ESA

80 South Lake Avenue
Suite 570
Pasadena, CA 91101
626.204.6170 phone
626.204.6171 fax

esassoc.com

memorandum

date	March 1, 2021
to	Planning and Land Use Management Committee City of Los Angeles 200 N. Spring Street Los Angeles, CA 90012 Email: clerk.plumcommittee@lacity.org
from	Heidi Rous, Alan Sako, and Jessie Fan Environmental Science Associates
subject	Responses to January 22, 2021 Carpenters Appeals Re Council File No. 21-0134 and Case Nos. VTT-74891 and ENV-2017-1706-MND for De Soto-Burbank Master Plan Project

Chairman Harris-Dawson and Honorable Committee Members:

ESA prepared the Tiered Initial Study/Mitigated Negative Declaration (the "Tiered IS/MND") for the De Soto-Burbank Master Plan Project (the "Project"). On January 22, 2021, appellant Southwest Regional Council of Carpenters (the "Carpenters"), represented by Mitchell M. Tsai, Esq., filed two appeals with respect to the Project.

In the first appeal (the "Carpenters VTT Appeal"), the Carpenters challenge the written determination (the "VTT Determination") dated January 13, 2021 from the City Planning Commission (the "CPC") relating to Vesting Tentative Tract Map No. 74891 (the "VTTM") for the Project. In that determination, CPC approved Case No. VTT-74891 for the VTTM, adopted the Tiered IS/MND and the Mitigation Monitoring Program ("MMP") and denied the prior appeals of the Carpenters and the Coalition for Valley Neighborhoods, granted the appeal in part and denied the appeal in part of Michael Adler, and otherwise sustained the Director of Planning's determination dated March 23, 2020.

The Carpenters' second appeal (the "Carpenters CEQA Appeal"), and collectively with the Carpenters VTT Appeal, the "Carpenters Appeals") challenges the CPC's adoption of the Tiered IS/MND and MMP in connection with the CPC's approval of Project Permit Compliance Review (Case No. DIR-2017-1708) for the Project (the "DIR Determination").[1] The VTT Determination and the DIR Determination are collectively defined as the "CPC Determinations."

Many arguments in the Carpenters Appeals simply repeat those in the Carpenters' prior appeals of the Advisory Agency's approval of the VTTM (on April 3, 2020) and the Director of Planning's approval of Case No. DIR-2017-1708-SPP (on April 7, 2020). The Carpenters' prior claims are largely set forth in an August 3, 2020 letter from Mr. Tsai to the CPC (the "First Carpenters Letter"), which enclosed a supporting letter dated June 22, 2020 from Soil/Water/Air Protection Enterprise ("SWAPE") relating to the Project's air quality impacts (the "First

[1] The DIR Determination itself is final and not further appealable. An appeal of the CEQA clearance with respect to the DIR Determination is appealable, however, pursuant to Section 21151(c) of the California Public Resources Code.

SWAPE Letter").

The Applicant responded to the original appeals in Sheppard Mullin's May 22, 2020 letter to the CPC and planning staff also addressed them in the Department of City Planning Recommendation Report for the June 25, 2020 CPC hearing, which was continued August 13, 2020 (the "Staff Report"). In addition, ESA responded to the unmeritorious claims in the First Carpenters Letter and the First SWAPE Letter in their memorandum to the CPC dated August 10, 2020 (the "First ESA Memo").

This memorandum responds to new claims in the Carpenters Appeals, in particular those in Mr. Tsai's January 22, 2021 letter (the "New Carpenters Letter") and two additional supporting letters from SWAPE, the first of which is dated August 19, 2020, titled "Comments on the De Soto/Burbank Master Plan Project," and attached as Exhibit C to the New Carpenters Letter (the "Exhibit C SWAPE Letter"), and the second of which is dated August 27, 2020, titled "Response to Comments on the De Soto/Burbank Master Plan Project," and attached as Exhibit D to the New Carpenters Letter (the "Exhibit D SWAPE Letter"). This memorandum was jointly prepared by ESA and Sheppard Mullin to address both California Environmental Quality Act ("CEQA") and non-CEQA issues raised in these documents.

For the reasons below, the latest Carpenters Appeals have no merit and fail to present substantial evidence that the Project is inconsistent with the Warner Center 2035 Plan (the "WC2035 Plan") or may cause significant effects on the environment that were not adequately addressed in the Final Environmental Impact Report (the "Final EIR") for the WC2035 Plan. Please include this letter in the administrative record for the Project.

I.

RESPONSES TO CARPENTERS LETTER

A. The Project is Consistent with the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan.

The Carpenters argue that the Project is inconsistent with Objective 1-4 in the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan (the "Community Plan") to "[p]rovide a diversity of housing opportunities capable of accommodating all persons regardless of income, age or ethnic background" because the Project initially proposed no affordable or low income housing units, and the voluntary affordable units that the Applicant added to the Project remain insufficient given the size of the Project. (New Carpenters Letter, p. 9)

These claims are not well-taken. To start, Objective 1-4 of the Community Plan is implemented by the four policies below, and the Project is consistent with each of them. Contrary to the Carpenters' claims, none of the implementing policies prescribe affordability level requirements. As demonstrated below, the Project is consistent with Community Plan Objective 1-4.

- Policy 1-4.1. Promote greater individual choice in type, quality, price and location of housing.
    - Consistent with this policy, the Project's apartment and condominium units range in size and type, thereby providing several options for prospective residents with diverse household sizes and incomes, including families with children. The apartment units include approximately 126 studios (averaging approximately 530 square feet in size), 442 one-bedrooms (ranging from approximately 650 to 800 square feet), 206 two-bedrooms (ranging from approximately 1,100 to 1,300 square feet) and 14

three-bedrooms (averaging approximately 1,500 square feet), while the work-live apartment units include 6 one-bedrooms (averaging approximately 1,450 square feet), 43 two-bedrooms (ranging from approximately 1,500 to 2,600 square feet), and 4 three-bedrooms (ranging from approximately 1,915 to 2,095 square feet). The condominium units include approximately 35 one-bedrooms (averaging approximately 830 square feet), 84 two-bedrooms (averaging approximately 1,200 square feet), and 34 three-bedrooms (ranging from approximately 1,570 to 1,760 square feet), while the work-live condominium units include 14 two-bedrooms (ranging from approximately 1,700 to 2,100 square feet), and 1 three-bedroom (approximately 2,500 to 3,100 square feet). With a wide variety of different unit types, varying in the number of bedrooms and unit size, the Project does in fact provide a broad range of housing choices for potential residents, with corresponding price level options for both rental and ownership opportunities.

