees

The Traffic Mitigation Fees, Pittsburg Regional Transportation Development Impact Mitigation Fees, Kirker Creek Drainage Fees, Inclusionary Housing In-Lieu Fees, Traffic Impact Fair Share Fee and the Sewer and Water Facility Reserve Fees that the City of Pittsburg collects, qualify as Development Impact Fees. Therefore, these fees must comply with the above referenced statutes. Government Code Section 66001 requires the City to make available to the public certain information regarding development impact fees for each fund within 180 days after the end of the fiscal year.

Expenditures from the fees collected must occur within a 5-year period of collection unless the City can make the appropriate findings that there remains reasonable relationships between the current need for the fees and the purpose for which they were originally proposed.

Kirker Creek Drainage Fees collected in the amount of $382,328 have been on deposit for over five years and these findings are stated on page 2 of the attached report. In summary, the Kirker Creek Drainage Fund is insufficient to construct the prioritized improvements recommended in the 2001 Storm Water Master Plan. As development continues in the Kirker Creek watershed area, additional funds will be collected and deposited for construction of the prioritized improvements.

In addition, there are Traffic Impact Fair Share funds in the amount $554,626 that have been on deposit for over five years and these findings are stated on Page 7 of the attached report. In summary, the fair share funds have been on deposit to address future capital projects in the areas near West Leland Road/Oak Hills Drive; East Leland Road/Century Boulevard; Willow Pass Road/Avila Road; San Marco Boulevard/West Leland Road; and Bailey Road/West Leland Road. The funding held on deposit will be augmented as development in the respective areas occur.

Although the Park Dedication Fee is covered under the Quimby Act and not Mitigation Fee Act, staff has included the Park Dedication Fee in this report for reporting purposes only.

ATTACHMENTS: AB1600 Report

Report Prepared By: Laura Mendez, Senior Financial Reporting Analyst

Kirker Creek Drainage Fees Revenues and Expenditures - Fund 302 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		**$ 391,638**	**$ 383,361**	**$ 379,680**	**$ 360,321**	**$ 363,307**	**$ 370,145**
REVENUES:							
Kirker Creek Drainage Fees Collected		335					
Other Revenue:							
Investment Earnings		12,292	11,133	1,288	2,986	6,838	12,183
Funding from Outside Sources for Kirker Creek Slide Repair							
Sale of Plans & Specs							
Transfers-In:			5,009				
Total Revenues:		**12,628**	**16,142**	**1,288**	**2,986**	**6,838**	**12,183**
EXPENDITURES:							
Project Expenditures:							
Railroad Ave. Storm Drainage Improvements	3202	2,905				-	-
Pump Station Repairs	3205		1,462	2,287		-	-
Transfers - Out:							
Tsfr-Out to General Fund (Engineering Support)		18,000	18,360	18,360		-	-
Tsfr-Out to NPDES							
Total Expenditures:		**20,905**	**19,822**	**20,647**	**-**	**-**	**-**
Revenues Over/Under Expenditures:		**(8,277)**	**(3,680)**	**(19,359)**	**2,986**	**6,838**	**12,183**
Fund Balance - June 30		**$ 383,361**	**$ 379,680**	**$ 360,321**	**$ 363,307**	**$ 370,145**	**$ 382,328**

There have been no fee refunds to-date.

The description of this fee and fee amounts per Ordinance No. 01-1180 dated April 16, 2001 and Ordinance No. 05-1236 dated 02/07/05.

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

KIRKER CREEK DRAINAGE FEES

Fiscal Year Collected	Amt. Collected
FY 06/07	164,579
FY 07/08	78,676
FY 08/09	1,526
FY 09/10	18,986
FY 10/11	61
FY 11/12	1,638
FY 12/13	1,937
FY 13/14	710
FY 14/15	99,647
FY 15/16	14,232
FY 16/17	-
FY 17/18	-
FY 18/19	335
Total Fees :	**382,328**

The above fees collected in the amount of $382,328 have been on deposit for over 5 years. Findings are as follows:

The Kirker Creek Drainage Fee was established in May 2001 for the purpose of providing funding for improvements to the storm water drainage system, which was overwhelmed by floodwaters in 1998. The City Council adopted Ordinance No. 01-1180 on May 7, 2001, adding Chapter 15.104, entitled "Storm Water Management Plan for Kirker Creek Watershed Drainage Area", to the Pittsburg Municipal Code. Chapter 15,104.080 set out a fee schedule, currently $1.19 per square foot of impervious area for development in the watershed. Fees collected are deposited in the account of the drainage facilities fund, and may be expended for land acquisition, construction, engineering, administration, repair, maintenance and operation of planned drainage facilities or to reduce the principal or interest of any bonded indebtedness of the drainage area.

Some of these fees were collected more than five years ago. Currently, the Kirker Creek Drainage Fund is insufficient to construct all of the improvements recommended in the 1999 Storm Water Master Plan and the City's Green Stormwater Inrastructure Plan. As development continues in this area of the City, additional funds will be collected and deposited into the Kirker Creek Drainage Fund and used to construct improvements identified by the Master Plan. Unfortunately, the timing of these funds is dependent on the pace of development within the watershed and is therefore inexact.

Reviewed and Confirmed By: _____

John Samuelson - Director of Public Works/City Engineer

Local Traffic Mitigation Fees Revenues and Expenditures - Fund 303 FY18/19 - FY23/24	Proj #	FY18/19	FY 19/20	FY 20/21		FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		**$ 2,174,701**	**$ 1,835,666**	**$ 2,157,901**		**$ 3,906,276**	**$ 5,207,247**	**$ 6,400,477**
REVENUES:								
Traffic Mitigation Fees Collected		1,443,301	422,541	2,120,918		1,330,212	1,153,794	475,511
Transfers-in from Reg Traffic Mitigation		420,069	236,304					
Other Revenue:								
Investment Earnings		68,485	181,516	10,087		39,317	107,846	185,414
Other Revenue[1]						7,412	31,241	6,768
Total Revenues:		**1,931,855**	**840,361**	**2,131,005**		**1,376,941**	**1,292,880**	**667,693**
EXPENDITURES:								
Project Expenditures:								
California Ave. Widening Phase I (North)	3006	5,000						
W. Leland Road Extension (San Marco to Avila)	3011	14,449	13,207					
San Marco Blvd/ Santa Teresa Signal	3012							
Intelligent Transportation System Upgrade	3013	289						
San Marco Right Turn @West Leland	3014							
James Donlon Blvd Extension PHASE I	3015	2,167,793	366,742	6,318		8,424	30,868	6,768
Other Expenditures:								
Engineering Support		83,359	84,892	76,311		67,546	68,782	72,455
Land Acquisition*			53,285					
Transfers - Out:								
Tsfr-Out to Gas Tax - 15/16 Citwide Pavement Management Project								
Tsfr-Out to Pittsburg CIP - Traffic Signal Installation (3104)								
Tsfr-Out to Measure J - BART Multimodal Facility	2010							
Tsfr-Out to Measure J - Ped & Bicycle Connectivity	2019			300,000				2,925,000
Total Expenditures:		**2,270,890**	**518,126**	**382,629**		**75,970**	**99,650**	**3,004,223**
Revenues Over/Under Expenditures:		**(339,035)**	**322,235**	**1,748,376**		**1,300,971**	**1,193,230**	**(2,336,530)**
Fund Balance - June 30		**$ 1,835,666**	**$ 2,157,901**	**$ 3,906,276**	**	**$ 5,207,247**	**$ 6,400,477**	**$ 4,063,947**

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 06-10687 dated December 18, 2006.

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

* During the FY 19/20, $53,285 was used to acquire a parcel of vacant surplus land from Contra Costa County adjacent to intersection of Harbor Street and California Avenue. The parcel will be used for expansion of this intersection to improve the safe and effecient flow of traffic through the intersection.

** A portion of these funds have been allocated towards the San Marco Right Turn @ W. Leland ($45,633)

[1] Other revenues associated with CIP project

Park Dedication Fees Revenues and Expenditures - Fund 304 FY18/19 - FY23/24	Proj #	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24
Fund Balance - July 1		$ 1,285,742	$ 756,592	$ 1,539,253	$ 2,707,162	$ 2,429,710	$ 2,220,953
REVENUES:							
Park Dedication Fees Collected		58,160	457,221	1,223,013	919,314	693,038	265,906
Other Revenue:							
Investment Earnings		32,801	43,637	3,736	21,415	47,804	167,524
Measure WW Grant - Ambrose Park Pool Renovation							
Ambrose Park Pool Renovation - County Share							
Ambrose Park Restroom Renovation - County Share			510,000	318,788	-		
Ambrose Park Pool Renovation - Ambrose District Share							
John Henry Johnson Park - Housing Related Parks Grant							
Transfers-In:							
Tsfr-In from Infrastructure Repair/Rplcment Fund - Buckley Square							
Tsfr-In from ARPA							7,921,099
Tsfr-In from City CIP Fund							150,000
Tsfr-In from General Fund							1,615,000
Total Revenues:		**90,962**	**1,010,858**	**1,545,536**	**940,728**	**740,842**	**10,119,529**
EXPENDITURES:							
Project Expenditures:							
Small World Park New Features	3054						
Ambrose Park Master Plan & Improvements	3057	3,720	534	809	-		
John Henry Johnson Park Improvements	3062						
San Marco Park	3065	359,665					
John Buckley Square (Old Town Park)	3066						
DeAnza Park Rehabilitation	3069	5,879					
PK-3 Small World Park Improvements	3070	23,438			1,040		
PK-4 Annual Playground Replacement	3071				119,702		
PK-6 City Park Soccer Field Replacement	3072	14,680					1,056
PK-9 Annual Park Features Replacement	3073	15,093	1,385	21,498	221,627		88,469
PK-10 Biennial Restroom Repl/Rehab	3074	6,377					
pk-15 Annual Park Sign Replacement	3075			43,633	65,488		
PK-8 Biennial Playfield Replacement	3076		20,344			3,000	
PK-13 Annual Park and Landscaping Imp	3077		18,947	8,206	81,062	40,572	
	3078						
Downtown Ice Rink			19,283				
Ambrose Park Restroom Construction	3079		49,085	245,432	556,845		
Pittsburg Premier Fields	3080				29,174	561,915	123,866
Oak Hills Restroom	3123				80,917	280,541	46,240
Other Expenditures:							
Engineering Support						63,572	66,752
Developer Payment for City's Contribution for San Marco Park							878,280
Interest Accrual - Interfund Loans							
Interfund Loan Payoff to Sewer Fund							
Interfund loan Payoff to Power Fund							
Adjust inventory supplies							
Transfers - Out:							
Tsfr-Out to General Fund - Engineering Support		59,906	61,104	58,049	62,326	-	-
Tsfr-Out to Measure J Fund		108,689	32,515				
Tsfr-Out to Gas Tax Fund - Standard Detail Update		22,665	25,000				
Tsfr-Out to Measure M Fund							150,000
Tsfr-Out to ARPA Fund							6,078,288
Total Expenditures:		**620,111**	**228,197**	**377,627**	**1,218,181**	**949,599**	**7,432,951**
Revenues Over/Under Expenditures:		**(529,149)**	**782,661**	**1,167,909**	**(277,452)**	**(208,757)**	**2,686,578**
Fund Balance - June 30		$ 756,592	$ 1,539,253	$ 2,707,162	* $ 2,429,710	$ 2,220,953	$ 4,907,531

There have been no fee refunds to-date.

The description of this fee and fee amounts per Ordinance No. 06-1275 dated October 16, 2006.

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

*A major portion of these funds have been allocated towards the following: West Leland Street Lighting ($25,000), Small World Park Improvements ($990), Annual Playground Replacement ($240,000), City Park Soccer Field Turf Replacement ($235,320), Annual Park Features Replacement ($262,024), Biennial Restroom Replacement/Rehab ($383,623), Annual Park Sign Replacement ($106,367), Biennial Playfield Replacement ($346,226), Annual Park and Landscaping Improvements ($222,847), Downtown Ice Rink ($280,717), Ambrose Park Restroom ($547,073), Delta View Sports Field ($600,000), Oak Hills Restroom ($500,000)

Revised Ending Fund Balance for FY 2022-23 to reconcile to Audited Financial Statements

Inclusionary Housing In-Lieu Fees Revenues and Expenditures - Fund 305 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1	$ 391,255	$ 404,014	$ 416,121	$ 418,518	$ 418,837	$ 419,568
REVENUES:						
Inclusionary Housing In Lieu Fees Collected	-	-	-	-	-	-
Other Revenue:						
Investment Earnings	12,759	12,107	2,397	319	731	1,302
Transfers-In:						
Total Revenues:	**12,759**	**12,107**	**2,397**	**319**	**731**	**1,302**
EXPENDITURES:						
Project Expenditures:						
Transfers - Out:						
Total Expenditures:	**-**	**-**	**-**	**-**	**-**	**-**
Revenues Over/Under Expenditures:	**12,759**	**12,107**	**2,397**	**319**	**731**	**1,302**
Fund Balance - June 30	$ 404,014	$ 416,121	$ 418,518	$ 418,837	$ 419,568	$ 420,870

There have been no fee refunds to-date.

The description of this fee and fee amounts are per Resolution No. 05-10215 dated 2/7/2005 and Ordinance No. 04-1229 dated 11/15/04.

November 2020, per Reso# 19-329, the City issued interfund loan in the amount of $380,000 to the Housing Authority using the City's Inclusionary Housing In-Lieu Fund. The loan, along with the Housing Successor Agency's funds that are overseen by the Housing Authority, were used to pay for permits and fees and other development costs to construct 29 new affordable housing units by Satellite Affordable housing Associates (SAHA).

Per Reso# 19-3239, the Housing Aurhority shall pay the City a pro-rata share of Loan payments received from Developer (SAHA) until all outstanding principal has been paid in full. Pro-Rata share is calculated at 49% ($380K loan to Housing Authority / $780 Housing Authority's loan to SAHA). Loan shall accrue an interest rate of 0%.

Traffic Impact Fair Share Fund Revenues and Expenditures - Fund 306 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		$ 489,831	$ 505,805	$ 520,962	$ 522,702	$ 527,033	$ 536,953
REVENUES:							
Traffic Impact Fair Share Fees Collected							
Other Revenue:							
Investment Earnings		15,973	15,158	1,740	4,331	9,920	17,673
Total Revenues:		**15,973**	**15,158**	**1,740**	**4,331**	**9,920**	**17,673**
EXPENDITURES:							
Transfer-Out to Pittsburg CIP - Traffic Signal Installation	3104					-	-
Total Expenditures:		-	-	-	-	-	-
Revenues Over/Under Expenditures:		**15,973**	**15,158**	**1,740**	**4,331**	**9,920**	**17,673**
Fund Balance - June 30		$ 505,805	$ 520,962	$ 522,702	$ 527,033	$ 536,953	$ 554,626

11/14/13 - A fee refund of $3,750.00 + $726.00 interest was paid to Empire Business Park (Lonne Carr). Refund due to a deposit intended to extend the left turn lanes at the intersection that was proposed, however there are no plans by the City, Contra Costa County or Caltrans to complete this at this time.

Description of fee:
Traffic Impact Fair Share fees were collected for the purpose of funding transportation projects in the area of new developments. Developers of individual projects paid a fee consistent with their percentage share of the cost of the traffic project, such as road widening or traffic signal, made necessary by their development. The share of responsibility was determined by a traffic study required by the City during the permit approval process. For example, if a fast food restaurant was determined by a traffic study to add 3 percent of the traffic at an intersection that will need a traffic signal, the developer would pay a fee in an amount equivalent to 3 percent of the cost of a signal, or $6,600 for a $220,000 traffic signal project. (See attachment for the amount collected per developer and the description of the specific traffic impact.)

ACCOUNT # 306-55501-5495
TRANSPORTATION MITIGATION (TRAFFIC IMPACT) FAIR SHARE REVENUE
at June 30, 2024

Deposit #	Date	Payee	Description	Amt. Paid	*Interest Earned	Receipt #	Funds Used or Returned	Balance
1	05/18/01	A. D. Seeno	Fair Share - West Leland Signal at Oak Hills Drive	19,415.00	8,106.92	R000595397	(27,048.00)	$ 474
2	05/18/01	A. D. Seeno	Re-Align Driveway at Los Medanos College with Signal at Leland and Century Blvd.	78,774.52	49,161.26	R000595312	-	$ 127,936
3	12/12/06	William Lyon Homes	Fair Share for Intersection Improvements at - (1) West Leland Rd/Bailey Road Intersection (2) Avila Road/Willow Pass Road (3) San Marco/West Leland Intersection	351,448.00	104,768.09	0634602-1#17	(30,000.00)	$ 426,216
			Totals:	**$ 449,637.52**	**$ 162,036.26**		**$ (57,048)**	**$ 554,626**

Funds related to Items 1, 2, and 3 have been on deposit for over 5 years. Findings are as follows:

1 Traffic Signal at West Leland Road and Oak Hills Drive has been completed. Additional development on the vacant parcel between the Oak Hills Shopping Center and BART will also contribute a share of the traffic impacts at this intersection once it is constructed. A separate traffic signal project lies within the project area for several infrastructure projects planned in the Bailey Road/Leland Road area. The pace of development in this area is outside the City's control. Once the remaining development in the area is identified, the intersection will be redesigned and signalized using these funds and Local Traffic Mitigation Fee funding.

2 Fees collected in the amount of $78,774.52 are for improvements to the intersection of East Leland Road and Century Boulevard, near the intersection of East Leland Road and Los Medanos College's eastern entrance. Additional development on a vacant parcel on the southeast corner of this intersection will also contribute a share of the traffic impacts at this intersection. A roadway that is proposed to connect this intersection with Buchanan Road and James Donlon Boulevard may also contribute to these impacts. The pace of development in this area is outside the City's control, but it is a factor that has delayed implementation of this project. Once the remaining development in the area is identified, the project will be designed and constructed using these funds.

3 Intersection improvements are planned at three intersections that will be impacted by development in this area of the city. Specifically,

(a) At Willow Pass Road and Avila Road, including addition of left turn lanes in the westbound and southbound directions, and a right turn lane from the northbound direction; and

(b) At San Marco Boulevard and West Leland Road, including converting northbound left turn lane to a thru-lane; and

(c) At Bailey Road and West Leland Road, including addition of westbound shared thru/right turn lane, addition of eastbound left turn lane, and eastbound right turn lane.

The timing of the construction of these projects is subject to the pace of development in the area of the City, among other factors. In addition, a portion of the project area lies outside the City's jurisdiction. These funds will be retained pending development of a project scope, schedule and design.

Reviewed and Confirmed By: _____

John Samuelson - Director of Public Works/City Engineer

Pittsburg Regional Transportation Development Impact Mitigation (PRTDIM) Fees Revenues and Expenditures - Fund 307 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20		FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		$ 3,932,061	$ 3,513,588		$ 3,279,091	$ 3,279,413	$ 3,283,122	$ 3,291,616
REVENUES:								
PRTDIM Fees Collected							-	-
Other Revenue:								
Investment Earnings		18,772	3,687		323	3,709	8,494	15,132
Prior Year Revenue		(17,176)						
Total Revenues:		**1,596**	**3,687**		**323**	**3,709**	**8,494**	**15,132**
EXPENDITURES:								
Project Expenditures:								
James Donlon Blvd. Extension	3701						-	-
Railroad Avenue Traffic Siginal Timing	3702						-	-
BART Access Improvments Project	3703		1,881				-	-
BART Parking and Access Strategy	3704						-	-
Transfers - Out:								
Tsfr-Out to General Fund - Set-Up Administration								
Tsfr-Out to eBART CFD								
Transfer-Out to Measure J (BART Multimodal)								
Transfer-Out to Local TMF Fund		420,069	236,304					
Total Expenditures:		**420,069**	**238,185**		**-**	**-**	**-**	**-**
Revenues Over/Under Expenditures:		**(418,473)**	**(234,498)**		**323**	**3,709**	**8,494**	**15,132**
Fund Balance - June 30		$ 3,513,588	$ 3,279,091	*	$ 3,279,413	$ 3,283,122	$ 3,291,616	$ 3,306,748

These fees were used to help fund regional transportation improvements, necessary to offset the impacts of continuing growth and development within the City, and to cooperate with the City's regional partners, including East Contra Costa Regional Fee and Financing Authority (ECCRFFA), to fund and implement transportation projects in the regional area. Fees are no longer retained at the City level, but instead are collected and passed through to ECCRFFA to be used for regional

The description of this fee and fee amounts per Resolution No. 10-11533 dated 09/20/10 and Ordinance No. 10-1329 dated 10/04/10.

There have been no fee refunds to-date.

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

* A portion of these fees have been programmed for the James Donlon Blvd Extension Phase I ($236,304) Railroad Ave Traffic Signal Timing, ($4,540) BART Access Improvements ($7,483), BART Parking and Access Strategy ($5,127)

Revised Ending Fund Balance for FY 2022-23 to reconcile to Audited Financial Statements, excluding Interfund loan interest.

Water Facility Reserve Fees - Water Treatment Plant Expansion Revenues and Expenditures - Fund 502 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20	FY 20/21		FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		**$ 867,412**	**$ 991,394**	**$ 1,258,217**		**$ 1,490,867**	**$ 3,680,487**	**$ 3,329,114**
REVENUES:								
Water Facility Reserve Fees Collected		96,937	80,089	234,579		132,485	96,276	45,034
Other Revenue:								
Investment Earnings		27,046	31,739	3,803		25,525	52,351	87,579
Refund on Prior Year Revenue - William Lyon (Incl. interest)								
Sale of Plans & Specs								
Refund to Discovery Builders- Irrigation Meters @ SMV								
Transfers-In from Water Bond								
Transfers-In from Water Fund		34,688	168,660			1,500,000	-	
Transfers-In from Water Fund (iBank loan funds)								
Transfers-In from Water Facility Reserve (Other Fund)								
Total Revenues:		**158,671**	**280,488**	**238,382**		**1,658,010**	**148,627**	**132,613**
EXPENDITURES:								
Project Expenditures:								
Water Treatment Plant SCADA Upgrades	5035			3,402				
Water Treatment Plant Sludge Handling Facility	5040	34,688	13,665	2,330				
W-55 Buchanan Road Waterline	5049							
WTP Disinfection Modification & Conversion	5062					18,810		
W-34 WTP Disinfection Mod & Conversion	5069						500,000	
Main on W. Leland (WTP to SW Hills)	5071					-		
Transfer-Out to Water Operations Fund (2)								858,000
Adjust Capital Outlay to Construction in Progress						(550,420)		
Total Expenditures:		**34,688**	**13,665**	**5,732**		**(531,610)**	**500,000**	**858,000**
Revenues Over/Under Expenditures:		**123,982**	**266,823**	**232,650**		**2,189,620**	**(351,373)**	**(725,387)**
Fund Balance - June 30		**$ 991,394**	**$ 1,258,217**	**$ 1,490,867**	*	**$ 3,680,487**	**$ 3,329,114**	**$ 2,603,727**

The description of this fee and fee amounts collected prior to August 20, 2005 per Resolution No. 98-8551.

The description of this fee and fee amounts collected on or after August 20, 2005 per Resolution No. 05-10291.
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

* A portion of these funds have been allocated to upgrade the Supervisory Control and Data Acquisition (SCADA) system at the Water Treatment Plant ($3,402), WTP Disinfection Modification & Conversion ($400,000), Main on W. Leland (WTP to SW Hills) $1,796,000.

Revised Ending Fund Balance for FY 2021-22 to reconcile to Audited Financial Statements

(2) The transfer out of $858,000 in Fiscal Year 2024 is used to fund Project 5067 - WTP Filter Gallery

Water Facility Reserve Fees - Water Distribution Revenues and Expenditures - Fund 503 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1		$ 383,204	$ 909,057	$ 455,303	$ 1,516,867	$ 1,698,082	$ 1,847,533
REVENUES:							
WFR - Water Distribution Fees Collected		502,803	337,243	1,062,084	167,597	116,483	24,198
Other Revenue:							
Investment Earnings		23,050	36,503	(520)	13,618	32,968	49,844
Total Revenues:		**525,853**	**373,746**	**1,061,563**	**181,215**	**149,451**	**74,042**
EXPENDITURES:							
Project Expenditures:							
Delta Diablo Recycled Water - John Buckley Park	5056						
Waterline School Street between Harbor/Vincent	5057						
Transfers-Out to Water Facility Reserve Fund 502 - 2016/17 Water Main Installation Project	5054						
Transfers - Out to Sewer Fund:			827,500				
Transfer-Out to Water Operations Fund (2)							1,988,000
Total Expenditures:		**-**	**827,500**	**-**	**-**	**-**	**1,988,000**
Revenues Over/Under Expenditures:		**525,853**	**(453,754)**	**1,061,563**	**181,215**	**149,451**	**(1,913,958)**
Fund Balance - June 30		$ 909,057	$ 455,303	* $ 1,516,867	$ 1,698,082	$ 1,847,533	$ (66,425)

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No.12-11778 dated 02/21/12

These fees ensure the distribution system has available operational capacity to meet the demands of new development outside the Southwest Hills.

The five-year CIP was adopted by the City Council on June 21, 2021 per Resolution No. 21-13944

*A portion of these funds have been programmed for 10/11 Sewer Replacement Program ($750,000), CCTV/Inspection/Sewer Replacement Program-Completed ($77,500)

(2) The transfer out of $1,988,000 in Fiscal Year 2024 is used to fund Project 5067 - WTP Filter Gallery Replacement. Reso 24-14474.

Water Facility Reserve Fees - Zone 1 & 2 Reservoir Revenues and Expenditures - Fund 504 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1	$ 970,305	$ 1,001,946	$ 1,031,972	$ 1,035,418	$ 1,043,998	$ 1,063,648
REVENUES:						
WFR - Zone 1/11 Reservoir Fees Collected					-	
Other Revenue:						
Investment Earnings	31,641	30,026	3,446	8,580	19,650	35,009
Transfers-In:						
Total Revenues:	**31,641**	**30,026**	**3,446**	**8,580**	**19,650**	**35,009**
EXPENDITURES:						
Project Expenditures:						
Transfers - Out:						
Total Expenditures:	-	-	-	-	-	
Revenues Over/Under Expenditures:	**31,641**	**30,026**	**3,446**	**8,580**	**19,650**	**35,009**
Fund Balance - June 30	$ 1,001,946	$ 1,031,972	$ 1,035,418	$ 1,043,998	$ 1,063,648	$ 1,098,657

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.

Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

These fees will be used to fund the cost of a water reservoir for Zones 1 and 2 which are not within the Southwest Hills area.

Water Facility Reserve Fees - SE 20" Trans Line Revenues and Expenditures - Fund 505 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1	$ 157,075	$ 233,334	$ 287,032	$ 400,066	$ 421,727	$ 442,457
REVENUES:						
WFR - SE 20" Trans Line Fees Collected	69,538	45,491	112,288	18,232	12,683	3,882
Other Revenue: Investment Earnings	6,721	8,207	747	3,429	8,047	14,660
Transfers-In:						
Total Revenues:	76,258	53,698	113,035	21,661	20,730	18,542
EXPENDITURES:						
Project Expenditures: Interest Expense						
Transfers Out to Water Fund (W-55 Buchanan Road Waterline)						
Total Expenditures:	-	-	-	-	-	-
Revenues Over/Under Expenditures:	76,258	53,698	113,035	21,661	20,730	18,542
Fund Balance - June 30	$ 233,334	$ 287,032	$ 400,066	$ 421,727	$ 442,457	$ 460,999

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 20(
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

These fees will be used to fund the Segment 1E and Zone 2 Transmission Pipeline to the new Zone 2 Reservoir.

Water Facility Reserve Fees - SW Hills CIP - Phase I & II Revenues and Expenditures - Fund 506 FY18/19 - FY23/24	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1	$ 57,467	$ 5,501	$ 0	$ 0	$ 0	$ 0	$ 432,115
REVENUES:							
WFR - SW Hills CIP Fees Collected	151,251	150,179	123,773	567,849	602,686	426,578	233,849
Other Revenue:							
Investment Earnings		1,840	3,166	(939)	3,705	5,537	17,119
Total Revenues:	**151,251**	**152,018**	**126,939**	**566,910**	**606,391**	**432,115**	**250,968**
EXPENDITURES:							
Project Expenditures:							
Interest Expense	34						
Transfers - Out:							
Transfer-Out to Water Revenue Bond (1)	203,183	157,519	126,939	566,910	606,391	-	
Transfer-Out to Water Operations Fund (2)							745,000
Total Expenditures:	**203,217**	**157,519**	**126,939**	**566,910**	**606,391**	**-**	**745,000**
Revenues Over/Under Expenditures:	**(51,966)**	**(5,501)**	**-**	**-**	**-**	**432,115**	**(494,032)**
Fund Balance - June 30	$ 5,501	$ 0	$ 0	$ 0	$ 0	$ 432,115	$ (61,917)

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

(1) The fees collected will reimburse Water Bond funds used in prior years to construct the new 3.0 MG Zone 2 Reservoir, two pump stations (Zone 2 & 3) and Transmission Pipeline Segments 2-5 to serve Southwest Hills. Reimbursement will take place as funds become available, starting in Fiscal Year 2011/12. Project Descriptions and Expenses incurred are as follows:

West Leland Waterline	$ 234,766
Vista Del Mar Waterline	235,154
Southwest Hills Water Improvement Project	13,200,368
Total Eligible for Reimbursement:	13,670,288
Reimbursed in Prior Years	(1,208,021)
Reimbursed in Fiscal Year 14/15	(265,688)
Reimbursed in Fiscal Year 15/16	(428,624)
Reimbursed in Fiscal Year 16/17	(214,782)
Reimbursed in Fiscal Year 17/18	(203,183)
Reimbursed in Fiscal Year 18/19	(157,519)
Reimbursed in Fiscal Year 19/20	(126,939)
Reimbursed in Fiscal Year 20/21	(566,910)
Reimbursed in Fiscal Year 21/22	(606,391)
Reimbursed in Fiscal Year 22/23	-
Reimbursed in Fiscal Year 23/24	-
Balance Remaining to Reimburse Water Bond	$ 9,892,231

In FY2016 the City issued 2016A Water Revenue Refunding Bonds to retire the 2008 Water Refunding Bonds

(2) The transfer of $745,000 in Fiscal Year 2024 is used to fund Project 5067 - WTP Filter Gallery Replacement. Reso 24-14474

Water Facility Reserve Fees - SW Hills Phase III Pipe/Reservoir Revenues and Expenditures - Fund 507 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY22/23	FY23/24
Fund Balance - July 1	$ 2,339,136	$ 2,425,179	$ 3,255,808	$ 3,417,391	$ 3,709,040	$ 3,966,130
REVENUES:						
WFR - SW Hills Phase III Pipe Fees Collected	9,831	3,860	150,961	261,685	184,985	123,256
Other Revenue:						
Investment Earnings	76,212	72,769	10,622	29,964	72,105	134,286
Transfers-In:						
Tsfr-In from Water Bond		754,000				
Total Revenues:	86,043	830,629	161,583	291,649	257,090	257,542
EXPENDITURES:						
Project Expenditures:						
Transfers - Out:						
Total Expenditures:	-	-	-	-	-	-
Revenues Over/Under Expenditures:	86,043	830,629	161,583	291,649	257,090	257,542
Fund Balance - June 30	$ 2,425,179	$ 3,255,808	$ 3,417,391	$ 3,709,040	$ 3,966,130	$ 4,223,672

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No.12-11778 dated 02/21/12

A portion of these funds have been programmed for the Water Main at West Leland, from Water Treatment Plant to Southwest Hills ($1,796,000)

In addition to funding segment P-1, the fees collected will reimburse Water Bond funds used in prior years to construct the new Transmission Pipeline Segments P2-5 to serve Southwest Hills. Reimbursement will take place as funds become available, and after the other segments of the pipeline are completed.

Water Facility Reserve Fees - SW Hills Phase III Pump Revenues and Expenditures - Fund 508 FY18/19 - FY23/24	Project Number	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1		(0)	(0)	(0)	(0)	(0)	(0)
REVENUES: WFR - SW Hills Phase III Pump Fees Collected							
Other Revenue:							
Transfers-In:							
Total Revenues:		-	-	-	-	-	-
EXPENDITURES:							
Project Expenditures:							
Transfers - Out: Transfer-Out to Water Revenue Bond (1)							
Total Expenditures:		-	-	-	-	-	-
Revenues Over/Under Expenditures:		-	-	-	-	-	-
Fund Balance - June 30		$ (0)	$ (0)	$ (0)	$ (0)	$ (0)	$ (0)

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

(1) The fees collected will reimburse Water Bond funds used in prior years to acquire the Zone 4 site at San Marco for water lines serving Zones 3 and higher within the Southwest Hills area. Reimbursement will take place as funds become available, starting in Fiscal Year 2011/12. Project Description and Expenses incurred are as follows:

San Marco Site Land Acquisition	$325,000
Total Eligible for Reimbursement:	$ 325,000
Reimbursed in FY 2011/12:	(103,102)
Balance Remaining to Reimburse Water Bond	$ 221,898

Water Treatment Plant Sludge Handling Revenues and Expenditures - Fund 509 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1		$ 166,546	$ 293,858	$ 401,761	$ 697,402	$ 863,956	$ 997,840
REVENUES:							
WFR - Water Treatment Plant Sludge Handling		119,387	96,599	294,805	159,813	116,248	54,376
Other Revenue:							
Investment Earnings		7,925	11,304	836	6,741	17,636	27,966
Total Revenues:		**127,312**	**107,903**	**295,641**	**166,554**	**133,884**	**82,342**
EXPENDITURES:							
Project Expenditures:							
Interest Expense							
Transfers-Out to Water Facility Reserve - Fund 502 (W-33 WTP Sludge Handling Facility)	5040						
Transfer-Out to Water Operations Fund (2)							1,083,000
Total Expenditures:		-	-	-	-	-	**1,083,000**
Revenues Over/Under Expenditures:		**127,312**	**107,903**	**295,641**	**166,554**	**133,884**	**(1,000,658)**
Fund Balance - June 30		$ 293,858	$ 401,761	$ 697,402	$ 863,956	$ 997,840	$ (2,818)

The Water Treatment Plant (WTP) Sludge Handling Fee (Fund 509) covers the cost of increasing the WTP's capacity for handling additional sedimentation basin sludge, a result of increased WTP water production resulting from additional development within the City.

Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

$550,000 was programmed for a Sludge Handling Facility at the Water Plant. Fund 502, Water Treatment Plant Expansion funded $300,000 of the project, $250,000 was funded with Sludge Handling funds (fund 509). The balance of $300,000 has been reimbursed from Water Treatment Plant Sludge Handling funds in FY 2015/16.

(2) The transfer out of $1,083,000 in Fiscal Year 2024 is used to fund Project 5067 - WTP Filter Gallery

Water Facility Reserve Fees - Zone 1 Reservoir Revenues and Expenditures - Fund 510 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1	$ 440,985	$ 714,829	$ 910,980	$ 1,465,197	$ 1,563,716	$ 1,653,347
REVENUES:						
WFR - Zone 1 Reservoir Fees Collected	254,174	170,049	552,231	85,841	59,683	12,002
Other Revenue:						
Investment Earnings	19,670	26,102	1,986	12,678	29,948	54,719
Transfers-In:						
Total Revenues:	273,844	196,151	554,217	98,520	89,631	66,721
EXPENDITURES:						
Project Expenditures:						
Transfers - Out:						
Total Expenditures:	-	-	-	-	-	-
Revenues Over/Under Expenditures:	273,844	196,151	554,217	98,520	89,631	66,721
Fund Balance - June 30	$ 714,829	$ 910,980	$ 1,465,197	$ 1,563,716	$ 1,653,347	$ 1,720,068

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

These fees will be used to fund the cost of a water reservoir for Zones 1 which are not within the Southwest Hills area.

Water Facility Reserve Fees - Zone 2 Reservoir Revenues and Expenditures - Fund 511 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1	$ 87,914	$ 114,040	$ 130,588	$ 131,734	$ 132,826	$ 135,326
REVENUES:						
WFR - Zone 1 Reservoir Fees Collected	22,586	12,828	708	-	-	1,818
Other Revenue:						
Investment Earnings	3,540	3,720	438	1,092	2,500	4,500
Transfers-In:						
Total Revenues:	26,126	16,548	1,146	1,092	2,500	6,318
EXPENDITURES:						
Project Expenditures:						
Transfers - Out:						
Total Expenditures:	-	-	-	-	-	-
Revenues Over/Under Expenditures:	26,126	16,548	1,146	1,092	2,500	6,318
Fund Balance - June 30	$ 114,040	$ 130,588	$ 131,734	$ 132,826	$ 135,326	$ 141,644

There have been no fee refunds to-date.

The description of this fee and fee amounts per Resolution No. 05-10291 dated June 20, 2005.
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12

These fees will be used to fund the cost of a water reservoir for Zone 2 which are not within the Southwest Hills area.

Sewer Facility Reserve Fees -Collection System Capacity Buy-In Revenues and Expenditures - Fund 522 FY18/19 - FY23/24	Proj #	FY 18/19	FY 19/20		FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1		$ 722,105	$ 1,190,265		$ 609,648	$ 1,018,781	$ 456,084	$ 652,135
REVENUES:								
Sewer Facility Reserve Buy In - Fees Collected		517,676	188,897		643,818	33,612	186,018	19,549
Other Revenue:								
Investment Earnings		32,796	40,487		315	3,691	10,033	21,900
Transfers-In:								
Total Revenues:		**550,472**	**229,383**		**644,133**	**37,303**	**196,051**	**41,449**
EXPENDITURES:								
Project Expenditures:								
Sewer Line Replacement East of Loveridge	5207	82,312					-	-
Other Expenditures:								
Design								
Transfers - Out:								
Transfer-Out to Sewer Operating - Sewer Rehab			810,000		235,000	600,000	-	-
Total Expenditures:		**82,312**	**810,000**		**235,000**	**600,000**	**-**	**-**
Revenues Over/Under Expenditures:		**468,160**	**(580,617)**		**409,133**	**(562,697)**	**196,051**	**41,449**
Fund Balance - June 30		**$ 1,190,265**	**$ 609,648**	*	**$ 1,018,781**	**$ 456,084**	**$ 652,135**	**$ 693,584**

There have been no fee refunds to-date.

The description of this fee and fee amounts collected prior to August 20, 2005 per Resolution No. 97-8495.

The description of this fee and fee amounts collected on or after August 20,2005 per Resolution No. 05-10291.

Revised fee amounts per Resolution No. 05-10372

*Fees have been programmed for the Highway 4 Trunk Line Relief Project ($133,113). Fees have also been programmed for the CCTV/Inspection/Sewer Rehab project ($460,000), Montezuma Pump Station Replacement ($585,000)

Revised Ending Fund Balance for FY 2022-23 to reconcile to Audited Financial Statements

Sewer Facility Reserve Fees - Hwy 4 Trunk Line Revenues and Expenditures - Fund 523 FY18/19 - FY23/24	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
Fund Balance - July 1	$ 20,276	$ 21,818	$ 22,472	$ 34,114	$ 32,764	$ 33,381
REVENUES:						
SFR-Pipe - Fees Collected	872		11,568	(1,614)	-	-
Other Revenue:						
Investment Earnings	670	654	75	264	617	1,099
Transfers-In:						
Total Revenues:	1,542	654	11,643	(1,350)	617	1,099
EXPENDITURES:						
Project Expenditures:						
Reimbursment - prior year revenue [1]						
Transfers - Out:						
Total Expenditures:	-	-	-	-	-	-
Revenues Over/Under Expenditures:	1,542	654	11,643	(1,350)	617	1,099
Fund Balance - June 30	$ 21,818	$ 22,472	$ 34,114	$ 32,764	$ 33,381	$ 34,480

[1] A developer refund was made in 2016/17 - for reimbursement of Sanitary Sewer Video costs.

The description of this fee and fee amounts per Resolution No. 05-10291 dated Ju
Revised fee amounts per Resolution No. 12-11778 dated 02/21/12.

These fees will be used to fund the increase in size for the Highway 4 Sewer Trunk Line to serve new development.

Funds in the amount of $200,000 for the Hwy 4 Trunk Line Relief project are payable to fund 522 Sewer Facility Reserve Buy-In fund when revenue receipts are sufficient.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Successor Agency Minute Order Approving the July 1, 2025 – June 30, 2026 Recognized Obligation Payment Schedule

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The Successor Agency for the Redevelopment Agency of the City of Pittsburg (Successor Agency) has prepared its Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2025 – June 30, 2026 (ROPS 25/26), pursuant to AB 26x1, also referred to as the "Dissolution Act".

FISCAL IMPACT

There is no fiscal impact to adopting ROPS 25/26. Rather, ROPS 25/26 identifies the Successor Agency's anticipated financial obligations for July 1, 2025 – June 30, 2026. ROPS 25/26 will be reflected in the Successor Agency's budget that will be considered along with the City's budget in June 2025 for Fiscal Year 2025/26.

RECOMMENDATION

Staff recommends that the Successor Agency Governing Board approve ROPS 25/26.

BACKGROUND

On June 29, 2011, the Governor signed into law the Dissolution Act, which automatically suspended redevelopment activities, and on December 29, 2011, the California State Supreme Court upheld the provisions of the Dissolution Act, thereby dissolving all redevelopment agencies on February 1, 2012.