In addition, while the Community Plan does not establish affordability level requirements that apply to the Project (nor does the WC2035 Plan), pursuant to Condition 31 in the DIR Determination (which the Applicant volunteered), 10 percent of units in the Project's multi-family apartment buildings (Phases 1, 2 and 6) will be reserved for workforce housing for a period of 55 years. This further promotes greater individual choice for potential renters in the pricing of housing.

- Policy 1-4.2. Promote mixed use housing projects in pedestrian oriented areas.

  - Consistent with this policy, the Project is a mixed-use development on an approximately 24-acre project site (the "Site") that combines residential, office, hotel, retail and restaurant uses in mid-rise and high-rise structures and includes pedestrian adapted pathways (PAPs) throughout the Site to maintain pedestrian connectivity between the proposed buildings, as well as pedestrian connectivity to the adjacent street frontages. The PAPs are incorporated into the Publicly Accessible Open Space (PAOS) for the Project to provide both access to all of the project buildings and connectivity between De Soto Avenue and Burbank Boulevard. The incorporation of focal points throughout the Site provide additional open space in the form of shaded seating areas for employees, residents and visitors.

- Policy 1-4.3. Ensure new housing opportunities minimize displacement of the residents.

  - Consistent with this policy, the phased development of the Project would not displace any current residents or remove any existing housing stock since it will be built on land currently used for commercial uses. The Project will instead substantially increase the amount of available housing stock in the City of Los Angeles (the "City") to address the increasing housing demand. In addition, the Project encourages a more sustainable neighborhood that contains a mix of housing, job opportunities, commercial services and amenities, near public transit.

- Policy 1-4.4. Increase home ownership options by providing opportunities for development of townhouses, condominiums, and similar types of housing.

  - Consistent with this policy, the Project includes a variety of rental and for-sale housing units that comprise the 1,009 total residential units, including 788 apartment units, 53 work-live apartment units, 153 condominium units and 15 work-live condominium units.

B. The Tiered IS/MND Took Into Account the Potential Concurrent Development of Project Phases.

The Carpenters now contend that the Tiered IS/MND is unlawful because the CPC modified Condition 2.d in the DIR Determination to eliminate the last sentence, which stated that no building permit could be issued for a development phase prior to issuance of a certificate of occupancy for the prior development phase. They claim that this allows the concurrent development of multiple phases, which would result in more intense and concentrated air quality and transportation impacts that were not adequately analyzed in the Tiered IS/MND. (New Carpenters Letter, pp. 18-19)

This claim lacks merit. The environmental analysis in the Tiered IS/MND is not governed by project conditions, but rather by the phasing assumptions in the Tiered IS/MND itself. In that regard, the Tiered IS/MND expressly states the assumptions regarding the potential for concurrent development of multiple project phases that were relied on to prepare the environmental analyses in the document:

> It is possible that there would be partial overlap between the construction periods for Phase 1 (New Building 1) and Phase 2 (New Building 2), with the excavation for Phase 2 commencing near the end of the construction of Phase 1. It is also possible that that there would be full overlap between the construction of Phase 5 (New Building 5) and Phase 6 (New Building 3). In addition, New Buildings 8 and 9 in Phase 3 are anticipated to be constructed roughly at the same time. (Tiered IS/MND, p. A-45)

The Tiered IS/MND then explained that, in the event this phasing changed, the City would determine whether additional environmental review would be required:

> Any revisions to project phasing would require approval from the Planning Department to ensure that any changes would not affect the environmental analysis or conclusions herein. (Id.)

Moreover, as set forth in Condition 2.c in the DIR Determination, any change in the sequencing of the project phases would be reviewed by the Department of City Planning and could require a modification of the approved Project Permit Compliance. Pursuant to Section 11.5.7.D of the Los Angeles Municipal Code ("LAMC"), a required modification involves a discretionary review by the Director of Planning and is therefore subject to CEQA. (LAMC Section 11.5.7-D). Therefore, the review required under Condition 2.c would necessarily include a determination of whether any additional review under CEQA was required in connection with such a change in the phasing sequence.

For these reasons, the Tiered IS/MND properly accounted for the potential concurrent development of project phases and the deletion of the last sentence in Condition 2.c has no bearing on the adequacy of the environmental analysis in the Tiered IS/MND.

C. The Project is Not Required to Incorporate Mitigation Measures WC-AQ-17-21, WC-CUL-1-2 and WC-TRS-101.

The Carpenters repeat their prior claim that the City failed to require the Project to implement mitigation measures WC-AQ-17-21, WC-CUL-1-2, and WC-TRS-101. For the reasons discussed below, the Carpenters'

claims have no basis in law or fact, and the Project is not required to incorporate these mitigation measures. (New Carpenters Letter, pp. 21-22)

- **WC-AQ-17-21:** The Carpenters are dissatisfied with the City's response that operational mitigation measures WC-AQ-17-21 are obligations of the City, not the Applicant, and are therefore not applicable to the Project. However, they simply restate their prior claim to the contrary. Therefore, this comment was fully addressed in the First ESA Memo (at page 9).