While redevelopment successor agencies may not initiate any new activities nor incur new indebtedness, they are nevertheless required under legislative statute and court order to continue making those payments necessary for day-to-day operations pursuant to contractual commitments/enforceable obligations, regulatory authorities, and indebtedness entered into prior to the enactment of the Dissolution Act.

On June 27, 2012, the Governor signed into law budget trailer bill AB 1484. AB 1484 imposed new requirements on successor agencies with regard to the submittal of the ROPS.

Budget trailer bill SB 107 was approved and signed by the Governor and took immediate effect on September 22, 2015. The primary purpose of SB 107 is to make technical and substantive amendments to the existing Dissolution Act. Health & Safety Code Section 34177, as amended, changed the review of ROPS from semi-annual to annual.

Pursuant to Health and Safety Code Section 34179 (j), on and after July 1, 2018, in each county where more than one oversight board was created, there shall be only one countywide oversight board. As of July 1, 2018, the California Department of Finance (DOF) will only recognize the Contra Costa County Oversight Board (Countywide Oversight Board). The Successor Agency's ROPS and other actions may not be submitted to the DOF without the Countywide Oversight Board's approval.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

ROPS 25/26 consists of debt service-related expenses, administrative expenses, and other eligible enforceable obligation. Staff will submit ROPS 25/26 to the Countywide Oversight Board for its consideration on January 27th, 2025. Upon receiving Countywide Oversight Board approval, ROPS 25/26 will be submitted to the DOF, the County Auditor-Controller's Office, and the California State Controller's Office on or before February 1, 2025.

ATTACHMENTS: FY2025-26 DOF ROPS Report
FY2025-26 DOF ROPS Report Back Up
Countywide Oversight Board

Report Prepared By: Andy Wang, Assistant Finance Director

Recognized Obligation Payment Schedule (ROPS 25-26) - Summary
Filed for the July 1, 2025 through June 30, 2026 Period

Successor Agency: Pittsburg

County: Contra Costa

	Current Period Requested Funding for Enforceable Obligations (ROPS Detail)	25-26A Total (July - December)	25-26B Total (January - June)	ROPS 25-26 Total
A	**Enforceable Obligations Funded as Follows (B+C+D)**	**$ -**	**$ -**	**$ -**
B	Bond Proceeds	-	-	-
C	Reserve Balance	-	-	-
D	Other Funds	-	-	-
E	**Redevelopment Property Tax Trust Fund (RPTTF) (F+G)**	**$ 16,037,750**	**$ 15,820,600**	**$ 31,858,350**
F	RPTTF	15,825,250	15,608,100	31,433,350
G	Administrative RPTTF	212,500	212,500	425,000
H	**Current Period Enforceable Obligations (A+E)**	**$ 16,037,750**	**$ 15,820,600**	**$ 31,858,350**

Certification of Oversight Board Chairman:

Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

Name Title

/s/

Signature Date

Pittsburg
Recognized Obligation Payment Schedule (ROPS 25-26) - ROPS Detail
July 1, 2025 through June 30, 2026

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	ROPS 25-26 Total	ROPS 25-26A (Jul - Dec)					25-26A Total	ROPS 25-26B (Jan - Jun)					25-26B Total
											Fund Sources						Fund Sources					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
								$157,950,356		$31,858,350	$-	$-	$-	$15,825,250	$212,500	$16,037,750	$-	$-	$-	$15,608,100	$212,500	$15,820,600
3	TAB 1999	Fees	11/03/ 1999	09/01/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agent fees 822-41272-2318 (TAB 1999)	Los Medanos	2,500	N	$2,500	-	-	-	1,250	-	$1,250	-	-	-	1,250	-	$1,250
10	HSG TAB 06A	Bonds Issued On or Before 12/31/10	12/14/ 2006	09/01/2037	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 844-41284-2303/ 2304 (HSG 2006A)	Los Medanos	1,077,602	N	$160,392	-	-	-	-	-	$-	-	-	-	160,392	-	$160,392
11	HSG TAB 06A	Fees	12/14/ 2006	09/01/2037	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agents/ PFM Invest 844-41284-2318 (HSG 2006A)	Los Medanos	3,500	N	$3,500	-	-	-	1,750	-	$1,750	-	-	-	1,750	-	$1,750
27	Prefund August debt service of Senior & Housing Bonds (1999, 2014 & Housing Bonds)	Bonds Issued On or Before 12/31/10	11/03/ 1999	09/01/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San	Prefund senior & housing bonds debt service to fiscal agent (1999, & 2014 TABS & 2016A Hsg & 2006A HSG bonds) Balance Calendar Yr	Los Medanos	68,518,553	N	$13,492,550	-	-	-	-	-	$-	-	-	-	13,492,550	-	$13,492,550

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 25-26 Total**	**ROPS 25-26A (Jul - Dec)**					**25-26A Total**	**ROPS 25-26B (Jan - Jun)**					**25-26B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
					Francisco, CA 94111	2018																
105	2014 RDA Refunded Bonds	Refunding Bonds Issued After 6/ 27/12	07/01/ 2014	12/01/2029	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 833-41285-2303/ 04 (TAB 2014)	Los Medanos	652,625	N	$260,500	-	-	-	-	-	$-	-	-	-	260,500	-	$260,500
107	2014 RDA Refunded Bonds	Fees	06/25/ 2014	12/01/2029	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agent fees/ PFM Investment 833-41280-2318 (TAB 2014)		6,500	N	$6,500	-	-	-	3,250	-	$3,250	-	-	-	3,250	-	$3,250
111	Administration	Admin Costs	07/01/ 2018	06/30/2019	City of Pittsburg	Administration 801-41202-xxxx Various Administrative Costs	Los Medanos	425,000	N	$425,000	-	-	-	-	212,500	$212,500	-	-	-	-	212,500	$212,500
118	HSG TAB 2016A Refunding	Refunding Bonds Issued After 6/ 27/12	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 845-41278-2303/ 2304 (HSG 2016A Refunding Bond)		278,326	N	$106,658	-	-	-	-	-	$-	-	-	-	106,658	-	$106,658
119	2016A RDA Refunding Bonds	Refunding Bonds Issued After 6/ 27/12	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street,	debt service (Interest & Principal) 834-41281-2303/ 2304 (2016A Refunding Bond)		86,976,250	N	$17,391,250	-	-	-	15,814,250	-	$15,814,250	-	-	-	1,577,000	-	$1,577,000

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 25-26 Total**	**ROPS 25-26A (Jul - Dec)**					**25-26A Total**	**ROPS 25-26B (Jan - Jun)**					**25-26B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
					Suite 3100 San Francisco, CA 94111																	
126	HSG TAB 2016A Refunding Bonds	Fees	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	Debt Service Fiscal Agent Fees 845-41278-2318		3,500	N	$3,500	-	-	-	1,750	-	$1,750	-	-	-	1,750	-	$1,750
127	2016A RDA Refunding Bonds	Fees	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	Debt Service Fiscal Agent Fees 834-41281-2318		6,000	N	$6,000	-	-	-	3,000	-	$3,000	-	-	-	3,000	-	$3,000

Pittsburg
Recognized Obligation Payment Schedule (ROPS 25-26) - Report of Cash Balances
July 1, 2022 through June 30, 2023
(Report Amounts in Whole Dollars)

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

A	B	C	D	E	F	G	H
	ROPS 22-23 Cash Balances (07/01/22 - 06/30/23)	**Fund Sources**					**Comments**
		Bond Proceeds		**Reserve Balance**	**Other Funds**	**RPTTF**	
		Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, grants, interest, etc.	Non-Admin and Admin	
1	**Beginning Available Cash Balance (Actual 07/01/22)** RPTTF amount should exclude "A" period distribution amount.	-	-	-	-	-	N/A
2	**Revenue/Income (Actual 06/30/23)** RPTTF amount should tie to the ROPS 22-23 total distribution from the County Auditor-Controller	-	-	-	-	31,044,901	
3	**Expenditures for ROPS 22-23 Enforceable Obligations (Actual 06/30/23)**	-	-	-	-	31,044,901	
4	**Retention of Available Cash Balance (Actual 06/30/23)** RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	-	-	-	-	-	N/A
5	**ROPS 22-23 RPTTF Prior Period Adjustment** RPTTF amount should tie to the Agency's ROPS 22-23 PPA form submitted to the CAC		No entry required			-	N/A
6	**Ending Actual Available Cash Balance (06/30/23) C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)**	**$-**	**$-**	**$-**	**$-**	**$-**	**N/A**

Pittsburg
Recognized Obligation Payment Schedule (ROPS 25-26) - Notes
July 1, 2025 through June 30, 2026

Item #	Notes/Comments
3	
10	
11	
27	
105	
107	
111	
118	
119	
126	
127	

IN THE MATTER OF THE COUNTYWIDE OVERSIGHT BOARD FOR THE COUNTY OF CONTRA COSTA SUCCESSOR AGENCIES APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JULY 2025 THROUGH JUNE 2026 FOR *CITY OF PITTSBURG* SUCCESSOR AGENCY.

WHEREAS, Section 34177(1) of the California Health and Safety Code requires the Successor Agency to submit to the Contra Costa Countywide Oversight Board (Board) for approval a Recognized Obligation Payment Schedule (ROPS); before each fiscal period identifying enforceable obligations and sources of payment; and

WHEREAS, in order for the ROPS to be deemed valid, and therefore eligible for payment, it must be approved by the Board and a copy of the approved ROPS must be submitted to the County Administrative Officers (CAO), the Contra Costa County Auditor-Controller (CAC), the State Controller's Office (SCO), and the State Department of Finance (DOF) by each February 1; and posted on the Successor Agency's website; and

WHEREAS, Health and Safety Code §34177(j) requires the Oversight Board to approve an Administrative Budget for administrative costs of the Successor Agency; and

WHEREAS, the Successor Agency's "administrative cost allowance" as defined and authorized pursuant to Health & Safety Code Section 34171(b), is a minimum of $250,000 unless reduced by the Oversight Board or by agreement between the Successor Agency and the DOF for the ROPS time period; and

WHEREAS, the accompanying staff report provides supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, THE COUNTYWIDE OVERSIGHT BOARD OF CONTRA COSTA COUNTY DOES HEREBYRESOLVE AS FOLLOWS:

1. The ROPS 2025-26, in the form attached to this resolution as Exhibit A and incorporated herein by reference, is hereby approved.

2. The staff of the Successor Agency is hereby directed to submit the ROPS 25-26 to the CAO, CAC, the SCO, and DOF, and post it on the Successor Agency's website in accordance with State Health and Safety Code Section 34177(1)(2)(C), and to cooperate with the DOF to the extent necessary to obtain DOF's acceptance of the ROPS, including, if necessary, making modifications to the ROPS determined by Successor Agency to be reasonable and financially feasible to meet its legally required financial obligations.

PASSED AND ADOPTED this 27th of January 2025.

Required RPTTF Funding Needed to Cover Debt Service and Pass Thru Requirements

ROPS Cycle	ROPS Period Ending	Senior Bonds				Subordinate Bonds			Total Debt Service by ROPS Period	Total Obligations
		1999 Tax Allocation Bond	2014 Tax Allocation Refunding Bond	2006 Housing Set Aside Tax Allocation Bond	2016 Housing Set Aside Tax Allocation Refunding Bond	2016A Tax Exempt Refunding Bond	2016B Taxable Refunding Bond	2016C Tax Exempt Refunding Bond (Forward)		[1]RPTTF Debt Service Requirement
	ITEM	#27	#105 / #27	#10 / #27	#118 / #27	#119	Paid Off	Paid Off		
	FUND	822	833	844	845	834	835	836		
24/25A	12/31/2024	8,755,000	2,836,125	540,043	1,176,312	15,464,500	-	-	28,771,980	15,464,500
24/25B	6/30/2025		324,875	170,483	127,340	1,924,250	-	-	2,546,948	15,944,646
25/26A	12/31/2025	8,755,000	2,899,875	550,483	1,192,340	15,814,250	-	-	29,211,948	15,814,250
25/26B	6/30/2026		260,500	160,392	106,657	1,577,000	-	-	2,104,550	15,597,099
26/27A	12/31/2026	8,750,000	2,965,500	560,392	1,216,657	16,187,000	-	-	29,679,550	16,187,000
26/27B	6/30/2027		192,875	149,770	84,546	1,211,750	-	-	1,638,941	15,231,133
27/28A	12/31/2027	9,145,000	2,637,875	574,770	1,234,546	16,566,750	-	-	30,158,941	16,566,750
27/28B	6/30/2028		131,750	138,484	57,613	827,875	-	-	1,155,723	14,848,570
28/29A	12/31/2028	9,145,000	2,701,750	588,484	1,257,613	16,967,875	-	-	30,660,722	16,967,875
28/29B	6/30/2029		67,500	126,535	29,509	424,375	-	-	647,919	14,446,463
29/30A	12/31/2029	9,145,000	2,767,500	596,535	1,289,509	17,399,375	-	-	31,197,919	17,399,375
29/30B	6/30/2030		-	114,054	-	-	-	-	114,054	9,868,107
30/31A	12/31/2030	9,145,000	-	609,054	-	-	-	-	9,754,054	-
30/31B	6/30/2031		-	100,909	-	-	-	-	100,909	721,818
31/32A	12/31/2031	-	-	620,909	-	-	-	-	620,909	-
31/32B	6/30/2032	-	-	87,100	-	-	-	-	87,100	724,201
32/33A	12/31/2032	-	-	637,100	-	-	-	-	637,100	-
32/33B	6/30/2033	-	-	72,495	-	-	-	-	72,495	724,990
33/34A	12/31/2033	-	-	652,495	-	-	-	-	652,495	-
33/34B	6/30/2034	-	-	57,093	-	-	-	-	57,093	724,187
34/35A	12/31/2034	-	-	667,093	-	-	-	-	667,093	-
34/35B	6/30/2035	-	-	40,895	-	-	-	-	40,895	496,789
35/36A	12/31/2035	-	-	455,895	-	-	-	-	455,895	-
35/36B	6/30/2036	-	-	29,874	-	-	-	-	29,874	1,184,749
36/37A	12/31/2036	-	-	1,154,874	-	-	-	-	1,154,874	-
36/37B										
	Totals:	**95,795,000**	**81,186,450**	**15,179,766**	**18,047,511**	**180,730,873**	**27,422,446**	**44,672,725**	**463,034,771**	**463,034,771**

(1) Full Calendar Year Funding is required for Senior Bonds during the ROPS "B" Cycle

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize Application and Receipt of Program Funding from Senate District 7 for the Accessory Dwelling Unit Accelerator Program Grant

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

On September 7, 2024, Senator Glazer of Senate District 7 issued a Notice of Funding Availability (NOFA) for approximately $2.5 million dollars in one-time funds for the Accessory Dwelling Unit (ADU) Accelerator Program Grant ("Program"). The purpose of the non-competitive funding is to provide financial assistance to encourage and facilitate the construction of ADUs throughout 15 cities in the East Bay located in Senate District 7. Staff is requesting authorization to apply for the up to $190,407 in program funds designated for the City.

FISCAL IMPACT

There is no impact to the General Fund or any other existing funds related to the submittal of this application. Staff costs related to submittal the grant application, as well as future development and administration of the Program would be covered by the grant.

RECOMMENDATION

City Council adopt the attached resolution authorizing application and receipt of Senate District 7 Accessory Dwelling Unit Accelerator Program grant funding.

BACKGROUND

Due to the unprecedented need for affordable housing, Senate District 7 has initiated a one-time Program available to local agencies within Senate District 7 to advance and accelerate the production of 350 ADUs, further incentivizing affordable housing production. Section 19.564 of the Budget Act of 2023 provides $2,500,000 through this Program to be allocated to select cities in Contra Costa and Alameda Counties to encourage the production of ADUs to help address California's housing supply.

As authorized through the California Budget Act of 2023 and the California Department of Housing and Community Development, the Town of Danville will act as the fiscal agent to receive fund applications and distribute Program grant funds. The Program funds have been distributed based on the Department of Finance annual population numbers as of January 1, 2024. The City of Pittsburg has been allocated $190,406.96.

Program funding eligibility requires that the City has a certified Housing Element for the 2023-2031 Cycle. The City of Pittsburg's 2023-2031 Housing Element was certified by the State Housing and Community Development Department on October 2, 2024.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

ADUs present an opportunity for affordable housing development, for residential investment, and for aging in place. One of the barriers to constructing an ADU can be the cost of designing an ADU to meet California Building Code and Municipal Code zoning requirements. The City of Pittsburg is eligible to receive $190,406.96 through the ADU Accelerator Program. This funding must be allocated in two categories: $140,406.96 shall be allocated to Category 1, the "Rebate (Incentive) Program", and $50,000. shall be allocated to Category 2, "PR Prototype ADU Plans." Consistent with this required allocation, staff is proposing that the ADU Accelerator Program would fund $50,000 towards the development of permit-ready prototype ADU Plans and $140,406.96 towards an incentive program for property owners who construct an ADU. A description of each Categories Program is described below:

Category 1 - Property Owner Rebate/Incentive Program ($140,406.96). This program would provide individual rebates of up to $7,500 to property owners for new ADU units and up to $15,000 for new ADU units that are deed restricted to low-income households (minimum of 20 years). As the purpose of the program is to encourage the construction of smaller ADU units, there will be no rebates for units over 1,000 square feet. Funding within this Rebate/Incentive Program would be provided on a first-come, first-served basis until all the funds are expended.

Low-Income Restricted ADUs. Property owners would be eligible to receive individual rebates of up to $15,000 if they obtain a Building Permit to construct an ADU and receive a certificate of occupancy within 18 months of issuance. Rebates will be provided for units that are deed restricted to low-income households for a minimum of 20 years; based on the following sliding scale:

- $15,000 for units < 500 square feet
- $10,000 for units between 501-750 square feet
- $5,000 for units between 751-1,000 square feet
- *No rebates for units over 1,000 square feet.*

Non-Restricted ADUs. Property owners would be eligible to receive individual rebates of up to $7,500 if they obtain a Building Permit to construct an ADU and receive a certificate of occupancy within 18 months of issuance. Rebates are awarded based upon the following sliding scale:

- $7,500 for units < 500 square feet
- $5,000 for units between 501-750 square feet
- $2,500 for units between 751-1,000 square feet
- *No rebates for units over 1,000 square feet.*

Category 2 - Development of Permit Ready ADU Plans ($50,000). This Program would provide Permit-Ready ADU Plans for public use throughout the City of Pittsburg. In an effort to streamline Building Permit plan review processes and reduce the cost associated with preparing and processing architectural drawings for ADUs, the City of Pittsburg proposes to consult with a licensed architecture firm through a Request for Proposal (RFP) process to develop Permit-Ready ADU Plans. The City of Pittsburg currently has one Permit-Ready ADU plan available for public use and construction, funded under Senate Bill 2 Planning Grants Program of 2017. This Program would allocate additional funds for the development of additional Permit-Ready ADU plans to further increase and diversify the City's available housing stock.

Staff anticipates beginning working on community outreach and creating a website for Category 1 in early Winter of 2025, and issuing a RFP and begin the section process for Category 2 in Spring of 2025 once funding is received.

Eligible cities that receive Program grant funding have 18 months, until September 30, 2026, to utilize program funding. If the City receives Program funding, the City would also be required to generate a Biannual Progress Report ("Report") for submittal to the Grant Program's Fiscal Agent, the Town of Danville. This Report would summarize the number of ADUs that have been permitted and finaled for the reporting period as well as cumulatively for the life of the program, through September 30, 2026.

ATTACHMENTS:

1. Proposed Resolution
2. Senate District 7 Notice of Funding Availability for Accessory Dwelling Unit Accelerator Program
3. Senate District 7 – ADU Accelerator Program Application Form
4. California Department of Housing and Community Development 2023-2031 Housing Element Approval Letter dated October 2, 2024

Report Prepared By: Kelsey Gunter, Associate Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Resolution Authorizing Application and)
Receipt of Program Funding from) RESOLUTION NO. 24-
Senate District 7 for the Accessory)
Dwelling Unit Accelerator Program Grant)

WHEREAS, pursuant to the Budget Act of 2023 Section 19.564, the Department of Housing and Community Development Department (HCD) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Accessory Dwelling Unit ("ADU") Accelerator Program ("Program") grant for the creation of pre-approved permit-ready accessory dwelling unit plans; and

WHEREAS, Senator Glazer of Senate District 7 has issued a NOFA and Application on September 7, 2024, in the amount of $2.5 million dollars in one-time funds for the Accessory Dwelling Unit (ADU) Accelerator Program ("Program") Grant to provide financial assistance to encourage and facilitate the construction of ADUs throughout 15 cities in the East Bay located in Senate District 7; and

WHEREAS, the City Council of the City of Pittsburg desires to submit an ADU Accelerator Program Grant application package, on the forms provided by Senate District 7, for approval of Program funding for two projects that assist in advancing and accelerating the production of ADUs in the City; and

WHEREAS, as authorized through the California Budget Act of 2023 and the California Department of Housing and Community Development, the Town of Danville will act as the fiscal agent to receive fund applications and distribute Program funds; and

WHERAS, Program funding eligibility requires that the City has a certified Housing Element for the 2023-2031 Cycle. The City of Pittsburg's 2023-2031 Housing Element was certified by the State Housing and Community Development Department on October 2, 2024.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg authorizes the following:

Section 1. The City Manager or his/her designee is hereby authorized and directed to apply for and submit to the Town of Danville the ADU Accelerator Program grant application package.

Section 2. In connection with the ADU Accelerator Program grant, if the application is approved, the City Manager or his/her designee is authorized to enter into, execute, and deliver a State of California Agreement (Standard Agreement) for the amount of $190,406.98, and any and all other documents required or deemed necessary or appropriate to evidence and secure the ADU Accelerator Program Grant, the City's obligations related thereto, and all amendments thereto.

Section 3. The City of Pittsburg shall be subject to the terms and conditions as specified in the NOFA, and Standard Agreement provided by HCD after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement, the applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

Section 4. The City Manager or his/her designee is authorized to execute the City of Pittsburg ADU Accelerator Program application, and ADU Accelerator Program grant documents, and any amendments thereto, on behalf of the City as required by HCD or the Town of Danville for receipt of the ADU Accelerator Program grant.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk



Accessary Dwelling Unit Accelerator Program

It is no secret the State of California is facing a shortage of available and affordable housing, and no one knows this better than our local cities and towns. From my first days in the State Senate, I have been a staunch supporter of cities seeking new and unique ways to spur the production of housing while blending new developments within the fabric of their communities.

I would like to announce the newly created *ADU Accelerator Program*. The ADU Accelerator Program offers rebates of up to $15,000 for qualifying ADU plans and projects. This $2.5 million state-funded initiative is intended to encourage and facilitate the construction of 350 ADUs in 15 cities and towns in Contra Costa and Alameda Counties.

Please see attached an overview of this exciting new program along with everything needed to apply and receive funds. Our goal is to have all 15 of our eligible cities participate to show local governments statewide what can be achieved when cities work together with the state on an incentivized program aimed at producing more affordable housing. Should you have any questions, please don't hesitate to reach out to me.

Sincerely,

Steve



Senate District 7 - ADU Accelerator Program | APPLICATION FORM

This new program, piloted by Senator Steve Glazer, will be composed of 15 cities in the East Bay of the San Francisco Bay Area located in Senate District 7. The program will be administered by the California Department of Housing and Community Development through the Town of Danville, acting as Fiscal Agent.

Program Eligibility: City/Town must have an adopted 2023-31 Housing Element that has been certified by the State of California Department of Housing and Community Development.

Biannual Reporting: Eligible recipients will be required to make Biannual Progress Reports which summarize the number of ADUs that have been permitted and finaled for the reporting period and cumulatively for the life of the program. Biannual Progress Reports will be filed with the Fiscal Agent, Town of Danville, at SD7.ADUProgram@danville.ca.gov

Application

1. Name of Agency: City of Pittsburg
   City Manager: Garrett Evans
   Planning Director: John Funderburg

   The persons listed above are designated to act on behalf of the participating agency for the SD7 ADU Accelerator Program.

2. Funding Type

   Application for a "per capita" (select one): Yes X No ___
   Application for Excess Funds (select one): Yes X No ___

3. Funding Request

a. Incentive Program

Amount Requested (from Attachment A): $ 140,406.96

Projected ADU Production by September 30, 2026.

Unit Size	ADU Restriction Category	
	Low-Income Restricted	Non-Restricted
Less than 500 s.f.	5	10
Less than 750 s.f.	5	10
Less than 1,000 s.f.	5	10

b. Permit Ready Prototype ADU Plans

Partnering with another eligible city/town? Yes ___ No X

If yes, name of partnering city/town: N/A

Amount Requested (from Attachment A): $ 50,000

4. **Total Funding Request** (Section 3a plus 3b): $ 190,406.96

Note: Receipt of ADU Accelerator Program funds is expected from State HCD by October 2024 and available for disbursement by November 2024.

I certify that I am authorized to accept ADU Accelerator Program funds on behalf of the City/Town of Pittsburg, CA; and, that all funds will be utilized under my direction or supervision in accordance with the developed program guidelines.

City/Town: Pittsburg

City/Town Manager: Garrett Evans

Signature: _____ Date: 12/16/24

Internal Use (Fiscal Agent)

- Incentive Program Funding Request ___ Approved by: _____ Date: _____
- ADU Plans Funding Request ___ Approved by: _____ Date: _____

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400
Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

October 2, 2024

John Funderburg, Assistant Director of Planning
Community and Economic Development Department
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Dear John Funderburg:

RE: City of Pittsburg's 6th Cycle (2023-2031) Adopted Housing Element

Thank you for submitting the City of Pittsburg's (City) housing element that was adopted on August 5, 2024 and received for review on August 9, 2024. The adopted element includes modifications received September 30, 2024 and authorized by Resolution Number 24-14516. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review.

HCD is pleased to find the adopted housing element, with modifications, in substantial compliance with State Housing Element Law (Gov. Code, § 65580 et seq) as of the date of this letter. The adopted element, with modifications, addresses the requirements described in HCD's August 3, 2023 review.

Additionally, the City must continue timely and effective implementation of all programs including but not limited to the following:

- Program 3 (Affordable Housing Development Assistance)
- Program 4 (Housing Inventory and RHNA Accommodation)
- Program 4A (Public Property Conversion to Housing)
- Program 7 (Accessory Dwelling Units and Junior Accessory Dwelling Units)
- Program 8 (Affordable Housing Funding Sources and Incentives)
- Program 15 (Zoning Ordinance Amendments – Housing Constraints)
- Program 17 (Access to Opportunities, Density Bonuses and Incentives)
- Program 18 (Parking Incentives and Modified Standards)
- Program 21 (Affirmatively Further Fair Housing)
- Program 25 (Reasonable Accommodation Procedures)
- Program 26 (Homeless Continuum of Care)

The City must monitor and report on the results of these and other programs through the annual progress report, required pursuant to Government Code section 65400. Please be aware, Government Code section 65585, subdivision (i) grants HCD authority to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government's actions do not comply with state law.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the Caltrans Senate Bill (SB) 1 Sustainable Communities grant, the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities program, and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City now meets housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: https://www.opr.ca.gov/planning/general-plan/guidelines.html.

HCD appreciates the assistance and dedication provided by the housing element update team throughout the housing element update and review. HCD wishes the City of Pittsburg success in implementing its housing element and looks forward to following its progress through the General Plan annual progress reports pursuant to Government Code section 65400. If HCD can provide assistance in implementing the housing element, please contact Judith Hinh of our staff, Judith.Hinh@hcd.ca.gov.

Sincerely,



Paul McDougall
Senior Program Manager

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the City Manager to Execute a First Amendment for the Consulting Service Agreement with Oliver John for the Baywalk Specific Plan Project

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The proposed item would authorize the City Manager to execute a First Amendment to the Consulting Service Agreement ("First Amendment") with Oliver John for contract planning services related to the proposed Baywalk Specific Plan Project.

FISCAL IMPACT

Staff is requesting the City Council authorize an increase of $70,000 to the consultant budget to cover consultant costs related to the processing of the proposed application. The requested budget increase would cover the estimated $70,000 cost for landscape architecture and Specific Plan review services by Oliver John. The new total compensation under the consultant agreement will be $140,000.

Prior to execution of the First Amendment, the applicant, Integral Communities, will be required to deposit the requested contract amendment amount into the existing Developer Deposit account. As such, there is no fiscal impact to the City.

RECOMMENDATION

City Council adopt the attached resolution authorizing the City Manager to execute a First Amendment to the Consulting Service Agreement with Oliver John for contract planning services related to the Baywalk Specific Plan Project.

BACKGROUND

In February 2021, Integral Communities ("Applicant") filed a preliminary plan review application for the Baywalk Specific Plan Project, and staff presented the proposed project to the Land Use Subcommittee for feedback. The Applicant has since submitted a formal application, and staff is working on preparation of a Specific Plan document and Environmental Impact Report, pursuant to the California Environmental Quality Act (CEQA).

Oliver John has provided exemplary services to the City for more than one year and were chosen for their thorough analyses and satisfactory work in the landscape architecture and land use planning fields.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Due to the complexity of the project, staff and the Applicant anticipate a detailed Specific Plan document be prepared to ensure adequate buildout of the development, and recommends the City utilize Oliver John to aid in review of the project's Specific Plan, Design Review, and Landscape Plans. Prior to entering into any contract, the City will require all requested funds associated with this proposed first contract amendment be submitted by the applicant.

ATTACHMENTS:

1. Proposed Resolution
2. First Amendment to the Consultant Services Agreement with Oliver John
    a. Attachment 1, Exhibit A – Consultant Scope of Services
    b. Attachment 2, Exhibit B – Compensation Schedule

Report Prepared By: Kelsey Gunter, Associate Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the City Manager to Execute A First Amendment to the Consulting Services Agreements with Oliver John For the Baywalk Specific Plan Project	))))	RESOLUTION NO. 24-

WHEREAS, in February 2021, Integral Communities ("Applicant") filed a preliminary plan review application, and staff presented the proposed "Baywalk Specific Plan Project," to the Land Use Subcommittee for feedback; and

WHEREAS, the Applicant has submitted a formal application for the development of the proposed Baywalk project, located on the former NRG power plant site, generally located at 696 West 10th Street; and

WHEREAS, due to the complexity of the project, staff and the Applicant anticipate a detailed Specific Plan document be prepared to ensure adequate buildout of the development, and recommends the City utilize Oliver John to aid in review of the project's Specific Plan, Design Review and Landscape Plans; and

WHEREAS, Oliver John has provided their respective services to the City for more than one year, and was chosen for their thorough analyses and exemplary performance; and

WHEREAS, the Applicant will be required to deposit funds with the City in an amount sufficient to reimburse the cost of project management consultants review services of $70,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute the First Amendment to the Consulting Services Agreement with Oliver John in an additional amount not to exceed $70,000, for a total contract amount of $140,000, upon receipt of Developer Deposit funds from Integral Communities.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

FIRST AMENDMENT TO
CONSULTING SERVICES AGREEMENT BETWEEN
CITY OF PITTSBURG AND
OLIVER JOHN

THIS First Amendment to the Principal Agreement made and entered into on February 28, 2023, hereafter referred to as Agreement, between Oliver John, a California General Partnership, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 16th day of December 16, 2024.

WHEREAS on February 28, 2023, the parties entered into an Agreement for professional Landscape Architectural and Planning Review services for the Baywalk Development in the City of Pittsburg in the amount of $65,000; and

WHEREAS, the parties desire to increase the term of service, add services, and increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Term. Section 1.1 of the Agreement term is hereby amended to read as follows: The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2027, or the date the Consultant completes the services specified in Exhibit A of the Agreement, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein

2. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City hereby agrees to pay Consultant a sum not to exceed one-hundred and forty thousand dollars ($140,000), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Exhibit A Scope of Services. Exhibit A is hereby replaced with Attachment 1 of this First Amendment.

4. Exhibit B Compensation Schedule. Exhibit B is hereby replaced with Attachment 2 of this First Amendment.

5. Integration. This First Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. This First Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and

conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

6. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Agreement, the provisions of this First Amendment shall control in all respects.

7. Ambiguities. The parties have each carefully reviewed this First Amendment and have agreed to each term of this First Amendment. No ambiguity shall be presumed to be construed against either party.

8. Counterparts. This First Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

9. Authority. The person signing this First Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this First Amendment on behalf of Consultant.

IN WITNESS WHEREOF, the parties have entered into this First Amendment on the day and year first hereinabove appearing.

CONSULTANT:

Oliver John, a California General Partnership

By: _____

Jerry Gonsalves, Principal

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: _____

Garrett Evans, City Manager

APPROVED AS TO FORM:

By: _____

Donna Mooney, City Attorney

ATTACHMENT [1]

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide professional Landscape Architectural and planning review services for the development of the proposed Baywalk Specific Plan document as follows:

Task 1 - Site Visit

After receiving an authorization to proceed, Consultant shall visit the site with City Representatives and Integral Communities and Urban Arena.

Task 2 - Review of Documents

Consultant shall review City provided pertinent documents, draft Specific Plan, guiding / vision documents, goals & objectives, etc. related to the proposed project. Consultant shall help the City identify components that are either lacking or missing from the draft specific plan.

Task 3 - Development of the Baywalk Specific Plan

Based upon the site visit, review of existing documents, and discussions with Integral Communities and Urban Arena, Consultant shall further define and refine the contents of the Baywalk Specific Plan to ensure sufficient detail is provided so that the project's development delivers unique, place-making Landscape Architectural attributes in alignment with established goals and policies.

It will be critical that robust and detailed Development Standards as well as Landscape Design Standards (and not Guidelines) be prepared for each land use to create, define, and refine such items as the project's unique spaces and solutions, way-finding, placemaking, land use adjacencies, edges, wetlands (preservation and avoidance), parks & recreational facilities, open space, preserves, street sections and streetscaping, street furniture, lighting, screening/ buffering, views, pedestrian and vehicular spaces, parking, connectivity, trails, signage, walls & fences, setbacks, plant palettes, etc.

Consultant shall support the City through the development of the Baywalk Specific Plan document including Landscape Design Standards by providing guidance, identifying subject matter topics, reviewing, and providing comments to draft specific plans submitted to the City, etc.

Consultant shall not be responsible for preparing the Baywalk Specific Plan document

Task 4 - Meetings

Consultant shall attend meetings in-person or via Zoom as requested.

Consultant shall not provide Architectural, Civil, Electrical, Structural Engineering, Land Surveying, or Environmental services.

EXHIBIT B

COMPENSATION SCHEDULE

City shall compensate Consultant at a Time and Material professional services' billing rate of $185 per hour, not to exceed a maximum of $140,000.

Key staff personnel on project:

Jerry Gonsalves, Principal/Landscape Architect - $185 per hour
Bliss Gonsalves, Principal/Landscape Architect - $185 per hour

Reimbursable expenses include, but are not limited to, reprographics, printing, postage, travel, mileage, etc. Charges for reimbursable expenses are computed at actual cost plus 10%.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Authorizing the City Manager to Execute a First Contract Amendment for the Consulting Service Agreement with Raney Planning and Management, Inc. for the Baywalk Specific Plan Project

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The proposed item would authorize the City Manager to execute a First Amendment to the consulting service agreement with Raney Planning and Management, Inc. in an amount not to exceed $147,750 for California Environmental Quality Act (CEQA) planning services related to the proposed Baywalk Specific Plan Project.

FISCAL IMPACT

Staff is requesting the City Council allocate to the consultant budget $110,200 to cover consultant costs related to the processing of the proposed application and $10,000 contingency. The requested budget increase would cover the estimated cost for CEQA planning services by Raney Planning and Management, Inc. and associated staff time. The new total compensation under the consultant agreement will be $368,351.

Prior to execution of any consultant contract amendments, the applicant, Integral Communities, would be required to deposit the requested contract amendment amount into the existing Developer Deposit account. As such, there is no fiscal impact to the City.

RECOMMENDATION

City Council adopt the attached resolution authorizing the City Manager to execute a First Amendment to the consulting service agreements with Raney Planning and Management, Inc. for CEQA planning services related to the Baywalk Project.

BACKGROUND

In February 2021, the applicant, Integral Communities, filed a preliminary plan review application for the Baywalk Specific Plan Project, and staff presented the proposed project to the Land Use Subcommittee for feedback. The applicant has since submitted a formal application and staff is working on preparation of a Specific Plan document and Environmental Impact Report, pursuant to the California Environmental Quality Act (CEQA).

Raney Planning and Management, Inc. has provided their respective services to the City for more than one decade and were chosen for their thorough analyses and satisfactory work.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Due to the complexity of the project, staff and the applicant anticipate a full environmental impact report (EIR) be prepared pursuant to CEQA. This proposed first contract amendment would cover the cost associated with the preparation of the EIR and associated Traffic Impact Study (TIS) as well as City staff cost for the environmental review.

The proposed First Amendment to the Principal Agreement would allocate $110,200 for Raney Planning and Management, Inc. and a $10,000 contingency. Prior to entering into any contract, the City will require all requested funds associated with this proposed first contract amendment be submitted by the applicant.

ATTACHMENTS:

1. Proposed Resolution
2. First Amendment to the Consulting Services Agreement with Raney Planning and Management Inc.
    a. Attachment 1, Exhibit A – Consultant Scope of Services
    b. Attachment 2, Exhibit B – Compensation Schedule

Report Prepared By: Kelsey Gunter, Associate Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the City Manager to Execute A First Amendment to the Consulting Services Agreements with Raney Planning and Management, Inc. For the Baywalk Specific Plan Project	)))))	RESOLUTION NO. 24-

WHEREAS, in February 2021, Integral Communities ("Applicant") filed a preliminary plan review application, and staff presented the proposed "Baywalk Specific Plan Project" to the Land Use Subcommittee for feedback; and

WHEREAS, the Applicant has submitted a formal application for the development of the proposed project, located on the former power plant site, commonly known as the NRG Site, generally located at 696 West 10th Street; and

WHEREAS, due to the complexity of the project, staff and the Applicant anticipate an Environmental Impact Report (EIR) be prepared and recommends the City utilize an environmental planning consultant for the preparation; and

WHEREAS, Raney Planning and Management has provided their respective services to the City for more than one decade, and was chosen for their thorough analyses and satisfactory performance; and

WHEREAS, Applicant will be required to deposit funds with the City in an amount sufficient to reimburse the cost of project management consultants review services of $110,200 and $10,000 for contingency.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute the First Amendment to the Consulting Services Agreement with Raney Planning and Management, Inc. in an amount not to exceed $368,351, upon receipt of Developer Deposit funds from Integral Communities.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

FIRST AMENDMENT TO
CONSULTING SERVICES AGREEMENT BETWEEN
CITY OF PITTSBURG AND
RANEY PLANNING & MANAGEMENT, INC.

THIS First Amendment to the Principal Agreement made and entered into on July 1, 2021, hereafter referred to as Agreement, between Raney Planning and Management, Inc., a California Corporation, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 16th day of December, 2024.

WHEREAS, on July 1, 2021, the parties entered into an Agreement for environmental services for the Baywalk Project in the amount of $285,701; and

WHEREAS, the parties desire to increase the term, add services and increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Term. Section 1.1 of the Agreement term is hereby amended to read as follows: The term of this Agreement shall begin on the Effective Date and shall end on July 1, 2027, or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein

2. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City hereby agrees to pay Consultant a sum not to exceed three-hundred and sixty-eight thousand, three hundred and fifty-one dollars ($368,351), as set forth in Exhibit B, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Exhibit A Scope of Services. Exhibit A is hereby amended with Attachment 1 of this First Amendment.

4. Exhibit B Compensation Schedule. Exhibit B is hereby replaced with Attachment 2 of this First Amendment.

5. Integration. This First Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this First Amendment. This First Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

6. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this First Amendment and the Agreement, the provisions of this First Amendment shall control in all respects.

7. Ambiguities. The parties have each carefully reviewed this First Amendment and have agreed to each term of this First Amendment. No ambiguity shall be presumed to be construed against either party.

8. Counterparts. This First Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

9. Authority. The person signing this First Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this First Amendment on behalf of Consultant.

IN WITNESS WHEREOF, the parties have entered into this First Amendment on the day and year first hereinabove appearing.

CONSULTANT:

Raney Planning & Management, Inc., a corporation

By: _____

Cindy Gnos, Senior Vice President

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: _____

Garrett Evans, City Manager

APPROVED AS TO FORM:

By: _____

Donna Mooney, City Attorney

EXHIBIT A

SCOPE OF SERVICES

The proposed first contract amendment would amend the Principal Agreement's Scope of Services to add the following Services:

1. Prepare a revised Project Description.
2. Prepare a revised Notice of Preparation (NOP) to address the changes to the project. The revised NOP would be re-released for public review and comment.
3. Revise the Introduction, Executive Summary, Cultural and Tribal Cultural Resources, Hazards and Hazardous Materials, Hydrology and Water Quality, Public Services/Utilities and Service Systems, and Transportation chapters, as may be needed due to the passage of time and changes to the project description.
4. Provide additional hours for project management by Raney Planning and Management, Inc., including attending regular project team meetings.
5. Allow Raney Planning and Management, Inc. sub-consultant, TJKM to update the Traffic Impact Analysis (TIA) and address City comments, as well as changes to the proposed project.