- **WC-CUL-1-2:** The Carpenters claim that the preparation of a cultural resources assessment for the Tiered IS/MND undermines the City's position that mitigation measures WC-CUL-1 and 2 do not apply to the Project. This defies logic. Pursuant to WC-CUL-2, a site-specific historic resources assessment was prepared "as part of the environmental review of the [P]roject" to "determine whether the property is a historic resource under CEQA." Therefore, this requirement was satisfied. And, because the assessment confirmed that no historical resources are located on the Site, WC-CUL-1, which requires preservation, rehabilitation, restoration or adaptive use of known historical resources, has no application to the Project since the Project would have no impact on historical resources. (See Final EIR, p. 4.4-12)

- **WC-TRS-101:** The Carpenters argue that the City's response that the Mobility Fee allows the City to implement the Neighborhood Protection Program through the WC2035 Plan is inconsistent with the Tiered IS/MND. They claim that the City must prove how the Neighborhood Protection Program would be implemented for the Project. This claim is not well-taken. The Tiered IS/MND clearly states that WC-TR-101 directs the City, and not a project applicant, to implement a Neighborhood Protection Program, and that the WC2035 Plan requires a portion of the collected Mobility Fee to be used for this purpose, in particular to address and mitigate any unforeseeable neighborhood traffic impacts as they arise from buildout under the WC2035 Plan. (Tiered IS/MND, p. B-234) Section 15126.4(a)(2) of the State CEQA Guidelines provide that mitigation measures can be incorporated into the plan, policy, regulation or project design to address broad impacts at a programmatic level. The City is obligated to implement the Neighborhood Protection Program, not the Applicant. (Tiered IS/MND, p. B-236; see also WC2035 Plan, Section 8) Moreover, the Applicant is required to pay the applicable Mobility Fee for the Project (as required in the WC2035 Plan and consistent with Condition 27 in the DIR Determination), a portion of which the City would distribute for funding the Neighborhood Protection Program. (WC2035 Plan, Section 8.6) For these reasons, WC-TRS-101 should not be imposed at the project level and should not be imposed as an environmental mitigation measure with respect to the Project.

II.

RESPONSES TO EXHIBIT C SWAPE LETTER

The Exhibit C SWAPE Letter largely repeats the First SWAPE Letter verbatim, except for a few new claims, which we respond to below.

A. The Air Quality Modeling Used Correct Land Use Types and Sizes.

SWAPE makes minor and immaterial revisions to its prior claim that the air quality modeling in the Tiered IS/MND failed to include the correct amount of land use types and sizes. (Exhibit C SWAPE Letter, pp. 5-8) These revisions do not warrant any amendment to ESA's prior response in Section 2.4 of the First ESA Memo.

B. The Operational Greenhouse Gas Mitigation Measures Used in the Modeling Were Substantiated.

SWAPE repeats its prior claims verbatim that the Project's CalEEMod output files incorrectly include water- and waste-related operational greenhouse gas emissions ("GHG") mitigation measures and, therefore, underestimated the Project's operational GHG emissions.

Water-Related Mitigation Measures

SWAPE asserts that the Tiered IS/MND failed to demonstrate consistency with those water-related mitigation measures regarding the installation of low flow bathroom and kitchen faucets, toilets, and showers, and the use of a water-efficient irrigation system because (1) the CalEEMod results do not include justification in the "User Entered Comments & Non-Default Data" table and (2) the mitigation measures are not enforceable requirements of the Project. We briefly responded to these claims in Section 2.12 of the First ESA Memo. To flesh out our original response, we provide additional detail to further demonstrate that SWAPE's arguments are not well-taken.

First, the water mitigation default was not changed in the CalEEMod, so the user is not required to provide a justification in Section 1.3–User Entered Comments & Non-Default Data. Furthermore, the default water-related mitigation measures applied to the Project are shown in the output file in Section 7.0 of Appendix F-3 to the Tiered IS/MND.

Second, the applicable mitigation measures from the WC2035 Final EIR, including MM-U-4 and MM-AQ-2, that were used in the GHG modeling were incorporated into the adopted Tiered IS/MND and MMP and made enforceable environmental mitigation measures for the Project in the CPC Determinations. (DIR Determination, pp. C-28, C-39-40; VTT Determination, pp. C-18, C-29) Thus, MM-U-4 and MM-AQ-2 are not simply "recommended" but are in fact fully enforceable conditions of approval for the Project.

Waste-Related Mitigation Measures

SWAPE also claims that the Tiered IS/MND failed to demonstrate consistency with the waste-related mitigation measure regarding recycling and composting services because (1) AB 341 does not apply at the project-level, (2) the reduction goals of AB 341 are for year 2020, so they do not apply to the Project since construction would start after 2020, (3) the 2013 Zero Waste Progress Report is outdated and does not apply to the Project, (4) AB 341 does not apply to composting, just recycling, (5) the Tiered IS/MND fails to address the measure as it is described in the CAPCOA guidance document, and (6) the Tiered IS/MND fails to use the web-based tool Waste Reduction Model (WARM) to quantify baseline emissions and reductions. (Exhibit C SWAPE Letter, pp. 13-16) SWAPE's arguments are not well-taken. We addressed this comment in Section 2.12 of the First ESA Memo and provide this additional detail to build on our original response.

To start, as a point of clarification, the waste-related "mitigation measure" that SWAPE is objecting to is a regulatory compliance measure, not a mitigation measure from the Final EIR or Tiered IS/MND. The waste-related mitigation measure for the Project is MM-U-12, which requires that the Project's *construction* debris would be subject to the City's solid waste diversion measures, and the provision of recycling area or room for onsite recycling activities. That mitigation measure is incorporated into the Tiered IS/MND and MMP and is made enforceable by environmental mitigation measures adopted in the CPC Determinations. In addition to said mitigation measure, the Project is consistent with the statewide mandatory commercial recycling regulations of AB 341 through its compliance with the City's Zero Waste Plan. The Zero Waste Plan supplements and expands

on the State requirements for waste diversion. The Project would be served by solid waste collection and recycling service providers that comply with the Zero Waste diversion targets of the City, consistent with the AB 341 reduction goals. (Tiered IS/MND, pp. B-110, B-280-281) Accordingly, the CalEEMod in this case used a diversion rate of 76% to account for the waste reduction last reported by the City in 2011. (Tiered IS/MND, Appendix F-3, Sections 1.3, 8.0)

Next, we respond to SWAPE's six specific points. First, as discussed in Section II.E of this memorandum, the Project's construction-related and operational GHG impacts were adequately addressed in the Final EIR, and that analysis is presumptively valid and can no longer be challenged. (Tiered IS/MND, pp. B-80-83) Nevertheless, the Tiered IS/MND includes, for informational purposes, a 45-page analysis which demonstrates that the Project would be consistent with the applicable plans, policies and regulations adopted by the State and the City for the purposes of reducing GHG emissions, including AB 341. (Tiered IS/MND, p. B-110) Though AB 341 directs CalRecycle to develop and adopt regulations for mandatory commercial recycling, the regulation would still apply at a project-level because the Project would be served by solid waste collection and recycling service providers that shall comply with State and local waste diversion targets, including the City's Zero Waste Plan.

Second, AB 341's statewide reduction goal of 75 percent by year 2020 would still apply to the Project even if construction of the Project would start after 2020 because AB 341 requires the 75 percent reduction by 2020 and annually thereafter, pursuant to Section 41780.01 of the California Public Resources Code, Division 30, Chapter 6. In other words, the Project cannot backslide below 75 percent and must maintain or exceed the required diversion rate.

Third, CalEEMod does not account for the 2013 reductions reported in the City's Zero Waste Progress Report and thus, it is appropriate to apply the approximately 76% diversion rate to the Project. CalEEMod uses waste disposal rates for municipal solid waste disposal for landfilling, recycling, and composting based on CalRecycle data for individual land uses. That data does not include diversion of waste. Therefore, the default rates in CalEEMod estimate waste prior to diversion. CalEEMod has a solid waste mitigation module where the program requires the user to input the percent reduction in waste disposal from recycling and composting services. In this case, a diversion rate of 76 percent was applied consistent with the City's Zero Waste diversion rate as of 2011.[2] (City of Los Angeles Department of Public Works, LA Sanitation, Zero Waste Progress Report, March 2013, p. 7)

Fourth, SWAPE is mistaken that AB 341 "fails to apply to composting directly" because AB 341 clearly includes source reduction, recycling, and composting to achieve three ways to achieve the 75 percent reduction by year 2020, and annually thereafter. (Section 41780.01 of the California Public Resources Code, Division 30, Chapter 6)

Fifth, the City does not require compliance with the CAPCOA guidance document to prepare quantified GHG emissions analysis. The CAPCOA guidance document states that, it does not "dictate how any jurisdiction should address questions of policy" and the "decision to accept any quantification method rests with the reviewing agency." (CAPCOA, Quantifying Greenhouse Gas Mitigation Measures, August 2010, p. 4) In accordance with

[2] Waste can be diverted from a landfill through waste reduction, recycling, composting, and other technologies that beneficially use the materials found in solid waste. The environmental metric used to evaluate the City's progress towards its Zero Waste goal is called the "diversion rate," or the percentage of generated waste that is not disposed in a landfill. The City had a diversion rate of 20.6 percent in 1990, 46.0 percent in 1995, 65.2 percent in 2000, and by the end of 2011, the City achieved a diversion rate of 76.4 percent. (City of Los Angeles Department of Public Works, LA Sanitation, Zero Waste Progress Report, March 2013, p. 7)

the City's direction, the CalEEMod for operational GHG emissions accounted for waste generation based on multi-family residential dwelling units, commercial floor area, and hotel guest rooms. (Tiered IS/MND, Appendix F-3, Sections 1.1, 8.0) As discussed above, the CalEEMod also included a diversion rate of 76 percent to account for the City's Zero Waste Plan. Lastly, contrary to SWAPE's claim, CAPCOA and the City do not require a "life-cycle" analysis for GHG because the data is speculative and there is not yet agreement on methodological approach to life-cycle analysis. (CAPCOA, Quantifying Greenhouse Gas Mitigation Measures, August 2010, p. 29)

Sixth, the WARM does not apply to the Project because this modeling tool applies to solid waste planners and organizations to track and voluntarily report greenhouse gas emissions reductions, energy savings, and economic impacts from several different management practices – source reduction, recycling, anaerobic digestion, combustion, composting and landfilling. (USEPA, Basic Information about the Waste Reduction Model [WARM], https://www.epa.gov/warm/basic-information-about-waste-reduction-model-warm) As discussed above, at the City's direction, the Tiered IS/MND used the CalEEMod to model GHG emissions for the Project.

For these reasons, the operational GHG mitigation measures are in fact substantiated.

C. SWAPE'S "Updated" Air Quality Analyses Are Flawed and Improper.

SWAPE claims that regional construction-related and operational air quality emissions for the Project are significant based on its new CalEEMod modeling. (Exhibit C SWAPE Letter, pp. 17-18) In the First SWAPE Letter, it claimed that several inputs to the CalEEMod modeling were incorrect (at pages 2-17). We explained why the inputs for the air quality analysis were appropriate and SWAPE was incorrect in the First ESA Memo (at pages 4-8). Now, SWAPE goes a step further by changing those modeling inputs to reflect its flawed reasoning, and then recalculating the construction-related and operational air quality emissions for the Project, which not surprisingly increase those emissions so that they exceed the various significance thresholds. For the reasons set forth in the First ESA Memo, SWAPE's CalEEMod modeling lacks credibility and grossly misrepresents the Project's regional air quality emissions. (First ESA Memo, pp. 4-8)

Moreover, with regard to regional operational emissions, consistent with the discussion in Section 2.2 of the First ESA Memo, the operational emissions of ROG, NOx, CO, PM10, and PM2.5 were adequately addressed in the Final EIR and fully apply to the Project. That analysis is presumptively valid and can no longer be challenged. (Tiered IS/MND, pp. B-30-32)

D. SWAPE's Screening-Level Health Risk Assessment Is Flawed and Improper, As Demonstrated By ESA's Project Risk Assessment.

1. SWAPE'S Flawed Screening-Level HRA.

SWAPE previously contended in the First SWAPE Letter that the Tiered IS/MND should have included a health risk assessment ("HRA") of the Project's toxic air contaminant ("TAC") emissions, such as diesel particulate matter ("DPM"). Now, SWAPE goes a step further by preparing a simple screening-level HRA, which not surprisingly estimates cancer-risk values that far exceed the various thresholds for a significant TAC impact. (Exhibit C SWAPE Letter, pp. 18-25)

This screening-level HRA lacks any semblance of credibility for a number of reasons. To start with, SWAPE's simple screening-level HRA relied upon AERSCREEN, which is a screening-level air quality dispersion model.

(Exhibit C SWAPE Letter, p. 19) This screening-level HRA indicates a screening risk of 110 in one million (1.1E-04) without age sensitivity factors and 231 in one million (2.31E-04) with age sensitivity factors. (Id., pp. 24-25) These risk values are immediately suspect as misleading and unreasonable because they are substantially higher than typical risk values for industrial source projects, and are therefore an entirely unexpected result for a mixed-use residential and commercial project, which typically have significantly lower DPM emissions than an industrial source project.