EXHIBIT B

COMPENSATION SCHEDULE

PROPOSED COST ESTIMATE				
Baywalk Mixed Use Project				
		Approved Budget	Remaining Budget	Additional Requested Budget*
Task 1	Project Initiation	$ 1,260.00	-	-
Task 2	Project Description	$ 3,320.00	-	$ 4,190.00
Task 3	Prepare NOP	$ 2,140.00	-	$ 2,695.00
Task 4	Prepare Administrative Draft EIR	$ 6,520.00	$ 4,382.50	$ 3,750.00
	Technical Sections			
Task 4.1	Introduction, Executive Summary, and PD	$ 1,620.00	$ 1,276.25	$ 820.00
Task 4.2	Environmental Setting, Impacts, Mitigation Measures			
a	Aesthetics	$ 4,620.00	$ 4,620.00	$ 1,170.00
b.1	Air Quality & GHG Emissions (including Energy)	$ 5,500.00	$ 5,240.00	$ 1,370.00
b.2	*AQ/GHG Technical Analysis*	$ 3,280.00	$ 3,242.50	$ 600.00
b.3	*Health Risk Assessment*	$ 3,840.00	$ 3,840.00	$ 700.00
b.4	*GHG Reduction Plan*	$ 7,640.00	$ 7,640.00	$ 1,400.00
c	Biological Resources	$ 5,060.00	$ 5,060.00	$ 1,270.00
d	Cultural and Tribal Cultural Resources	$ 4,120.00	$ 1,367.50	$ 2,920.00
e	Geology and Soils	$ 4,840.00	$ 4,840.00	$ 1,220.00
f	Hazards and Hazardous Materials	$ 5,560.00	$ 5,077.50	$ 2,090.00
g	Hydrology and Water Quality (including Drainage)	$ 4,840.00	$ 2,557.50	$ 3,645.00
h	Land Use and Planning & Population and Housing	$ 5,780.00	$ 5,780.00	$ 1,460.00
i	Noise	$ 4,340.00	$ 4,340.00	$ 1,080.00
j	Public Services & Utilities and Service Systems	$ 5,780.00	$ 4,298.75	$ 2,700.00
k	Transportation	$ 5,960.00	$ 3,863.75	$ 3,780.00
	Other Sections			
Task 4.3	Effects Not Found to Be Significant	$ 1,750.00	$ 1,530.00	$ 460.00
Task 4.4	Statutorily Required Sections	$ 2,470.00	$ 2,415.00	$ 650.00
Task 4.5	Alternatives	$ 4,270.00	$ 4,270.00	$ 1,075.00
Task 5	Prepare Screencheck Draft EIR	$ 5,900.00	$ 5,900.00	$ 1,550.00
Task 6	Prepare Public Review Draft EIR	$ 3,100.00	$ 3,100.00	$ 835.00
Task 7	Prepare Administrative Final EIR	$ 7,060.00	$ 7,060.00	$ 1,770.00
Task 8	Prepare MMRP	$ 2,060.00	$ 2,060.00	$ 500.00
Task 9	Prepare Screencheck Final EIR	$ 2,990.00	$ 2,990.00	$ 790.00
Task 10	Prepare Final EIR	$ 1,970.00	$ 1,970.00	$ 510.00
Task 11	Prepare FOF/SOC and NOD	$ 2,720.00	$ 2,720.00	$ 650.00
Task 12	Project Management, Meetings, and Hearings	$ 15,880.00	$ 1,490.00	$ 20,550.00
Raney Labor Budget		***$ 136,190.00***	***$ 102,931.25***	***$ 66,200.00***
Sub-Consultant/Expenses				
	Copying/Printing*	$ 5,000.00	$ 4,501.97	-
	Sub-consultant: Saxelby Acoustics	$ 11,524.00	-	-
	Sub-consultant: West Yost Associates	$ 30,500.00	$ 8,969.00	-
	Sub-consultant: TJKM	$ 82,000.00	$ 15,696.50	$ 40,000.00
	Extra Budget Remaining from F&P	$ 6,895.00	$ 16,837.50	-
	10% administrative fee	$ 13,592.00	$ 5,290.13	$ 4,000.00
Sub-Consultant/Expenses Budget		***$ 149,511.00***	***$ 51,295.10***	***$ 44,000.00***
Total Budget		**$ 285,701.00**	**$ 154,226.35**	**$ 110,200.00**

**Additional Requested Budget includes the requested budget increases outlined in Contract Amendment No. 1 related to additional Raney labor, Raney's 2024 billing rates, and TJKM's additional transportation analyses*

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Granting an Easement to Pacific Gas & Electric to Provide Service for Project 3080 - Pittsburg Premier Fields

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

Project 3080 - Pittsburg Premiere Fields (the "Project") requires electric, gas, and communication facilities to power restrooms, lighting, and future site improvements. An easement to Pacific Gas & Electric (PG&E) is necessary to install, operate, and maintain the facilities needed to serve the site.

FISCAL IMPACT

There is no fiscal impact associated with granting this easement.

RECOMMENDATION

City Council adopt the attached Resolution authorizing the City Engineer to execute an Easement Deed effective December 17, 2024, authorizing rights to PG&E for electric, gas, and communications services and other appurtenant improvements within a 568 square foot area in the northern portion of the property, as described and indicated on the easement deed attached to this report.

BACKGROUND

On June 19, 2023, the City Council adopted Resolution No. 23-14317, approving the Operating Budget for Fiscal Year 2023/24, allocating $1,615,000 of General Fund Surplus Funds to the Project.

On September 16, 2024, the City Council adopted Resolution No. 24-14533, adopting the 5-year Capital Improvement Program, allocating $1,842,811 of American Rescue Plan Act (ARPA) funds, $438,461 of Measure M Surplus funds, and $2,263,000 of Parks Dedication Fee funds to the Project.

On November 18, 2024, the City Council approved Resolution No. 24-14566, accepting the plans and specifications, allocating additional funds, and awarding a construction contract for the Project.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The current phase of the Project will construct a temporary multi-purpose field and includes additional improvements such as a traffic signal and striping, lighting, a new parking lot, and trail connections. There is no existing public utilities easement at the location required for PG&E to install their facilities.

ATTACHMENTS: Resolution
Easement Deed

Report Prepared By: Jolan Longway, Development Services Supervisor

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Granting an Easement to Pacific Gas &)
Electric to Provide Service for Project) RESOLUTION NO. 24
3080 - Pittsburg Premier Fields)

WHEREAS, Project 3080 - Pittsburg Premier Fields ("Project") will construct a temporary multi-purpose field and additional improvements such as a traffic signal and striping, lighting, a new parking lot, and trail connections; and

WHEREAS, on November 18, 2024, the City Council approved Resolution No. 24-14566, accepting the plans and specifications, allocating additional funding, and awarding a construction contract for the Project; and

WHEREAS, there is a need to convey an easement to Pacific Gas & Electric (PG&E) to provide the necessary electric, gas, and communication services, and other appurtenant improvements, to support the construction of the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg authorizes the City Engineer to execute an Easement Deed to PG&E for City parcel, Assessor's Parcel Number 0094-080-045.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY
300 Lakeside Drive, Suite 210
Oakland, CA 94612
Attn: Land Rights Library

Location: City/Uninc_____
Recording Fee $_____
Document Transfer Tax $ _____
[ ] This is a conveyance where the consideration and Value is less than $100.00 (R&T 11911).
[ ] Computed on Full Value of Property Conveyed, or
[ ] Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale
[ ] Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

_____
Signature of declarant or agent determining tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

LD# 2402-01-10077 EASEMENT DEED

CITY OF PITTSBURG, a municipal corporation,

hereinafter called Grantor, hereby grants to PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called Grantee, the right from time to time to excavate for, construct, reconstruct, replace (of initial or any other size), remove, maintain, inspect, and use facilities and associated equipment for public utility purposes, including, but not limited to electric, gas, and communication facilities, together with a right of way therefor, on, over, and under the easement area as hereinafter set forth, and also ingress thereto and egress therefrom, over and across the lands of Grantor situated in the City of Pittsburg, County of Contra Costa, State of California, described as follows:

(APN 094-080-045)

The parcel of land described in the deed from The United States of America and the City of Pittsburg, a municipal corporation dated December 8, 1960 and recorded as Liber 3759 Page 1, Contra Costa County Records.

The easement area is described as follows:

The Parcel of land described in EXHIBIT “A” and shown on EXHIBIT “B” attached hereto and made a part hereof.

Grantor further grants to Grantee the right, from time to time, to trim or to cut down, without Grantee paying compensation, any and all trees and brush now or hereafter within said easement area, and shall have the further right, from time to time, to trim and cut down trees and brush along each side of said easement area which now or hereafter in the opinion of Grantee may interfere with or be a hazard to the

facilities installed hereunder, or as Grantee deems necessary to comply with applicable state or federal regulations.

Grantor also grants to Grantee the right to use such portion of said lands contiguous to said easement area as may be reasonably necessary in connection with the excavation, construction, reconstruction, replacement, removal, maintenance and inspection of said facilities.

Grantor hereby covenants and agrees not to place or construct, nor allow a third party to place or construct, any building or other structure, or store flammable substances, or drill or operate any well, or construct any reservoir or other obstruction within said easement area, or diminish or substantially add to the ground level within said easement area, or construct any fences that will interfere with the maintenance and operation of said facilities.

Grantor further grants to Grantee the right to apportion to another public utility (as defined in Section 216 of the California Public Utilities Code) the right to excavate for, construct, reconstruct, replace, remove, maintain, inspect, and use the communications facilities within said easement area including ingress thereto and egress therefrom.

Grantor acknowledges that they have read the "Grant of Easement Disclosure Statement", EXHIBIT "C", attached hereto and made a part hereof.

This document may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.

Dated: _____, _____.

I hereby certify that a resolution was adopted on the ____ day of _____, 20____, by the _____ authorizing the foregoing grant of easement.

By_____

CITY OF PITTSBURG, a municipal corporation,

By _____
Name
Title

By _____
Name
Title

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____, before me, _____ Notary Public,
Insert name

personally appeared _____

_____,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Signature of Notary Public

CAPACITY CLAIMED BY SIGNER

[ ] Individual(s) signing for oneself/themselves

[ ] Corporate Officer(s) of the above named corporation(s)

[ ] Trustee(s) of the above named Trust(s)

[ ] Partner(s) of the above named Partnership(s)

[ ] Attorney(s)-in-Fact of the above named Principal(s)

[ ] Other _____

EXHIBIT "A"
LEGAL DESCRIPTION

APN: 094-080-045

AN EASEMENT, OVER A PORTION OF PARCEL 2 AS SAID PARCEL IS DESCRIBED IN RESOLUTION 3567, BEING A QUIT CLAIM DEED DATED DECEMBER 8, 1960 AND RECORDED IN BOOK 3759, PAGE 1, CONTA COSTA COUNTY OFFICIAL RECORDS; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHERLY LINE OF SAID PARCEL 2, SAME BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST LELAND ROAD, FROM WHICH A FOUND STANDARD STREET MONUMENT BEARS NORTH 17°41'17" EAST, 42.00 FEET AND NORTH 72°18'43" WEST, 182.58 FEET;

THENCE, ALONG SAID NORTHERLY LINE OF SAID PARCEL 2, SAME BEING THE SOUTHERLY RIGHT OF WAY LINE OF WEST LELAND DRIVE, SOUTH 72°18'43" EAST, 12.00 FEET;

THENCE, CROSSING SAID PARCEL 2 THE FOLLOWING SEVEN (7) COURSES AND DISTANCES;

1. SOUTH 18°06'18" WEST, 7.37 FEET;
2. SOUTH 72°18'43" EAST, 4.00 FEET;
3. SOUTH 18°05'47" WEST, 24.00 FEET;
4. NORTH 72°18'43" WEST, 20.00 FEET;
5. NORTH 18°05'55" EAST, 24.00 FEET;
6. NORTH 72°18'43" WEST, 4.00 FEET, AND
7. NORTH 18°06'01" EAST, 7.37 FEET TO THE **POINT OF BEGINNING**;

SAID EASEMENT AREA CONTAINING 568 SQUARE FEET, MORE OR LESS, AS SHOWN ON ATTACHED EXHIBIT "B," WHICH BY THIS REFERENCE IS MADE A PART HEREOF.

BASIS OF BEARING:

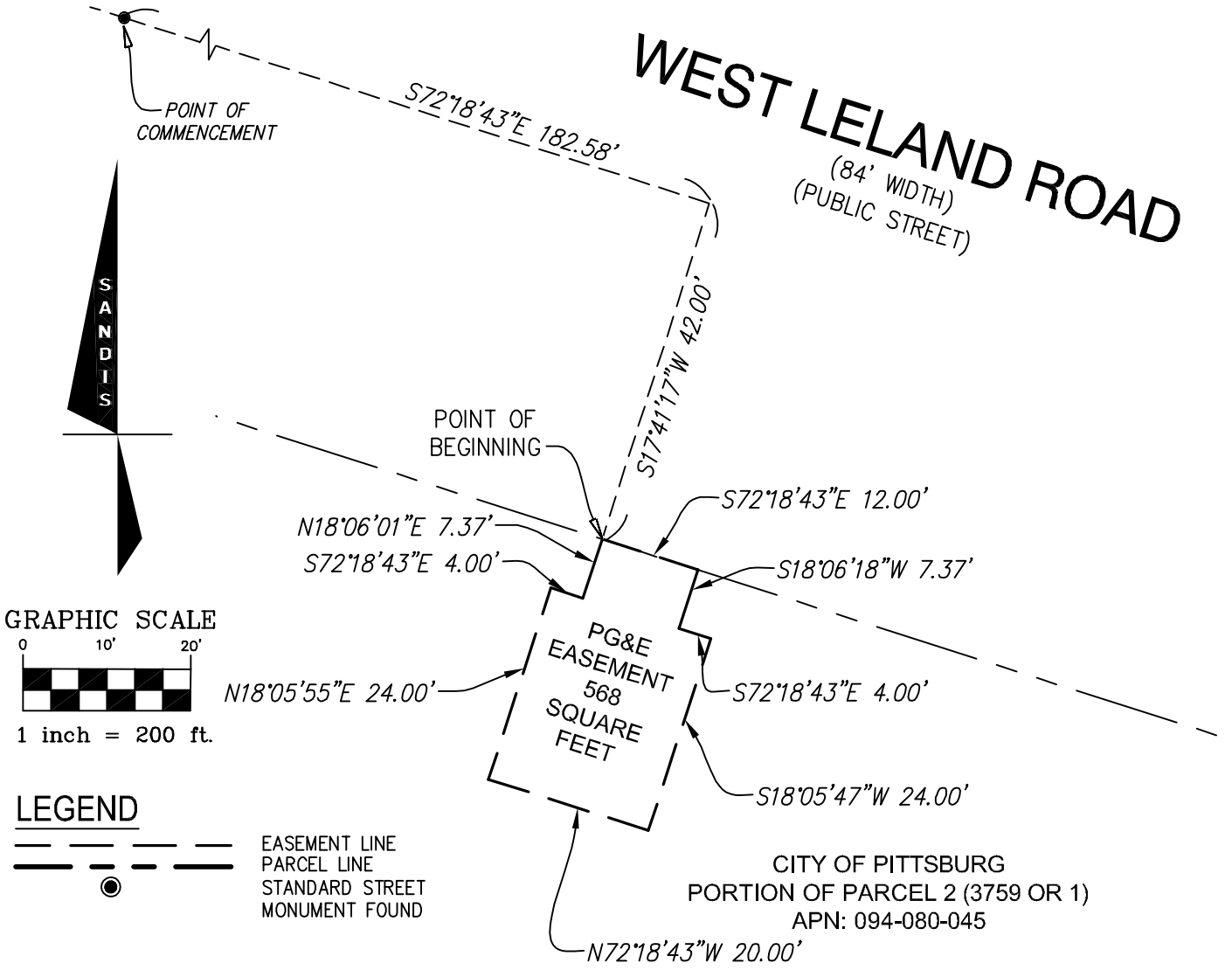
THE BEARING SOUTH 72°18'43" EAST BETWEEN 2 FOUND STANDARD STREET MONUMENTS, LOCATED WITHIN WEST LELAND ROAD, AS SHOWN ON THAT MAP ENTITLED "SUBDIVISION 5491, WOODSIDE UNIT 2", FILED JULY 30, 1979 IN BOOK 227 OF MAPS PAGES 32-39, CONTRA COSTA COUNTY OFFICIAL RECORDS, WAS TAKEN AS THE BASIS OF BEARING FOR THIS EASEMENT.

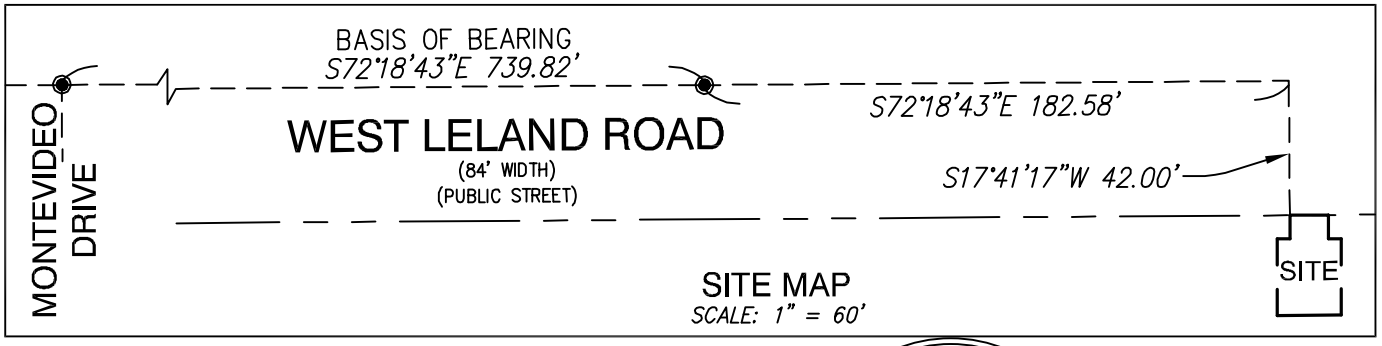
THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE CALIFORNIA PROFESSIONAL LAND SURVEYORS ACT.



Laura J. Cabral, PLS 7756

Date: October 9, 2024





SURVEY NOTES

1. UNLESS OTHERWISE SHOWN, ALL COURSES EXTEND TO OR ALONG ALL BOUNDARIES OR LINES.

LICENSED LAND SURVEYOR
LAURA J. CABRAL
NO. LS7756
STATE OF CALIFORNIA

PLAT TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT B

SANDIS
BUILD ON.
SANDIS.NET

DATE:	10/09/2024
SCALE:	1"=20'
BY:	WAH
PROJECT No.:	222400

EASEMENT
2225 JOHN HENRY JOHNSON PARKWAY
APN: 094-080-045
PITTSBURG CA

SHEET 1 OF 1 SHEETS

EXHIBIT "C"

GRANT OF EASEMENT DISCLOSURE STATEMENT

This Disclosure Statement will assist you in evaluating the request for granting an easement to Pacific Gas and Electric Company (PG&E) to accommodate a utility service extension to PG&E's applicant. **Please read this disclosure carefully before signing the Grant of Easement.**

- You are under no obligation or threat of condemnation by PG&E to grant this easement.

- The granting of this easement is an accommodation to PG&E's applicant requesting the extension of PG&E utility facilities to the applicant's property or project. Because this easement is an accommodation for a service extension to a single customer or group of customers, PG&E is not authorized to purchase any such easement.

- By granting this easement to PG&E, the easement area may be used to serve additional customers in the area and **may be used to install additional utility facilities.** Installation of any proposed facilities outside of this easement area will require an additional easement.

- Removal and/or pruning of trees or other vegetation on your property may be necessary for the installation of PG&E facilities. You have the option of having PG&E's contractors perform this work on your property, if available, or granting permission to PG&E's applicant or the applicant's contractor to perform this work. Additionally, in order to comply with California fire laws and safety orders, PG&E or its contractors will periodically perform vegetation maintenance activities on your property as provided for in this grant of easement in order to maintain proper clearances from energized electric lines or other facilities.

- The description of the easement location where PG&E utility facilities are to be installed across your property must be satisfactory to you.

- The California Public Utilities Commission has authorized PG&E's applicant to perform the installation of certain utility facilities for utility service. In addition to granting this easement to PG&E, your consent may be requested by the applicant, or applicant's contractor, to work on your property. Upon completion of the applicant's installation, the utility facilities will be inspected by PG&E. When the facility installation is determined to be acceptable the facilities will be conveyed to PG&E by its applicant.

By signing the Grant of Easement, you are acknowledging that you have read this disclosure and understand that you are voluntarily granting the easement to PG&E. Please return the signed and notarized Grant of Easement with this Disclosure Statement attached to PG&E. The duplicate copy of the Grant of Easement and this Disclosure Statement is for your records.