For example, an HRA was conducted for the Phillips 66 Wilmington refinery facility in the City of Wilmington, California, which generates TAC emissions from oil refinery operations and associated industrial processes, and determined a 30-year residential risk at nearby residential receptors located adjacent to the east of the facility of 33.8 in one million (3.38E-05).[3] The Phillips 66 Wilmington facility analysis included age sensitivity factors. Unlike the Phillips 66 Wilmington facility, which generates long-term ongoing emissions from its continuous industrial operations, construction of the Project would not generate DPM emissions on an ongoing and continuous basis over a lifetime (70-year) or a residential exposure duration (30 years). Operation of the Project would generate a relatively small amount of ongoing operational DPM emissions from a minimal number of diesel-fueled vehicles (e.g., delivery trucks), as compared to an industrial oil refinery facility that has numerous heavy-duty industrial-sized equipment and industrial processes. Thus, the unexpected high results reported in SWAPE's screening-level HRA do not appear, on their face, to be credible and mislead the public and decision-makers as to the human health risks associated with the Project's DPM emissions.

In addition, upon further examination of the data, the screening-level HRA has several significant flaws that account for the misleading and incorrect analysis and explain the unrealistically high results. The first flaw is that SWAPE assumes Project construction would occur at full intensity for seven days per week, including Sundays and holidays. This is not a valid assumption. As stated in the Tiered IS/MND mitigation measure MM-NOI-3 (which is a required mitigation measure for the Project), "[t]he Applicant shall restrict construction hours to hours between 7:00 a.m. and 9:00 p.m., Monday through Friday, and between 8:00 a.m. and 6:00 p.m. on Saturday. No noise-generating construction activities shall be allowed on Sundays or national holidays." SWAPE's false assumption contributes to substantially overestimated construction emissions and overestimated health risks at sensitive receptors.

The second flaw is that SWAPE used "unmitigated annual PM10 exhaust estimates" (Exhibit C SWAPE Letter, p. 20), which means that SWAPE incorrectly assumed that the Project would not use any construction equipment meeting the Tier 4 Final emissions standards. This is clearly incorrect and further contributes to substantially overestimated construction emissions and substantially overestimated health risks at sensitive receptors. The use of construction equipment meeting the Tier 4 Final emissions standards is required per mitigation measure MM-AQ-1, which is a required environmental mitigation measure for the Project in the CPC Determinations.

The third flaw is that SWAPE assumed the Project's "operational activities will generate approximately 2,518 pounds of diesel particulate matter ("DPM") per year throughout operation (Exhibit C SWAPE Letter, p. 22), which is equivalent to approximately 1.259 tons per year (i.e., 2,518 / 2,000 = 1.259). SWAPE calculated this value "by subtracting the existing emissions from the proposed Project" (Id., p. 22). This value was calculated based on the total exhaust PM10 emissions, which includes all area, energy, and mobile source exhaust PM10 emissions in the CalEEMod operational output files provided in Exhibit C SWAPE Letter. However, SWAPE

[3] South Coast Air Quality Management District, Approval of AB 2588 Health Risk Assessment (HRA) for Phillips 66 Wilmington (South Coast AQMD Facility ID No. 171107), August 21, 2020, http://www.aqmd.gov/docs/default-source/planning/risk-assessment/phillips-66-wilmington-171107---hra-approval-letter-8-21-20.pdf?sfvrsn=6. Accessed February 11, 2021.

incorrectly assumed the 2,518 pounds of exhaust PM10 emissions were the result of diesel fuel combustion. In fact, only a small portion of these operational emissions are DPM. In reality, most of the area and energy exhaust PM10 emissions are the result of gasoline-fueled landscaping equipment and natural gas combustion for building heating and cooking. Similarly, the operational mobile source exhaust PM10 emissions are from a combination of primarily gasoline-fueled vehicles, such as passenger vehicles and light-duty pick-up trucks, and a smaller number of diesel-fueled trucks, as provided in the vehicle fleet percentages in the CARB on-road vehicle emissions factor (EMFAC) model. It is highly inappropriate and factually incorrect to analyze non-diesel fuel exhaust PM10 emissions as diesel particulate matter. This results in substantially overestimated and, therefore, unrealistically high health risk impacts.

The fourth flaw is that SWAPE's screening-level HRA modeled all of the DPM emissions from mobile sources as if the emissions were occurring at a single location. This was also improper because mobile sources, by their very nature, do not generate emissions at a single location but rather along the entire vehicle trip, which would disperse the emissions along regional roadways and not concentrate the emissions at a single location. When conducting HRAs, dispersion of pollutants is a critical and important consideration because health risk impacts are a direct result of TAC concentrations. The screening operational HRA incorrectly assumed that all mobile source emissions would occur at a single location, which results in concentrations at sensitive receptors that are artificially elevated to highly unreasonable levels.

In addition, it is worthwhile to note the technical limitations in the model SWAPE used. As stated above SWAPE "relied upon AERSCREEN, which is a screening level air quality dispersion model". AERSCREEN assumes calm wind conditions at all times and a stable atmosphere (i.e., no atmospheric mixing) and does not have the capability to incorporate locally measured wind speed and wind direction data. Thus, AERSCREEN does not account for the dispersion of pollutants that occurs from wind. This is a significant limitation because wind directed away from sensitive receptor locations relative to a source of emissions would disperse pollutants away from sensitive receptors and thereby reduce the impact of TAC emissions on those receptors.

With respect to the Site, refer to Figure 3 in Attachment A to this memorandum, which shows that the dominant winds in the project area, based on Southern California Air Quality Management District ("SCAQMD") approved meteorological data, blow from the south/southeast towards the north/northwest. This means that the dominant winds would not disperse pollutants generated at or near the Site directly towards the nearest residential uses located to the east of the Site. Because the AERSCREEN model fails to account for local wind speed and wind direction, its application results in artificially elevated pollutant concentrations at sensitive receptors and, therefore, artificially elevated health risk levels.