ADMINISTRATIVE BLOCK

Attach to LD: 2402-01-10077
Area, Region or Location: 2
Land Service Office: Concord
Line of Business: Electric Distribution (43)
Business Doc Type: Easements
MTRSQ: 24.02.01.13.22,
FERC License Number: N/A
PG&E Drawing Number: N/A
Plat No.: B1406, B1411
LD of Affected Documents: N/A
LD of Cross Referenced Documents: N/A
Type of interest: Electric Underground Easements (4), Utility Easement (86)
SBE Parcel: N/A
% Being Quitclaimed: N/A
Order or PM: 35425631
JCN: N/A
County: Contra Costa
Utility Notice Number: N/A
851 Approval Application No: N/A ;Decision: N/A
Prepared By: PJN8
Checked By: DAK8

(THIS PAGE MUST BE RECORDED WITH DOCUMENT)

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Accept U.S. Department of Transportation Safe Streets and Roads for All 2024 Planning and Demonstration Grant Funds and Allocate Local Matching Funds

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The City has been awarded the Safe Streets and Roads for All (SS4A) Planning and Demonstration Grant (Grant) in the amount of $408,000 to update the Pittsburg Moves Active Transportation Plan and American with Disability Act (ADA) Transition Plan. If approved, the resolution will accept the grant funds and authorize the allocation of matching funds for a total approved project budget of $510,000.

FISCAL IMPACT

Under the Grant guidelines, the City is required to provide twenty percent of local matching funds in the amount of $102,000. These funds will be allocated from HUTA Gas Tax (Fund 203).

RECOMMENDATION

City Council adopt the attached Resolution to accept the $408,000 SS4A Planning and Demonstration Grant and allocate $102,000 as local matching funds from Fund 203.

BACKGROUND

On February 2, 2024, the U.S. Department of Transportation (USDOT) requested applications for the Grant which provides funding to develop, complete, or supplement a strategic plan to prevent roadway fatalities and injuries. On August 28, 2024, staff submitted an application to the U.S. Department of Transportation for the Grant in the amount of $510,000, requesting funds to update the Pittsburg Moves Active Transportation Plan and ADA Transition Plan.

On November 15, 2024, USDOT awarded the City the Grant in the amount of $408,000.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Updating the Pittsburg Moves Active Transportation Plan will support the current and predicted growth levels of the City by ensuring infrastructure remains consistent with the demand. New areas may become high-traffic zones for pedestrians, cyclists, and motorists. These updates will assist the City to bridge the current gaps by focusing on the safety planning that is required.

An ADA Transition Plan is necessary to maintain compliance with federal and other government regulations. Updating this plan will ensure that policies and safety measures are implemented to better serve the high percentage of our residents with disabilities.

ATTACHMENTS: Resolution
Pittsburg Moves ATP and ADA Transition Plan Update CIP Form

Report Prepared By: Nhat Phan, Associate Engineer

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Accepting U.S. Department of Transportation Safe Streets and Roads for All 2024 Planning and Demonstration Grant And Allocate Local Matching Funds	))))	RESOLUTION NO. 24-

WHEREAS, on October 21, 2024, the City Council adopted Resolution No. 24-14554, authorizing staff to apply for the U.S. Department of Transportation (USDOT) Safe Streets and Roads for All (SS4A) 2024 Planning and Demonstration Grant (Grant); and

WHEREAS, on November 15, 2024, USDOT awarded the City the SS4A 2024 Planning and Demonstration Grant funds in the amount of $408,000; and

WHEREAS, as required by the Grant guidelines, the City is required to provide twenty percent of local matching funds in the amount of $102,000; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby accepts the USDOT SS4A 2024 Planning and Demonstration Grant in the amount of $408,000 and allocates $102,000 as local matching funds from HUTA Gas Tax (Fund 203).

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Project Title: **Project #:**

Pittsburg Moves Active Transportation and ADA Transition Plan Updates — TBD

Project Category:	General
Location:	Citywide
Project Manager:	Nhat Phan
Project Priority:	1B – Essential
Project Status:	New
Est. Completion Date:	2025/26

Description/Justification:

The Pittsburg Moves Active Transportation Plan (ATP) was last updated in December 2020. The Pittsburg Moves ATP is not a one-time document, but a living plan that is constantly evolving to reflect the needs of the community, environmental considerations, and state policies. Regular updates to the Pittsburg Moves ATP can help address gaps in the transportation network, particularly in underserved areas, ensuring that all residents, regardless of income or physical ability, have access to safe and convenient transportation options.

The Americans with Disabilities Act (ADA) states that a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination against people with disabilities. Updating the ADA Transition Plan will assist the City of Pittsburg, its City Council and staff in identifying policy, programmatic, and physical barriers to accessibility and in developing barrier removal solutions that will facilitate the opportunity of access to all individuals. This includes, but is not limited to, sidewalks, curb ramps, buildings and other city owned facilities.

Supplemental Information:

On November 15, 2024, USDOT awarded the City an SS4A 2024 Planning and Demonstration Grant in the amount of $408,000 to update the Pittsburg Moves ATP and ADA Transition Plans.

PROJECT FINANCING	CURRENT		PROPOSED					
PROJECT EXPENDITURES	**Prior**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**	**TOTAL**
1101 **Staff Time**			$ 20,000					**$ 20,000**
2122 **Design**			$ 470,000					**$ 470,000**
2372 **Administrative Overhead**			$ 20,000					**$ 20,000**
TOTAL			**$ 510,000**					**$ 510,000**
PROJECT FUNDING	**Prior**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**	**TOTAL**
Federal/State Funding			$ 408,000					**$ 408,000**
203 **HUTA**			$ 102,000					**$ 102,000**
TOTAL			**$ 510,000**					**$ 510,000**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting Project 8336 - Americana Park Bypass Channel as Complete and Authorizing the City Engineer to File a Notice of Completion

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

Project 8336 - Americana Park Bypass Channel (the "Project") constructed a bypass channel to remediate the storm water floods on North Parkside Drive. This resolution will accept the construction contract as complete and authorize the City Engineer to file a Notice of Completion.

FISCAL IMPACT

Funding for construction was provided by Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funds, American Rescue Plan Act (ARPA) funds, Highway Users Tax Account (HUTA) (Fund 203) funds, Water Operations (Fund 501) funds, 2006 Tax Exempt Tax Allocation Bonds (TAB), 2006 Taxable Tax Allocation Bonds, and Infrastructure Repair and Replacement (IRR) (Fund 310) funds as follows:

• $374,879	FEMA HMGP	(Reso. No. 23-14370)
• $103,000	ARPA	(Reso. No. 24-14453)
• $101,800	HUTA	(Reso. No. 23-14318)
• $245,000	Water Operations Fund	(Reso. No. 23-14318 & 24-14453)
• $89,127	Tax exempt TAB	(Reso. No. 08-1287)
• $30,872	2006 Taxable TAB	(Reso. No. 08-1287)
• $610,000.44	IRR	(Reso. No. 14-12100 & 24-14453)

The total approved budget is $1,554,678.44. After payment of all expenditures for staff time, design, construction, release of retention, and project close out, the total anticipated expenditures for the Project are $1,285,000. Any unspent funds should be returned to the source fund account. An updated CIP Project Sheet is attached.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution accepting the Project as complete and authorizing the City Engineer to file a Notice of Completion.

BACKGROUND

On June 2, 2008, City Council adopted Resolution No. 08-1287, allocating $89,127 of 2006 Tax Exempt Tax Allocation Bond funds, and $30,872 of 2006 Taxable Tax Allocation Bond funds. Said bond funds were fully expended on the original design of the Project from 2008 through 2010.

On March 17, 2014, City Council adopted Resolution No. 14-12100, allocating $580,000.44 of Infrastructure Repair and Replacement funds. On June 15, 2023, City Council adopted Resolution No. 23-14318, approving the Five-Year Capital Improvement Program for Fiscal Years (FY) 2023/24 through 2027/28, allocating $101,800 of Highway Users Tax Account funds and $100,000 from the Water Operation funds.

On September 18, 2023, City Council adopted Resolution No. 23-14370, accepting the FEMA Hazard Mitigation Grant in the amount of $374,879. On April 3, 2024, three bids were received for project construction. Kroeker, Inc. was the lowest responsive, responsible bidder with a base bid of $805,103.82.

On April 15, 2024, City Council adopted Resolution No. 24-14453, allocating $103,000 of ARPA funds, $30,000 of Infrastructure Repair and Replacement funds, and $145,000 of Water Operation funds. This resolution also accepted the plans and specifications and awarded a construction contract to Kroeker, Inc. in the amount of $805,103.82. During construction, there was a total of three contract change orders issued in the amount of -$30,388.76 for a total contract amount of $774,715.03

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

The detention basin located in the Americana Park Subdivision was prone to overflowing on North Parkside Drive during heavy rains. The Project addressed this flooding by constructing a bypass channel across the PG&E transmission corridor. This channel will redirect storm water to another channel capable of directing the increased water volume, preventing overflow along North Parkside Drive.

ATTACHMENTS: Resolution
CIP Project Sheet

Report Prepared by: Gabriel Piña, Associate Engineer

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Accepting Project 8336 - Americana)
Park Bypass Channel as Complete)
And Authorizing the City Engineer to File) RESOLUTION NO. 24-
A Notice of Completion)

WHEREAS, Project 8336 - Americana Park Bypass Channel (the "Project") constructed a bypass channel to remediate the storm water floods on North Parkside Drive; and

WHEREAS, on June 2, 2008, City Council adopted Resolution No. 08-1287, allocating $89,127 of 2006 Tax Exempt Tax Allocation Bond funds, and $30,872 of 2006 Taxable Tax Allocation Bond funds. The bond funds were fully expended in the original design of the Project from 2008 to 2010; and

WHEREAS, on March 17, 2014, City Council adopted Resolution No. 14-12100, allocating $580,000.44 of Infrastructure Repair and Replacement funds; and

WHEREAS, on June 15, 2023, City Council adopted Resolution No. 23-14318, approving the Five-Year Capital Improvement Program for Fiscal Years (FY) 2023/24 through 2027/28, allocating $101,800 of Highway Users Tax Account funds and $100,000 from the Water Operation funds; and

WHEREAS, on September 18, 2023, City Council adopted Resolution No. 23-14370, accepting the FEMA Hazard Mitigation Grant in the amount of $374,879; and

WHEREAS, on April 3, 2024, three bids were received for project construction. Kroeker, Inc. was the lowest responsive, responsible bidder with a base bid of $805,103.82; and

WHEREAS, on April 15, 2024, City Council adopted Resolution No. 24-14453, allocating $103,000 of ARPA funds, $30,000 of Infrastructure Repair and Replacement funds, and $145,000 of Water Operation funds. This resolution also accepted the plans and specifications and awarded a construction contract to Kroeker, Inc. in the amount of $805,103.82 ; and

WHEREAS, there were three contract change orders in the amount of -$30,388.76 for a total contract amount of $774,715.03; and

WHEREAS, the total anticipated expenditures for the Project, including staff time, design, construction, release of retention, and project close out, are $1,285,000, and the estimated remaining balance will be returned to the source fund account.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby accepts the Project as complete and authorizes the City Engineer to file a Notice of Completion and file said document with the office of the Recorder of the County of Contra Costa, State of California, within 10 days from the date hereof.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST BY:

_____
Alice E. Evenson, City Clerk

Project Title: **Project #:**

Americana Park Bypass Channel 8336



Project Category:	Storm
Location:	East of Americana Park and south of N. Parkside Drive
Project Manager:	M. Mena
Project Priority:	1A – Essential
Project Status:	Construction
Est. Completion Date:	2024/25

Description/Justification:

The purpose of this project is to reduce flood hazards and mitigate stormwater overflows from the detention basin in Americana Park and North Parkside Drive.

The project includes excavating a new bypass channel from the Americana Park detention basin, south of N. Parkside Drive, eastward across the parcel of land owned by PG&E, and onto the nearby creek. Additional actions include the relocation of two waterlines (city and privately owned), replacing existing irrigation valves, and additional electrical work.

Supplemental Information:

The project will require environmental permits from USACE, SFWQCB, and CDFW. In addition, coordination will be needed with PG&E, Cal OES, and FEMA. Federal/State Funding Sources: Hazard Mitigation Grant Program (HMGP) Federal Funds.

PROJECT FINANCING		CURRENT		PROPOSED					
PROJECT EXPENDITURES		**Prior**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**	**TOTAL**
1101	**Staff Time**	$ 17,200	$ 39,400	$ 18,270					**$ 74,870**
2122	**Design**	$ 294,300	$ 15,000						**$ 309,300**
2281	**Construction**	$ 81,800	$ 168,000	$ 578,360					**$ 828,160**
2372	**Administrative Overhead**	$ 15,000	$ 39,400	$ 18,270					**$ 72,670**
TOTAL		**$ 408,300**	**$ 261,800**	**$ 614,900**					**$ 1,285,000**
PROJECT FUNDING		**Prior**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**	**TOTAL**
203	**HUTA**		$ 101,800						**$ 101,800**
298	**ARPA**		$ 103,000						**$ 103,000**
310	**IRRF**	$ 580,000	$ 30,000						**$ 610,000**
501	**Water Operations**		$ 245,000						**$ 245,000**
	Federal/State	$ 374,879							**$ 374,879**
	Other	$ 119,999							**$ 119,999**
TOTAL		**$ 1,074,878**	**$ 479,800**						**$ 1,554,678**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Amend the Master Pay Schedule to Include Amendments to the Seasonal Salary Schedule and Previously Approved Positions and Compensation

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

Effective January 1, 2025, the California minimum wage will increase from $16.00 per hour to $16.50 per hour. As the seasonal salary schedule presently has wages below the minimum, the City is required to increase the salaries affected by the State's new minimum wage and update the salary schedule to comply with CalPERS' interpretation of the requirements of California Code of Regulations, Title 2, Section 570.5 by amending the single master pay schedule.

FISCAL IMPACT

The fiscal impact for the remainder of Fiscal Year 2024/25 is estimated to be $2,730 based on twenty-one Recreation Leaders who work an estimated 20 hours per week between April and June. Such costs will be absorbed by the current department's budget. No additional appropriations are required.

RECOMMENDATION

It is recommended that the City Council adopt a resolution to amend the seasonal salary schedule effective December 22, 2024, the first pay period of 2025, and to amend the City of Pittsburg's master pay schedule for all employee classifications, so the City is in compliance with the requirements of the California Code of Regulations, Title 2, Section 570.5 and the California Public Employees' Retirement System (CalPERS) relating to publicly available pay schedules for purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1.

BACKGROUND

The State's minimum wage will increase from $16.00 to $16.50 per hour effective January 1, 2025. The City is required to pay employees an hourly wage that is at, or above the minimum wage.

To comply with CalPERS' interpretation of the requirements of California Code of Regulations, Title 2, Section 570.5 by amending the single master pay schedule already on the City's website representing all previously approved actions on the individual classifications of the pay schedule. The single master pay schedule will be submitted to the City Council for approval each time any single MOU or compensation plan is brought to the City Council for approval.

CalPERS, pursuant to their interpretation of California Code of Regulations, Title 2, Section 570.5, recommends all CalPERS employers to maintain their compensation levels in one publicly available document, approved and adopted by the governing body, which must meet all of the following requirements:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identifies the position title for every employee position;
- Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates an effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years; and
- Does not reference another document in lieu of disclosing the pay rate.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

The increase due to the minimum wage law has an impact on the City's seasonal classifications. The City currently has approximately twenty-one employees at less than minimum wage whose salary needs to be adjusted.

The fiscal impact is estimated at $2,730 assuming the affected Recreation employees work 20 hours a week between April and June.

The proposed changes have been reviewed and approved by the Recreation Department. Staff will work with affected departments to implement the salary adjustments for seasonal employees effective December 22, 2024, the beginning of the first pay period of 2025.

Exhibit A demonstrates the proposed changes to the seasonal classification plan. In accordance with the City's Personnel Rule 11.1, the City Council is asked to establish salary ranges. Salary ranges are set for each class by the City Council.

The adoption of the resolution will comply with CalPERS' interpretation of the requirements of Code of Regulations section 570.5 by amending the single master pay schedule already on the City's website representing all previously approved actions on the individual classifications of the pay schedule.

ATTACHMENTS: Exhibit A – Salary Schedule
Resolution

Report Prepared By: Griselda Clift, Senior Human Resources Analyst

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Amending the Master Pay Schedule to Include Amendments to the Seasonal Salary Schedule and Previously Approved Positions and Compensation

RESOLUTION NO.24-

WHEREAS, the California Public Employees' Retirement System (CalPERS) has requested all CalPERS employers list their compensation levels on one document, approved and adopted by the governing body, in accordance with Title 2 California Code of Regulations section 570.5, and meeting all of the following requirements thereof:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
- Identifies the position title for every employee position;
- Shows the pay rate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates an effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years; and
- Does not reference another document in lieu of disclosing the pay rate; and

WHEREAS, the State of California minimum wage increased from $16.00 per hour to $16.50 per hour effective January 1, 2025; and

WHEREAS, the current seasonal salary schedule has salary steps which are less than the new minimum wage and the City of Pittsburg is required to pay employees at the minimum wage or greater; and

WHEREAS, the salary schedule includes title changes, and is prepared for the 2025 State minimum wage increase; and

WHEREAS, the City now desires to amend the master pay schedule to include previously approved compensation levels for all bargaining groups and all compensation plans of the City of Pittsburg; and

WHEREAS, the City's Personnel Rules call for the City Council to establish the salary ranges for classifications; and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby amends the master pay schedule as shown in the attached salary schedule.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

CITY OF PITTSBURG

Exhibit A

MONTHLY SALARY SCHEDULE

CLASSIFICATION	CODE	EFFECTIVE	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Top Step w/Incentives	UNIT
Account Clerk	170	07/07/24	4,918	5,164	5,423	5,694	5,978			6,028	MISC A
Accountant I	355	07/07/24	6,693	7,027	7,379	7,748	8,135			8,185	MPC
Accountant II	500	07/07/24	7,492	7,867	8,260	8,673	9,107			9,157	MPC
Accounting Supervisor	747	07/07/24	8,533	8,960	9,408	9,878	10,372			10,422	MPC
Accounting Technician	220	07/07/24	5,742	6,030	6,331	6,648	6,980			7,030	MISC A
Administrative Analyst I	390	07/07/24	7,311	7,677	8,060	8,463	8,887			8,937	MPC
Administrative Analyst II	702	07/07/24	8,464	8,888	9,332	9,799	10,289			10,339	MPC
Administrative Assistant	160	07/07/24	4,955	5,203	5,463	5,737	6,023			6,073	MISC A/MPC
Administrative Coordinator	350	07/07/24	6,500	6,825	7,167	7,525	7,901			7,951	MPC
Administrative Officer	868	07/07/24	11,468	12,041	12,643	13,275	13,939			13,989	MPC
Administrative Specialist	290	07/07/24	6,139	6,446	6,768	7,107	7,462			7,512	MPC
Assistant City Clerk	820	07/07/24	9,001	9,451	9,924	10,420	10,941			10,991	MPC
Assistant City Engineer	920a	07/07/24	11,843	12,435	13,056	13,709	14,395			14,445	MPC
Assistant City Manager	950	07/07/24	16,998				21,691			21,691	Sr. Exec Team
Assistant Director of Finance	887	07/07/24	12,336				14,992			14,992	Mgmt Group
Assistant Director of Public Works - Operations	896	07/07/24	12,944	13,591	14,271	14,985	15,734			15,784	MPC
Assistant Director, Community & Economic Development	889	07/07/24	13,794				16,754			16,754	Mgmt Group
Assistant Director, Public Works - Utilities	889	07/07/24	13,794				16,754			16,754	Mgmt Group
Assistant Engineer	510	07/07/24	7,694	8,079	8,483	8,907	9,352			9,870	MPC
Assistant Planner	450	07/07/24	7,162	7,520	7,896	8,291	8,706			9,191	MPC
Assistant to the City Manager	835	07/07/24	11,849				14,401			14,401	Mgmt Group
Associate Engineer	780	07/07/24	8,909	9,354	9,822	10,313	10,829			11,420	MPC
Associate Planner	740	07/07/24	8,291	8,706	9,141	9,598	10,078			10,632	MPC
Building Inspection Supervisor	810	07/07/24	10,094	10,599	11,129	11,685	12,270			12,320	MPC
Chief Building Official	895	07/07/24	12,906	13,552	14,229	14,941	15,688			15,738	MPC
Chief of Police	955	07/07/24	18,070				22,844			26,727	Sr. Exec Team
City Attorney	943	09/01/24					22,986			22,986	Contract
City Engineer	9352	07/07/24	13,206				16,052			16,052	Mgmt Group
City Manager	960	02/04/24					24,983			24,983	Contract
Code Enforcement Officer I	258	07/07/24	5,977	6,276	6,589	6,919	7,265			7,315	MISC A
Code Enforcement Officer II	415	07/07/24	6,918	7,264	7,627	8,008	8,409			8,459	MISC A
Code Enforcement Supervisor	820	07/07/24	9,001	9,451	9,924	10,420	10,941			10,991	MPC
Combination Building Inspector	520	07/07/24	7,517	7,893	8,288	8,702	9,137			9,187	MISC A
Community Outreach Coordinator	315	07/07/24	6,341	6,658	6,991	7,340	7,707			7,757	MISC A
Community Relations Manager	703	07/07/24	8,973	9,422	9,893	10,388	10,907			10,957	MPC
Community Services Specialist	258	07/07/24	5,977	6,276	6,589	6,919	7,265			7,315	MISC A
Construction Inspector I	360	07/07/24	6,688	7,023	7,374	7,743	8,130			8,180	MISC A
Construction Inspector II	520	07/07/24	7,517	7,893	8,288	8,702	9,137			9,187	MISC A
Crime Analyst	700	07/07/24	7,776	8,165	8,573	9,002	9,452			9,502	MPC
Customer Service Representative	170	07/07/24	4,918	5,164	5,423	5,694	5,978			6,028	MISC A
Deputy Chief Information Systems Officer	887	07/07/24	12,336				14,992			14,992	Mgmt Group
Deputy City Clerk	330	07/07/24	6,446	6,768	7,106	7,462	7,835			7,885	MPC
Deputy Director, Information Technology Operations	887	07/07/24	12,336				14,992			14,992	Mgmt Group
Deputy General Manager, Pittsburg Power Company	887	07/07/24	12,336				14,992			14,992	Mgmt
Development Services Coordinator	532	07/07/24	7,676	8,060	8,463	8,886	9,331			9,381	MISC A

Exhibit A

CLASSIFICATION	CODE	EFFECTIVE	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Top Step w/Incentives	UNIT
Development Services Supervisor	881	07/07/24	10,670	11,204	11,764	12,352	12,970			13,020	MPC
Director of City Clerk Services	8351	07/07/24	11,849				14,401			14,401	Sr. Exec Team
Director of Community & Economic Development	9403	07/07/24	14,741				18,631			18,631	Sr. Exec Team
Director of Community Services	9402	07/07/24	14,535				18,371			18,371	Sr. Exec Team
Director of Finance	9401	07/07/24	14,535				18,371			18,371	Sr. Exec Team
Director of Human Resources	9400	07/07/24	14,535				18,371			18,371	Sr. Exec Team
Director of Public Works/City Engineer	945	07/07/24	15,754				19,151			19,151	Sr. Exec Team
Director of Recreation	9400	07/07/24	14,535				18,371			18,371	Sr. Exec Team
Economic Development Manager	867	07/07/24	11,455	12,028	12,629	13,261	13,924			13,974	MPC
Electrical Technician	420	07/07/24	6,931	7,278	7,642	8,024	8,425			9,267	Teamsters
Electrical Technician Apprentice	200	07/07/24	5,535	5,812	6,103	6,408	6,728			7,401	Teamsters
Engineering Technician I	310	07/07/24	6,276	6,589	6,919	7,265	7,628			7,678	MISC A
Engineering Technician II	460	07/07/24	7,268	7,631	8,013	8,414	8,834			8,884	MISC A
Environmental Affairs Manager	890	07/07/24	12,386	13,006	13,656	14,339	15,056			15,106	MPC
Environmental Health & Safety Officer	832	07/07/24	10,367	10,885	11,429	12,001	12,601			12,651	MPC
Environmental Health Specialist I	390	07/07/24	7,311	7,677	8,060	8,463	8,887			8,937	MPC
Environmental Health Specialist II	702	07/07/24	8,464	8,888	9,332	9,799	10,289			10,339	MPC
Equipment Mechanic	270	07/07/24	6,122	6,428	6,750	7,087	7,442			8,186	Teamsters
Equipment Shop Supervisor	531	07/07/24	7,928	8,324	8,740	9,177	9,636			9,686	MPC
Executive Assistant	400	07/07/24	6,937				8,433			8,433	Mgmt Group
Executive Assistant to the Chief of Police	330	07/07/24	6,446	6,768	7,106	7,462	7,835			7,885	MPC
Finance Division Manager	855	07/07/24	10,359	10,876	11,420	11,991	12,591			12,641	MPC
Financial Analyst	580	07/07/24	8,579	9,008	9,458	9,931	10,428			10,478	MPC
Geographical Information Systems (GIS) Administrator	815	07/07/24	9,940	10,437	10,959	11,507	12,082			12,132	MPC
Harbormaster	830	07/07/24	9,524	10,000	10,500	11,025	11,576			11,626	MPC
Housing Manager	855	07/07/24	10,359	10,876	11,420	11,991	12,591			12,641	MPC
Housing Program Analyst I	390	07/07/24	7,311	7,677	8,060	8,463	8,887			8,937	MPC
Housing Program Analyst II	702	07/07/24	8,464	8,888	9,332	9,799	10,289			10,339	MPC
Housing Specialist	210	07/07/24	5,647	5,930	6,226	6,537	6,864			6,914	MISC A
Human Resources Analyst	701	07/07/24	8,408	8,829	9,270	9,734	10,221			10,271	MPC
Human Resources Specialist	330	07/07/24	6,446	6,768	7,106	7,462	7,835			7,885	MPC
Information Technology Analyst I	420a	07/07/24	6,931	7,278	7,642	8,024	8,425			8,475	MPC
Information Technology Analyst II	720	07/07/24	8,112	8,518	8,944	9,391	9,860			9,910	MPC
Information Technology Manager	866	07/07/24	11,399	11,969	12,568	13,196	13,856			13,906	MPC
Laboratory Supervisor	810	07/07/24	10,094	10,599	11,129	11,685	12,270			13,018	MPC
Lead Community Services Specialist	415	07/07/24	6,918	7,264	7,627	8,008	8,409			8,459	MISC A
Lead Customer Service Representative	185	07/07/24	5,410	5,681	5,965	6,263	6,576			6,626	MISC A
Lead Electrical Technician	705	07/07/24	8,023	8,424	8,846	9,288	9,752			10,727	Teamsters
Lead Marina Services Worker	320	07/07/24	6,408	6,728	7,065	7,418	7,789			8,256	Teamsters
Lead Police Records Clerk	255	07/07/24	6,023	6,324	6,640	6,972	7,321			7,371	MISC A
Lead Public Works Superintendent	885	07/07/24	12,319	12,934	13,581	14,260	14,973			15,023	MPC
Maintenance Assistant	095	07/07/24	3,887	4,082	4,286	4,500	4,725			5,009	Teamsters
Maintenance Lead Worker	320	07/07/24	6,408	6,728	7,065	7,418	7,789			8,568	Teamsters
Maintenance Worker I	140	07/07/24	4,782	5,021	5,272	5,536	5,812			6,219	Teamsters
Maintenance Worker II	200	07/07/24	5,535	5,812	6,103	6,408	6,728			7,199	Teamsters
Office Assistant	095a	07/07/24	3,887	4,082	4,286	4,500	4,725			4,775	MISC A

CLASSIFICATION	CODE	EFFECTIVE	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Top Step w/Incentives	UNIT
Paralegal	400	07/07/24	6,937				8,433			8,433	Mgmt Group
Payroll Coordinator	350	07/07/24	6,500	6,825	7,167	7,525	7,901			7,951	MPC
Permit Center Supervisor	820	07/07/24	9,001	9,451	9,924	10,420	10,941			10,991	MPC
Permit Technician	260	07/07/24	6,057	6,360	6,678	7,012	7,362			7,412	MISC A
Pest Control Specialist	470	07/07/24	7,197	7,557	7,935	8,332	8,748			9,273	Teamsters
Planning Manager	890	07/07/24	12,386	13,006	13,656	14,339	15,056			15,106	MPC
Police Captain	650	07/07/24	15,665	16,448	17,271	18,134	19,041	19,993		23,392	PMG
Police Forensic Technician I	260	07/07/24	6,057	6,360	6,678	7,012	7,362			7,412	MISC A
Police Forensic Technician II	425	07/07/24	7,012	7,363	7,731	8,118	8,524			8,574	MISC A
Police Lieutenant	640	07/07/24	13,656	14,339	15,056	15,809	16,599	17,429		20,392	PMG
Police Officer	600	07/07/24	7,114	7,470	7,843	8,235	8,647	9,079	9,533		POA
Police Officer (Continuation of Steps H & I)	600	07/07/24						10,010	10,511	13,822	POA
Police Records Clerk	180	07/07/24	5,202	5,462	5,735	6,022	6,323			6,373	MISC A
Police Records Supervisor	540	07/07/24	8,048	8,450	8,873	9,317	9,782			9,832	MPC
Police Sergeant	625	07/07/24	10,105	10,610	11,141	11,698	12,283	12,897		16,960	POA
Police Services Administrator	831	07/07/24	10,088	10,593	11,122	11,679	12,262			12,312	MPC
Police System Coordinator	814	07/07/24	8,825	9,267	9,730	10,217	10,727			11,478	MPC
Power Company Manager	920	07/07/24	13,206				16,052			16,052	Mgmt Group
Principal Planner	864	07/07/24	10,559	11,087	11,641	12,223	12,834			13,526	MPC
Property and Evidence Coordinator	410	07/07/24	6,916	7,262	7,625	8,006	8,407			8,457	MISC A
Property and Evidence Supervisor	540	07/07/24	8,048	8,450	8,873	9,317	9,782			9,832	MPC
Property and Evidence Technician	250	07/07/24	5,462	5,735	6,022	6,323	6,639			6,689	MISC A
Public Works Superintendent	880	07/07/24	10,641	11,173	11,731	12,318	12,934			12,984	MPC
Public Works Supervisor	530	07/07/24	7,626	8,007	8,407	8,828	9,269			9,783	MPC
Purchasing Analyst	720	07/07/24	8,112	8,518	8,944	9,391	9,860			9,910	MPC
Records Specialist	330	07/07/24	6,446	6,768	7,106	7,462	7,835			7,885	MISC A
Recreation Coordinator	230	07/07/24	5,829	6,120	6,426	6,748	7,085			7,135	MISC A
Recreation Supervisor	550	07/07/24	7,612	7,993	8,393	8,812	9,253			9,303	MPC
Revenue Operations Supervisor	745	07/07/24	8,345	8,762	9,200	9,660	10,143			10,193	MPC
Senior Accounting Technician	313	07/07/24	6,317	6,632	6,964	7,312	7,678			7,728	MPC
Senior Administrative Analyst	825	07/07/24	9,798	10,288	10,803	11,343	11,910			11,960	MPC
Senior Civil Engineer	865	07/07/24	10,914	11,459	12,032	12,634	13,266			13,316	MPC
Senior Combination Building Inspector	760	07/07/24	8,449	8,871	9,315	9,781	10,270			10,320	MPC
Senior Construction Inspector	760	07/07/24	8,449	8,871	9,315	9,781	10,270			10,320	MPC
Senior Financial Analyst	790	07/07/24	9,932	10,429	10,950	11,498	12,073			12,123	MPC
Senior Housing Program Analyst	825	07/07/24	9,798	10,288	10,803	11,343	11,910			11,960	MPC
Senior Human Resources Analyst	821	07/07/24	9,733	10,220	10,731	11,267	11,831			11,881	MPC
Senior Information Technology Analyst	815	07/07/24	9,940	10,437	10,959	11,507	12,082			12,132	MPC
Senior Payroll Coordinator	385	07/07/24	7,150	7,508	7,883	8,277	8,691			8,741	MPC
Senior Permit Technician	359	08/12/24	6,663	6,996	7,346	7,713	8,099			8,149	MPC
Senior Planner	840	07/07/24	9,599	10,079	10,583	11,112	11,668			12,301	MPC
Sweeper Operator	140	07/07/24	4,782	5,021	5,272	5,536	5,812			6,161	Teamsters
Utility Lead Technician	870	07/07/24	11,513	12,089	12,693	13,328	13,994			14,974	IBEW
Utility Lineworker	742	07/07/24	8,236	8,648	9,080	9,534	10,011			14,834	IBEW
Utility Maintenance Worker	312	07/07/24	6,275	6,588	6,918	7,264	7,627			8,085	IBEW

Exhibit A

Exhibit A

CLASSIFICATION	CODE	EFFECTIVE	STEP A	STEP B	STEP C	STEP D	STEP E	STEP F	STEP G	Top Step w/Incentives	UNIT
Utility Supervisor	810	07/07/24	10,094	10,599	11,129	11,685	12,270			12,320	MPC
Utility Technician	863	07/07/24	10,466	10,990	11,539	12,116	12,722			13,613	IBEW
Water Instrument/Maintenance Technician I	480	07/07/24	8,117	8,523	8,949	9,397	9,867			10,558	Teamsters
Water Instrument/Maintenance Technician II	750	07/07/24	9,396	9,866	10,359	10,877	11,421			12,221	Teamsters
Water Maintenance Mechanic I	480	07/07/24	8,117	8,523	8,949	9,397	9,867			10,558	Teamsters
Water Maintenance Mechanic II	750	07/07/24	9,396	9,866	10,359	10,877	11,421			12,221	Teamsters
Water Plant Apprentice Operator	200	07/07/24	5,535	5,812	6,103	6,408	6,728			7,132	Teamsters
Water Plant Operator	560	07/07/24	8,153	8,560	8,988	9,438	9,910			11,399	Teamsters
Water Plant Superintendent	883	07/07/24	11,732	12,319	12,935	13,582	14,261			14,711	MPC
Water Plant Supervisor	810	07/07/24	10,094	10,599	11,129	11,685	12,270			13,398	MPC
Water Quality Analyst I	380	07/07/24	7,145	7,503	7,878	8,272	8,685			9,753	Teamsters
Water Quality Analyst II	710	07/07/24	8,603	9,033	9,485	9,959	10,457			11,649	Teamsters

SEASONAL/HOURLY/EXTRA HELP CLASSIFICATIONS			Min				Max				UNIT
Administrative Support Associate	0500	12/22/24	16.50				50.00			50.00	Unrepresented
Executive Consultant	910	03/16/15	30.00				100.00			100.00	Unrepresented
Intern - High School	0550	12/22/24	16.50				16.50			16.50	Unrepresented
Intern - College	0510	12/22/24	16.50				19.00			19.00	Unrepresented
Maintenance Aide	0530	12/22/24	16.92				23.46			23.46	Unrepresented
Police Trainee	6009	07/07/24	34.20				34.20			34.20	Unrepresented
Professional Consultant	0540	12/24/23	20.00				90.00			90.00	Unrepresented
Recreation Leader I	0550	12/22/24	16.50				16.50			16.50	Unrepresented
Recreation Leader II	0560	12/22/24	16.50				21.50			21.50	Unrepresented
Recreation Leader III	0570	07/09/23	16.50				24.50			24.50	Unrepresented
Technical Consultant	0520	12/24/23	20.00				80.00			80.00	Unrepresented

ELECTED OFFICIAL CLASSIFICATIONS	CODE	EFFECTIVE					Per month				UNIT
City Clerk	8349						470				Elected Official
City Council	8177						500				Elected Official
City Council -- member of a different governing board											
if serving on Tri Delta Transit	$100 per meeting			visit www.TriDeltaTransit.com							
if serving on Delta Diablo Sanitation District	$209 per meeting			visit ddsd.org							
City Treasurer	8349						470				Elected Official

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Authorizing the Execution of a Fourth Contract Amendment to the Consulting Service Agreement with 4LEAF, Inc. for Building Inspector and Chief Building Official On-Call Services

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The proposed item would authorize the execution of the Fourth Amendment to the Consulting Services Agreement ("Fourth Amendment') with 4LEAF, Inc. (4LEAF) in an amount not to exceed $570,000. This amount would allocate an additional $120,000 to the existing contract amount of $450,000 for Building Inspector and Chief Building Official on-call services.

FISCAL IMPACT

The proposed item would authorize the execution of the Fourth Amendment to the Consulting Services Agreement with 4LEAF in an amount not to exceed $570,000. This amount would allocate an additional $120,000 to the existing contract amount of $450,000 for Building Inspector and Chief Building Official on-call services.

RECOMMENDATION

Staff recommends the City Council adopt the attached resolution authorizing the City Manager to execute the Fourth Amendment to the Consulting Services Agreement with 4LEAF, Inc. for Building Inspector and Chief Building Official on-call services.

BACKGROUND

With the continued increase of large commercial projects and ongoing commercial projects, the City has sought the assistance of a certified Chief Building Official and Building Inspector to assist with inspections and plan checking for the Building Division on an as-needed basis.

In August 2022, the City executed a contract with 4LEAF in an amount of $50,000 for building inspection and chief building official services. On February 8, 2023, the City and 4LEAF executed the First Amendment to the Consulting Services Agreement to increase the contract amount to $125,000. On July 25, 2023, the City and 4LEAF executed the Second Amendment to the Consulting Services Agreement to extend the duration and increased the contract amount to $250,000. On February 28, 2024, the City and 4LEAF executed the Third Amendment to the Consulting Services Agreement to increase the contract amount to $450,000.

SUBCOMMITTEE FINDINGS

The item was not presented to a subcommittee.

STAFF ANALYSIS

Staff recommends the City continue to utilize 4LEAF to continue Building Inspector and Chief Building Official on-call services. 4LEAF was chosen due to their extensive resources and expertise in building inspection, Chief Building Official, and building code enforcement services. 4LEAF also maintains a staff of numerous certified Chief Building Officials and Building Inspectors to ensure someone is always available to staff.

The contract would be paid using salary savings within the Building Division budget due to unfilled positions. However, it should be noted that the on-call Chief Building Official and Building Inspector may complete “in house” plan checks, reducing the amount spent on outside plan check services and increasing plan check revenues.

ATTACHMENTS:

1. Consulting Services Agreement
2. First Amendment
3. Second Amendment
4. Third Amendment
5. Fourth Amendment
6. Resolution

Report Prepared By: Candace Hatch, Administrative Analyst I

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Authorizing the Execution of a Fourth Contract Amendment to the Consulting Services Agreement with 4LEAF, Inc. for Building Inspector and Chief Building Official On-Call Services	)	RESOLUTION NO. 24-

WHEREAS, with the continued increase of large commercial projects and the ongoing commercial projects through the City of Pittsburg, staff has a need for on-call chief Building Division support services to assist with and ensure compliance with the California Building Code, California Fire Code and other model codes adopted; and

WHEREAS, on August 15, 2022, the City executed a contract with 4LEAF, Inc. in an amount of $50,000 for building inspection and chief building official services; and

WHEREAS, on February 8, 2023, the City and 4LEAF, Inc. executed the First Amendment to the Consulting Services Agreement to increase the contract amount to $125,000; and

WHEREAS, on July 25, 2023, the City and 4LEAF, Inc. executed the Second Amendment to the Consulting Services Agreement to extend the duration and increase the contract amount to $250,000; and

WHEREAS, on February 28, 2024, the City and 4LEAF, Inc,. executed the Third Amendment to the Consulting Services Agreement to increase the contract amount to $450,000; and

WHEREAS, the cost associated with this contract will be covered by salary savings within the Building Division budget due to unfilled positions in the current year and the upcoming fiscal year; and

WHEREAS, the City and 4LEAF, Inc. mutually wish to extend the term of the contract to June 30, 2025 and increase the amount of the Consulting Services Agreement to $570,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby authorizes the City Manager to execute the Fourth Amendment to the Consulting Services Agreement between the City of Pittsburg and 4LEAF, Inc.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Jelani Killings, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Docusign Envelope ID: 656DF989-90BE-4645-B7E3-15D74D830147

FOURTH AMENDMENT TO CONSULTING SERVICES AGREEMENT BETWEEN CITY OF PITTSBURG AND 4 LEAF, INC.

This Fourth Amendment to the Principal Agreement made and entered into on August 15, 2022, hereafter referred to as Agreement, between 4LEAF, Inc., a California Corporation, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 2nd day of December 2024.

WHEREAS, the parties entered into an Agreement for Building Inspector and Chief Building Official on-call services; and

WHEREAS, the parties desire to extend the duration of an Agreement for on-call Building Inspector and Chief Building Official services to increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Term. Section 1.1 of the Agreement is hereby amended to read as follows: The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2025 or the date that Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.

2. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City shall compensate 4LEAF, Inc. for the performance of Services at the rates shown on Exhibit B. City hereby agrees to pay Consultant a sum not to exceed Five Hundred Seventy Thousand dollars ($570,000), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under the Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Integration. This Fourth Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Fourth Amendment. Fourth Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

4. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Fourth Amendment and the Agreement, the provisions of this Fourth Amendment shall control in all respects.

Docusign Envelope ID: 656DF989-90BE-4645-B7E3-15D74D830147

5. Ambiguities. The parties have each carefully reviewed this Fourth Amendment and have agreed to each term of this Fourth Amendment. No ambiguity shall be presumed to be construed against either party.

6. Counterparts. This Fourth Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

7. Authority. The person signing this Fourth Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Fourth Amendment on behalf of Consultant.

The remainder of this page left intentionally blank.