For all of these reasons, SWAPE's health risk results are highly misleading and inaccurate and lack credibility. In other words, SWAPE's conclusions are not supported by any credible evidence, much less substantial evidence. Even SWAPE acknowledged the serious limitations in its screening-level study, stating (actually, understating) that "[o]ur analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection."

2. ESA's Project-Level Health Risk Assessment.

In order to calculate the actual cancer risk associated with the Project and demonstrate that the cancer risk identified by SWAPE in its screening-level analysis is wildly overstated, ESA prepared a Project Health Risk Assessment (the "Project HRA") to further support the conclusion in the Tiered IS/MND, in reliance on the Final

EIR, that the Project's health risk impact on sensitive receptors would be less than significant. The Project HRA is included in Attachment A hereto and we summarize its analysis and conclusions below.

We emphasize, however, that this project-level analysis of human health effects from DPM emission is not required because, as discussed in the Tiered IS/MND, (1) the Final EIR analyzed the DPM impact associated with buildout under the WC2035 Plan and that analysis fully applies to the Project and (2) a full-blown HRA is not required for non-industrial source projects, in particular when a first-tier EIR has already been prepared and certified. However, given the non-credible analysis and conclusions in SWAPE's screening-level study, the Applicant felt it was important provide reality-based analysis for the public and City decisionmakers to demonstrate that the Project's health risk with respect to DPM emissions for the Project is less than significant.

The Project HRA was prepared using the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD), which is a refined dispersion model, not a screening model. Unlike AERSCREEN, AERMOD accounts for SCAQMD-approved meteorological data (i.e., wind speed and wind direction data) and otherwise avoids all of the pitfalls in SWAPE's screening-level HRA. The Project HRA then calculates health risks both with and without age sensitivity factors, based on methodologies and exposure parameters developed by the Office of Environmental Health Hazard Assessment (OEHHA), as well as corresponding SCAQMD guidance documents. The OEHHA 2003/SCAQMD 2012 Risk Assessment Procedures do not consider age sensitivity factors. Whereas, the OEHHA 2015/SCAQMD 2017 Risk Assessment Procedures do consider age sensitivity factors.

The results of the quantified construction and operational HRA scenarios in the Project HRA are presented below in **Table 1**, *Maximum Cancer Risk Results – Residential Receptor*; **Table 2**, *Maximum Cancer Risk Results – School Receptor*; and **Table 3**, *Maximum Cancer Risk Results – Hospital Receptor*. As shown, with respect to all proximate sensitive receptors, the Project would result in a cancer risk impact well below the significance threshold of an incremental risk of 10 in one million under both methodologies (i.e., without and without age sensitivity factors). As shown, the maximum lifetime incremental increase in cancer risk is 4.10 in a million, with respect to the closest residential receptor to the east of the Site.

TABLE 1
MAXIMUM CANCER RISK RESULTS – MAXIMUM IMPACTED RESIDENTIAL RECEPTOR

	Lifetime Incremental Increase in Cancer Risk (in One Million)	
Risk Scenario	**OEHHA 2003 / SCAQMD 2012 Risk Assessment Procedures (without age sensitivity factors)**	**OEHHA 2015 / SCAQMD 2017 Risk Assessment Procedures (with age sensitivity factors)**
Construction Only: Construction Phases 1 through 8	0.20	3.49
Construction Only: Construction Phases 2 through 8	0.11	1.25
Construction and Operations: Overlap Scenario 1	0.46	4.10
Construction and Operations: Overlap Scenario 2	0.41	1.96
Operations Only: 30-Year Operations	0.29	1.85
Maximum Risk	**0.46**	**4.10**
Significance Threshold	10	10

Exceeds Threshold?	No - (for all Residential Receptor Locations)	No - (for all Residential Receptor Locations)

SOURCE: ESA, 2021.

TABLE 2
MAXIMUM CANCER RISK RESULTS – SCHOOL RECEPTOR

	Lifetime Incremental Increase in Cancer Risk (in One Million)	
Risk Scenario	**OEHHA 2003 / SCAQMD 2012 Risk Assessment Procedures (without age sensitivity factors)**	**OEHHA 2015 / SCAQMD 2017 Risk Assessment Procedures (with age sensitivity factors)**
Construction Only: Construction Phases 1 through 8	0.21	3.05
Construction Only: Construction Phases 2 through 8	0.15	1.96
Construction and Operations: Overlap Scenario 1	0.48	3.65
Construction and Operations: Overlap Scenario 2	0.46	2.46
Operations Only: 30-Year Operations	0.35	1.99
Maximum Risk	**0.48**	**3.65**
Significance Threshold	10	10
Exceeds Threshold?	No - (for all School Receptor Locations)	No - (for all School Receptor Locations)

SOURCE: ESA, 2021.

TABLE 3
MAXIMUM CANCER RISK RESULTS – HOSPITAL RECEPTOR

	Lifetime Incremental Increase in Cancer Risk (in One Million)	
Risk Scenario	**OEHHA 2003 / SCAQMD 2012 Risk Assessment Procedures (without age sensitivity factors)**	**OEHHA 2015 / SCAQMD 2017 Risk Assessment Procedures (with age sensitivity factors)**
Construction Only: Construction Phases 1 through 8	0.14	1.06
Construction Only: Construction Phases 2 through 8	0.13	1.08
Construction and Operations: Overlap Scenario 1	0.30	1.42
Construction and Operations: Overlap Scenario 2	0.31	1.49
Operations Only: 30-Year Operations	0.29	2.06
Maximum Risk	**0.31**	**2.06**
Significance Threshold	10	10
Exceeds Threshold?	No - (for all Hospital Receptor Locations)	No - (for all Hospital Receptor Locations)

SOURCE: ESA, 2021.

The maximum chronic non-cancer risks are shown in **Table 4**, *Maximum Chronic Non-Cancer Results – Residential Receptor*; **Table 5**, *Maximum Chronic Non-Cancer Results – School Receptor*; and **Table 6**, *Maximum Chronic Non-Cancer Results – Hospital Receptor*. Non-cancer risks include such effects as emphysema or reproductive disorders. As shown, the Project would result in a chronic non-cancer impact well below the significance threshold of a Hazard Index of 1.0 for the maximum impacted receptor. As shown, the maximum chronic non-cancer risk Hazard Index is 0.43, with respect to the hospital receptor to the south of the Site.

TABLE 4
MAXIMUM CHRONIC NON-CANCER RESULTS – MAXIMUM IMPACTED RESIDENTIAL RECEPTOR

Risk Scenario	Chronic Non-Cancer Hazard Index
Construction Only: Construction Phases 1 through 8	0.41
Construction Only: Construction Phases 2 through 8	0.41
Construction and Operations: Overlap Scenario 1	0.41
Construction and Operations: Overlap Scenario 2	0.41
Operations Only: 30-Year Operations	0.004
Maximum Hazard Index	**0.41**
Significance Threshold	1.0
Exceeds Threshold?	No - (for all Residential Receptor Locations)

SOURCE: ESA, 2021.

TABLE 5
MAXIMUM CHRONIC NON-CANCER RESULTS – SCHOOL RECEPTOR

Risk Scenario	Chronic Non-Cancer Hazard Index
Construction Only: Construction Phases 1 through 8	0.29
Construction Only: Construction Phases 2 through 8	0.29
Construction and Operations: Overlap Scenario 1	0.30
Construction and Operations: Overlap Scenario 2	0.30
Operations Only: 30-Year Operations	0.002
Maximum Hazard Index	**0.30**
Significance Threshold	1.0
Exceeds Threshold?	No - (for all School Receptor Locations)

SOURCE: ESA, 2021.

TABLE ES-6
MAXIMUM CHRONIC NON-CANCER RESULTS – HOSPITAL RECEPTOR

Risk Scenario	Chronic Non-Cancer Hazard Index
Construction Only: Construction Phases 1 through 8	0.42
Construction Only: Construction Phases 2 through 8	0.42
Construction and Operations: Overlap Scenario 1	0.43

Construction and Operations: Overlap Scenario 2	0.43
Operations Only: 30-Year Operations	0.004
Maximum Hazard Index	**0.43**
Significance Threshold	1.0
Exceeds Threshold?	No - (for all Hospital Receptor Locations)

SOURCE: ESA, 2021.

The results of ESA's Project HRA confirm that the Project would not have a significant impact with respect to cancer and non-cancer health risks associated with DPM emissions and confirms that SWAPE screening-level HRA very significantly overstated those risks.

E. SWAPE'S "Updated" GHG Analysis Is Flawed and Improper and Does Not Demonstrate a Significant GHG Impact.

SWAPE prepared its own CalEEMod modeling of the Project's construction-related and operational GHG emissions and, based on its analysis, claims that the Project would result in significant GHG impacts. Specifically, it claims that the Project would generate net annual GHG emissions of 44,961.38 MT CO_2e/year, and that this amount exceeds a 3,000 MT CO_2e/year mixed-use threshold previously stated by the SCAQMD. (Exhibit C SWAPE Letter, pp. 25-26)

This argument is not well-taken. First, a second-tier CEQA document is not required to re-analyze a significant impact where the first-tier determined that the impact is significant and that the impact is not susceptible to being mitigated to a level of insignificance. (CEQA Guidelines Section 15152(d)) The Final EIR concluded that buildout under the WC2035 Plan would have a significant and unavoidable GHG impact with respect to construction and operational emissions. Accordingly, the Project's construction-related and operational GHG impacts were adequately addressed in the Final EIR, and that analysis is presumptively valid and can no longer be challenged. (Tiered IS/MND, pp. B-80-83)

Second, even if the Final EIR had not already adequately addressed the significant and unavoidable GHG impact, the Tiered IS/MND was not required to include a quantified analysis of GHG impacts. Pursuant to Section 15064.4(a) of the CEQA Guidelines, the lead agency has the discretion, with respect to a project's GHG emissions, to (1) quantify GHG emissions and/or (2) rely on a quantitative analysis or performance based standards. Section 15064.4(b)(3) further provides that, in determining whether a project's GHG impact is significant, the lead agency should consider "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions," as well as "a project's consistency with the State's long-term climate goals or strategies." SWAPE engages in the pretense that a quantitative analysis is required (once again, though, no further project-level GHG analysis was required).

Third, SWAPE ignores that, while the Tiered IS/MND was not required to include a quantitative or qualitative analysis of the Project's GHG impacts, the Tiered IS/MND includes, for informational purposes, a 45-page analysis which demonstrates that the Project would be consistent with the applicable plans, policies and regulations adopted by the State and the City for the purpose of reducing GHG emissions, including the emissions reduction measures in the CARB's Climate Change Scoping Plan, Southern California Association of Government's 2016-2040 Regional Transportation Plan/Sustainable Community Strategy, and the City's LA

Green Plan, Sustainable City pLAn and Green Building Code. The Tiered IS/MND therefore concluded that the Project would not conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs and the Project's GHG impact would be less than significant. (Tiered IS/MND, pp. B-86-130)

Fourth, SWAPE ignores that, in addition to the lengthy qualitative analysis of the Project's GHG impacts, the Tiered IS/MND also includes, again for informational purposes, a detailed quantified analysis of the Project's GHG impact and calculated that the Project's net GHG emissions would be 31,663 MT CO_2e/year.[4]

Fifth, SWAPE falsely implies that SCAQMD has adopted the 3,000 MT CO_2e/year significance threshold. In fact, it has not. In 2008, the SCAQMD formed a GHG Significance Threshold Working Group ("Working Group"), consisting of government agencies implementing CEQA and representatives from various stakeholder groups, to provide guidance to local lead agencies on determining thresholds of significance for GHG emissions in their CEQA documents.[5] The last meeting of the Working Group occurred over a decade ago on September 28, 2010. At that meeting, SCAQMD staff presented two options for the Working Group's consideration: (1) separate numerical thresholds for residential projects (3,500 MT CO_2e/year), commercial projects (1,400 MT CO_2e/year) and mixed-use projects (3,000 MT CO_2e/year); and (2) a single numerical threshold for all non-industrial projects of 3,000 MT CO_2e/year. SCAQMD staff stated that if a lead agency chooses one option, it must consistently use that same option for all projects where it is lead agency. SCAQMD staff recommended the use of option 2, but would allow lead agencies to choose option 1 if they prefer that approach. Although SCAQMD staff expected to bring their GHG proposals to the SCAQMD Governing Board for consideration in December 2010, they never did, nor has staff held any subsequent Working Group meetings.[6] At present, the SCAQMD Governing Board has not adopted numerical GHG thresholds of significance for projects where the City is lead agency.