Docusign Envelope ID: 656DF989-90BE-4645-B7E3-15D74D830147

IN WITNESS WHEREOF, the parties have entered into this Fourth Amendment on the day and year first hereinabove appearing.

CONSULTANT:

4LEAF, Inc., a California Corporation

By: DocuSigned by: Kevin Duggan 813734D554DB4B5...

Kevin Duggan, President

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: _____

Garrett Evens, City Manager

APPROVED AS TO FORM:

By: _____

Donna Mooney, City Attorney

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF PITTSBURG AND 4LEAF, INC.

THIS Agreement ("Agreement") for on call building inspection and chief building official services is made by and between the City of Pittsburg, a California municipal corporation ("City"), and 4LEAF, Inc., a California Corporation ("Consultant") (together referred to as the "Parties") as of August 15, 2022 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein.

1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2023 or the date the total compensation set forth in Section 2 of this Agreement is fully expended, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.

1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, requests in writing the reassignment of any such persons to ensure Consultant performs services in accordance with the Standard of Performance, Consultant shall, immediately upon receiving City's request, reassign such persons.

1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided herein above and to satisfy Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed Fifty Thousand Dollars ($50,000), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under this Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

Consultant and City acknowledge and agree that compensation paid by City to

Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the City Manager, or his or her designee:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall pay undisputed invoices that comply with the above requirements within 30 days from the receipt of the invoice.

2.3 **Final Payment.** Consultant shall submit its final invoice within 60 days of completing its services. Consultant's failure to submit its final invoice within this 60-day period shall constitute Consultant's waiver of any further billings to, or payments from, City.

2.4 **Reimbursable Expenses.** Reimbursable expenses, if any, are specified in Exhibit A and included in the total compensation referenced in Section 2. Expenses not listed in Exhibit A are not chargeable to, or reimbursable by, City.

2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

2.6 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written authorization from the City Manager, or his or her designee.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement

Section 4. INSURANCE REQUIREMENTS. Before beginning any services under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance specified herein and maintain that insurance throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid or proposal. Consultant shall be fully responsible for the acts and omissions of its subcontractors or other agents.

4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant in the amount required by applicable law. The requirement to maintain Statutory Workers' Compensation and Employer's Liability Insurance may be waived by the City upon written verification that Consultant is a sole proprietor and does not have any employees and will not have any employees during the term of this Agreement.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than $2,000,000 per occurrence and $4,000,000 aggregate, combined single limit coverage for risks associated with the work contemplated by this Agreement.

4.2.2 **Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent

edition) covering any auto (Code 1), or if Consultant has no owned autos, hired (code 8) and non-owned autos (Code 9). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. The Commercial General and Automobile Liability Insurance shall cover on an occurrence basis.

b. City, its officers, officials, employees, agents, and volunteers shall be covered as additional insureds for liability arising out of work or operations on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work or operations; or automobiles owned, leased, hired, or borrowed by the Consultant. Coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and non-contributing.

d. The policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

e. Consultant agrees to give at least 30 days prior written notice to City before coverage is canceled or modified as to scope or amount.

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than $1,000,000 per occurrence or claim covering the Consultant's errors and omissions.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of work under this Agreement.

d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 **All Policies Requirements.**

4.4.1 **Submittal Requirements.** Consultant shall submit the following to City prior to beginning services:

a. Certificate of Liability Insurance in the amounts specified in this Agreement; and

b. Additional Insured Endorsement as required for the General Commercial and Automobile Liability Polices.

4.4.2 **Acceptability of Insurers.** All insurance required by this Agreement is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.3 **Deductibles and Self-Insured Retentions.** Insurance obtained by the Consultant shall have a self-insured retention or deductible of no more than $100,000.

4.4.4 **Wasting Policies.** No policy required herein shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from

Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents, and subcontractors.

4.4.6 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, and Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are covered as additional insured on all coverages.

4.4.7 **Excess Insurance.** If Consultant maintains higher insurance limits than the minimums specified herein, City shall be entitled to coverage for the higher limits maintained by the Consultant.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option: 1) obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; 2) order Consultant to stop work under this Agreement and withhold any payment that becomes due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof; and/or 3) terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

5.1 **General Indemnification.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subcontractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and

expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City or its directors, officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. This Section **5.1** shall survive any expiration or termination of this Agreement.

5.2 **PERS Indemnification.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City.

6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. Consultant shall also, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates as determined by the California Department of Industrial Relations.

7.3 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have, and will maintain at their sole cost and expense, all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

7.4 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender or gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

7.5 **Registration and Monitoring.** Consultant shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as referenced in Labor Code section 1771.1(a). Additionally, Consultant is hereby notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

7.6 **Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the services described in Exhibit A are to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as

provided in the California Labor Code must be paid to all workers engaged in performing the services described in Exhibit A. In accordance with California Labor Code Section 1773.2, the City has obtained the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City's General Services Department and shall be made available on request. Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the services described in Exhibit A. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the City harmless from any and all claims made by any worker, governmental agency or other third party with regard thereto.

The Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with Labor Code Section 1775, which establishes a penalty per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage.

In accordance with Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Such records shall be in kept, maintained and made available in accordance with the requirements of Labor Code Section 1776.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. Upon ten days' prior written notice, City may cancel this Agreement at any time and without cause upon such written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

8.2 Amendments. The parties may amend this Agreement only by a writing signed by the parties hereto.

8.3 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City Manager, or his or her designee. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the City Manager, or his or her designee.

8.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant, including but not limited to the provisions of Section 5, shall survive the termination of this Agreement.

8.5 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

8.5.1 Immediately terminate the Agreement;

8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.5.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

8.5.5 The remedies mentioned in this Agreement are not exclusive of any other right, power or remedy permitted by law. The City's failure or delay in exercising any remedy shall not constitute a waiver of such remedy or preclude the further exercise of City's rights.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Consultant's Performance.** All final

versions of reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement, and the City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential drafts and will not be released to third parties by Consultant without prior written approval of City.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Pursuant to Government Code Section 8546.7, the Agreement may be subject to the examination and audit of the State Auditor for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in Contra Costa County or in the United States District Court for the Northern District of California.

10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and

effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

10.6 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

10.7 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 **Notices.** Any notice, demand, request, consent, or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, or (ii) certified United States mail, postage prepaid, return receipt requested, Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Consultant: 4LEAF Inc.
2126 Rheem Drive
Pleasanton, CA 94588
ATTN: Mike Leontiades, CBO

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
ATTN: Director of Community and Economic Development

10.9 Professional Seal. Where applicable in the determination of the City Manager, or his or her designee, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility."

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. To the extent, there are any inconsistencies between this Agreement, the Exhibit, and Consultant's proposal, the Agreement shall control. To the extent there are any inconsistencies between the Exhibit and the Consultant's Proposal, the Exhibit shall control.

Exhibit A Scope of Services and Compensation Schedule

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Construction of Agreement. Each party hereto has had an equivalent opportunity to participate in the drafting of the agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

10.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any third parties.

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The Parties have executed this Agreement as of the Effective Date.

CITY OF PITTSBURG

Garrett Evans, City Manager

CONSULTANT: *4LEAF, Inc.*

8/15/22

Name: Gene Barry
Title: Vice -President

Attest:

Alice Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

EXHIBIT A

Duties to be performed by Consultant for the City's Building Division.

SCOPE OF DUTIES:

At the request of, and as directed by the City's Permanent Chief Building Official, Richard Abono, Consultant shall provide on-call building inspection services as well as on-call Chief Building Official services. Building inspection services shall be provided on an as-needed basis as determined by the Permanent Chief Building Official or their designee. Chief Building Official services shall be provided on an as-needed basis as determined by the Permanent Chief Building Official or their designee. City will provide a vehicle for Building Inspection services.

COMPENSATION SCHEDULE:

City shall be billed hourly at the following rates:

Schedule of Hourly Rates	
Description	Hourly Rate
Chief Building Official	$170
Combination Building Inspector	$135
Residential Building Inspector	$105

REIMBURABLE EXPENSES:

Reimbursable expenses shall be approved by the Director of Community and Economic Development on a case-by-case basis, and shall not exceed 10 percent of the entire contract amount.

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT: 4LEAF, Inc.

By: _____

Gene Barry

Title: Vice President

2784987.1

J4125 - Amend #1

FIRST AMENDMENT TO
CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF PITTSBURG AND
4LEAF, INC.

This First Amendment to Agreement ("First Amendment") for consulting services is made by and between the City of Pittsburg ("City") and 4LEAF, Inc., ("Consultant") (each separately referred to as a "Party" and together referred to as the "Parties") as of February 8, 2023 (the "Effective Date").

RECITALS

WHEREAS, on August 15, 2022, the City and Consultant entered into an Agreement for Consultant with 4LEAF, Inc., in an amount not to exceed $50,000.00 to provide on-call building inspection services as well as on-call Chief Building Official services; and

WHEREAS, the parties seek to amend the contract to increase the contract amount by $75,000.00 for continued on-call building inspector services as well as on-call Chief Building Official services.

NOW THEREFORE, the City and the Consultant, for the considerations hereinafter named, agree as follows:

AMENDMENTS

1. The recitals to this First Amendment are by this reference incorporated herein as though set out in full.

2. Section 1 of the Agreement shall remain unchanged.

3. Paragraph 1 of Section 2 of the Agreement is hereby amended to read as follows:

   City hereby agrees to pay Consultant a sum not to exceed Seventy Five Thousand ($75,000), as set forth in Exhibit A of the Agreement, incorporated herein for services to be performed and reimbursable expenses incurred under the Agreement. This dollar amount is not a guarantee that he City will pay that full amount to the Consultant, but is merely a limited potential City expenditures under this Agreement.

4. Except as otherwise expressly amended or modified herein, the terms and conditions of the Agreement shall remain in full force and effect. Should the validity of this First Amendment be called into question in litigation or otherwise and determined to be invalided for any reason, such determination shall in no way affect the validity of the Agreement which shall remain in full force and effect in accordance with its original terms.

IN WITHNESS WHEROF, the parties hereto have executed the First Amendment to the Agreement effective on the day and year first identified above.

CITY OF PITTSBURG

Garrett Evans, City Manager

CONSULTANT

Kevin Duggan, President

Attest:

Alice E. Evenson, City Clerk

Approved as to Form:

Donna Mooney, City Attorney

DocuSign Envelope ID: F9E07154-AB75-441F-A0EF-8B510F4424C0

SECOND AMENDMENT TO CONSULTING SERVICES AGREEMENT BETWEEN CITY OF PITTSBURG AND 4 LEAF, INC.

This Second Amendment to the Principal Agreement made and entered into on August 15, 2022, hereafter referred to as Agreement, between 4LEAF, Inc., a California Corporation, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 25th day of July, 2023.

WHEREAS, the parties entered into an Agreement for building inspector and chief building official services; and

WHEREAS, the parties desire to extend the duration of an Agreement for on call building inspector and chief building official services and increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Term. Section 1.1 of the Agreement is hereby amended to read as follows: The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2024 or the date the Consultant completes the services specified in Exhibit A, whichever occurs first, unless the term of the Agreement is otherwise terminated or extended, as referenced herein.

2. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City shall compensate 4LEAF, Inc. for the performance of Services at the rates shown on Exhibit B. City hereby agrees to pay Consultant a sum not to exceed two hundred fifty thousand dollars ($250,000), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under the Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Integration. This Second Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Second Amendment. Second Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

4. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Agreement, the provisions of this Second Amendment shall control in all respects.

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5. Ambiguities. The parties have each carefully reviewed this Second Amendment and have agreed to each term of this Second Amendment. No ambiguity shall be presumed to be construed against either party.

6. Counterparts. This Second Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

7. Authority. The person signing this Second Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Second Amendment on behalf of Consultant.

The remainder of this page left intentionally blank.

IN WITNESS WHEREOF, the parties have entered into this Second Amendment on the day and year first hereinabove appearing.

CONSULTANT:

4LEAF, Inc., a California Corporation

By: DocuSigned by: Kevin Duggan 813734D654DD4B5...

Kevin Duggan, President

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: _____

Garrett Evens, City Manager

ATTEST:

By: _____

Alice Evenson, City Clerk

APPROVED AS TO FORM:

By: _____

Donna Mooney, City Attorney

IN WITNESS WHEREOF, the parties have entered into this Second Amendment on the day and year first hereinabove appearing.

CONSULTANT:

4LEAF, Inc., a California Corporation

By: _____

Kevin Duggan, President

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: _____

Garrett Evens, City Manager

ATTEST:

By: Alice E. Evenson

Alice Evenson, City Clerk

APPROVED AS TO FORM:

By: _____

Donna Mooney, City Attorney

DocuSign Envelope ID: A8B37B35-1722-4808-9F2D-106229B11FDC

THIRD AMENDMENT TO CONSULTING SERVICES AGREEMENT BETWEEN CITY OF PITTSBURG AND 4 LEAF, INC.

This Third Amendment to the Principal Agreement made and entered into on August 15, 2022, hereafter referred to as Agreement, between 4LEAF, Inc., a California Corporation, therein referred to as Consultant, and the City of Pittsburg, a municipal corporation, therein referred to as City, is made and entered into on this 28th day of February, 2024.

WHEREAS, the parties entered into an Agreement for building inspector and chief building official services; and

WHEREAS, the parties desire to extend the duration of an Agreement for on call building inspector and chief building official services to increase the compensation amount accordingly.

NOW, THEREFORE, Consultant and City do mutually agree as follows:

1. Term. Section 1.1 remains the same per Second Amendment.

2. Compensation. Section 2 of the Agreement is hereby amended to read as follows: City shall compensate 4LEAF, Inc. for the performance of Services at the rates shown on Exhibit B. City hereby agrees to pay Consultant a sum not to exceed four hundred fifty thousand dollars ($450,000), as set forth in Exhibit A, attached hereto and incorporated herein for services to be performed and reimbursable expenses incurred under the Agreement. This dollar amount is not a guarantee that the City will pay that full amount to the Consultant, but is merely a limit of potential City expenditures under this Agreement.

3. Integration. This Third Amendment contains the entire agreement between the parties with respect to its subject matter and supersedes whatever oral or written understanding they may have had prior to the execution of this Third Amendment. Third Amendment shall not be amended or modified except by a written agreement executed by each of the parties. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Consultant shall perform all duties, obligations and conditions required under the Agreement.

4. Inconsistencies. In the event of any conflict or inconsistency between the provisions of this Third Amendment and the Agreement, the provisions of this Third Amendment shall control in all respects.

5. Ambiguities. The parties have each carefully reviewed this Third Amendment and have agreed to each term of this Third Amendment. No ambiguity shall be presumed to be construed against either party.

DocuSign Envelope ID: A8B37B35-1722-4808-9F2D-106229B11FDC

6. Counterparts. This Third Amendment may be executed by the parties in one or more counterparts all of which collectively shall constitute one document and agreement.

7. Authority. The person signing this Third Amendment for Consultant hereby represents and warrants that he or she is fully authorized to sign this Third Amendment on behalf of Consultant.

The remainder of this page left intentionally blank.

DocuSign Envelope ID: A8B37B35-1722-4808-9F2D-106229B11FDC

IN WITNESS WHEREOF, the parties have entered into this Third Amendment on the day and year first hereinabove appearing.

CONSULTANT:

4LEAF, Inc., a California Corporation

By: DocuSigned by: Kevin Duggan 813734D554DD4B5...

Kevin Duggan, President

CITY:

CITY OF PITTSBURG, a municipal corporation of the State of California

By: DocuSigned by: Garrett Evans 0BFCADAB643045C...

Garrett Evens, City Manager

APPROVED AS TO FORM:

By: DocuSigned by: 16DDA4CD88BB41E...

Donna Mooney, City Attorney

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Pittsburg Power Company Resolution Adopting the 2023 Power Content Label to the California Energy Commission

MEETING DATE: December 16, 2024

EXECUTIVE SUMMARY

The Pittsburg Power Company (PPC), in compliance with the State law (Public Utilities Code 398.1(b)), is disclosing both the power sources portfolio information and comparison to California's total system power mix on an annual Power Content Label (PCL). For public agencies submitting board resolutions as attestation, in lieu of a requirement to provide a report from an auditor, the Board of Directors must attest to and adopt the PCL.

FISCAL IMPACT

Adoption of the 2023 Power Content Label has no fiscal impact to Island Energy's Enterprise Fund or the City of Pittsburg's General Fund.

RECOMMENDATION

Staff recommends the Governing Board of the Pittsburg Power Company adopt the attached resolution adopting the PPC 2023 Power Content Label.

BACKGROUND

Under the Power Source Disclosure Program, electricity retail suppliers are required to submit to the California Energy Commission (CEC) annually to disclose their gross purchases of electricity by source, resales of electricity, and the net electricity by source used to serve retail load for the previous calendar year.

SUBCOMMITTEE FINDINGS

This item was not been presented to a subcommittee.

STAFF ANALYSIS

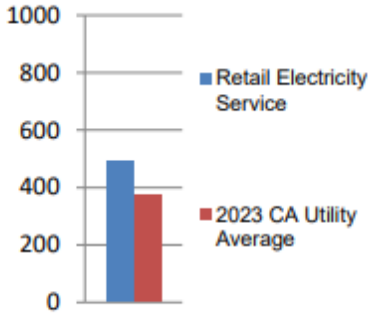
Derived from the 2023 Power Source Disclosure Report, the 2023 Power Content Label shows resources or fuel types of power procured and sold to end use customers. The 2023 Power Content Label indicates that for calendar year 2023, 19.3% of PPC's annual electricity sales to end use customers is from solar generation, 1.1% from eligible hydroelectricity, 25.0% from large hydroelectric generation, 2.5% from customer owned solar distributed generation on Mare Island and 52.1% of 2023 annual electricity sales was purchased from open market and its sources of generation cannot be specified.

PPC has purchased unbundled Renewable Energy Credits (RECs) through short-term contracts to help meet the annual RPS requirement of calendar year 2023. The unbundled RECs account for 3.1% of the annual retail sales.

2023 POWER CONTENT LABEL

Pittsburg Power Company

https://islandenergy.com/power-content-label/

Greenhouse Gas Emissions Intensity (lbs CO_2e/MWh)		Energy Resources	Retail Electricity Service	2023 CA Power Mix
Retail Electricity Service	2023 CA Utility Average	**Eligible Renewable**[1]	**20.4%**	**36.9%**
492	**373**	Biomass & Biowaste	0.0%	2.1%
		Geothermal	0.0%	4.8%
		Eligible Hydroelectric	1.1%	1.8%
		Solar	19.3%	17.0%
		Wind	0.0%	11.2%
		Coal	**0.0%**	**1.8%**
		Large Hydroelectric	**25.0%**	**11.7%**
		Natural Gas	**0.0%**	**36.6%**
		Nuclear	**0.0%**	**9.3%**
		Other	**2.5%**	**0.1%**
		Unspecified Power[2]	**52.1%**	**3.7%**
		TOTAL	**100.0%**	**100.0%**
Percentage of Retail Sales Covered by Retired Unbundled RECs[3]**:**			**3%**	

[1]The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.

[2]Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.

[3]Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.

For specific information about this electricity portfolio, contact:	**Pittsburg Power Company (707-562-5000)**
For general information about the Power Content Label, visit:	https://www.energy.ca.gov/programs-and-topics/programs/power-source-disclosure-program

ATTACHMENTS: Resolution

Report Prepared By: Vanessa Xie, Pittsburg Power Company/Island Energy

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY
OF THE CITY OF PITTSBURG

In the Matter of:

Attesting the Veracity of the 2023)
Power Content Label to the) RESOLUTION NO. 24-
California Energy Commission)

WHEREAS, Pittsburg Power Company (PPC), a joint powers authority, provides retail electricity and natural gas services on Mare Island, Vallejo, under the name of Island Energy; and

WHEREAS, under the Power Source Disclosure Program, electricity retail suppliers are required to submit to the California Energy Commission (CEC) annually to disclose their gross purchases of electricity by source, resales of electricity, and the net electricity by source used to serve retail load for the previous calendar year; and

WHEREAS, the electricity retail suppliers then disclose to their consumers the power mix associated with their electricity portfolios, as well as California's overall power mix on an annual Power Content Label; and

WHEREAS, PPC, in compliance with the State law (Public Utilities Code 398.1(b)), is disclosing both the power sources portfolio information and comparison to California's total system power mix on an annual Power Content Label; and

WHEREAS, the CEC regulations authorize a public agency electric retail provider that offers only one electricity product to approve submission of an attestation of the veracity of the Power Content Label, in lieu of a requirement to provide a report from an auditor.

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Pittsburg Power Company hereby approves the 2023 Annual Power Content Label and attests to the veracity of the Power Content Label.

PASSED AND ADOPTED by Governing Board of the Pittsburg Power Company at a regular meeting on the 16th day of December 2024, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Jelani Killings, Chair

ATTEST:

_____
Garrett Evans, Executive Secretary