For all of these reasons, the Project's GHG impact was adequately addressed in the Final EIR and, in any event, the Tiered IS/MND included a detailed qualitative analysis of the Project's GHG impacts, for informational purposes that complies with the relevant requirements in the CEQA Guidelines.

F. The City Did Not Fail to Implement All Feasible Mitigation to Reduce Air Quality and GHG Impacts.

SWAPE claims that both the Tiered IS/MND and their new modeling of construction-related and operational air quality and GHG emissions demonstrates that the Project would result in potentially significant impacts, and thus additional mitigation measures must be identified and incorporated in a new Project-specific EIR to reduce

---

4 This amount is substantially lower than SWAPE's calculation of 44,961.38 MT CO_2e/year for several reasons. First, SWAPE utilized incorrect and higher operational vehicle trip generation factors based on default values rather than Project-specific trip generation values in the Traffic Volume Review study (Appendix K to the Tiered IS/MND), resulting in incorrect and overestimated mobile source GHG emissions. Second, SWAPE included GHG emissions from area sources (hearths) not included in the Project design. Third, SWAPE incorrectly designated virtually all parking spaces as fully enclosed subterranean parking structures, rather than using the Project-specific mix of both enclosed subterranean and unenclosed above-grade parking structures, resulting in incorrect and overestimated electricity use and electricity-related GHG emissions. Fourth, SWAPE failed to account for any water saving and water efficiency measures required by the City's Green Building Code and the implementation of applicable Mitigation Measures AQ-22, U-4 through U-8 and U-14 in the Final EIR (which have been imposed on the Project as environmental mitigation measures), resulting in incorrect and overestimated water-related GHG emissions. Fifth, SWAPE failed to account for any municipal solid waste diversion achieved by the City, as required by State law pursuant to Assembly Bill 341.

5 South Coast Air Quality Management District, Greenhouse Gases CEQA Significance Thresholds, 2008, http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/ghg-significance-thresholds. Accessed February 17, 2021.

6 South Coast Air Quality Management District, Greenhouse Gas CEQA Significance Threshold Stakeholder Working Group Meeting #15, September 28, 2010, http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2. Accessed February 17, 2021.

emissions to less than significant. SWAPE claims that it has identified additional feasible mitigation measures that the Project should have considered. (Exhibit C SWAPE Letter, pp. 3-4, 26-39)

ESA previously responded to this comment on page 9 of the First ESA Memo. As provided therein, no additional mitigation measures beyond those identified in the Tiered IS/MND are required because either the proposed mitigation measure: (1) does not apply to the Project, (2) is already incorporated as part of the Project through regulatory compliance, or (3) is included in the adopted MMP for the Project. Please see complete responses in Attachment B for each of SWAPE's proposed mitigation measures.

III.

RESPONSES TO EXHIBIT D SWAPE LETTER

The Exhibit D SWAPE Letter consists of SWAPE's responses to the First ESA Memo. Many of the SWAPE responses simply repeat its prior, unsubstantiated claims that we have already responded to in the First ESA Memo. To streamline our responses, we only respond to new comments by SWAPE. Where SWAPE merely restates a prior comment in the First SWAPE Letter, then we briefly make that distinction under the relevant heading.

A. The Tiered IS/MND Appropriately Tiered Off of the Operational Air Quality Analysis in the Final EIR.

SWAPE argues that the First SWAPE Letter was insufficient in addressing its concern that the Tiered IS/MND's reliance on the Final EIR is incorrect because the Final EIR did not adequately address the Project's significant operational ROG impacts. Specifically, SWAPE asserts that because the First ESA Memo says that the Project's operational ROG emissions would be approximately 90 lbs/day, which exceeds the SCAQMD threshold of 55 lbs/day and therefore constitutes a new significant air quality impact not previously identified or addressed in the Final EIR, so that a project-specific EIR should be prepared and recirculated. (Exhibit D SWAPE Letter, pp. 1-4)

This argument is not well-taken. Section 15152(f)(3) of the CEQA Guidelines states that

> [s]ignificant environmental effects have been "adequately addressed" if the lead agency determines that: (A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

The Final EIR determined that regional operational ROG impacts would be less than significant due to ongoing emission controls. (Final EIR, p. 4.2-34, 43) Accordingly, the topic of regional operational ROG impacts was adequately addressed because the impact has been mitigated or avoided through mitigation and/or conditions in the certified Final EIR and MMP and the City adopted specific findings concerning mitigation of significant impacts when it was certified the Final EIR on October 23, 2013. Therefore, the Final EIR analysis with respect to operational ROG impacts fully applies to the Project and is presumptively valid and can no longer be challenged. (Tiered IS/MND, pp. B-30-32) As such, the Tiered IS/MND was not required to include an analysis of regional operational ROG emissions.

Moreover, the density of the Project is substantially lower than the density assumed for the Site in the Final EIR. The development assumption for the Site in the final EIR was that the Site would be redeveloped at an FAR of 3.0:1. In comparison, the Project has a substantially lower FAR of 2.52:1, which means that the Project would have a reduced operational air quality impact as compared to the impact assumed in the Final EIR. This further demonstrates that the Final EIR adequately addressed the Project's operational air quality impact. (Id., p. B-31)

Furthermore, as discussed in Section 2.2 of the First ESA Memo, the CalEEMod run was used for establishing emissions for the Localized Significance Threshold (LST) analysis, not regional air quality emissions since the latter were adequately addressed in the Final EIR. Therefore, Appendix A-3 of the Tiered IS/MND does not reflect the Project's regional air quality emissions.

In addition, SWAPE repeats its prior claim that mitigation measures WC-AQ-17 through WC-AQ-21 in the Final EIR should apply to the Project. (Exhibit D SWAPE Letter, pp. 2-3) This comment was addressed and refuted in the First ESA Memo (at page 9) and again in Section I.C, above, of this memorandum.

SWAPE also claims that the MMP was not included in the Tiered IS/MND and is not publicly available online. (Exhibit D SWAPE Letter, pp. 3) This is a red herring. Neither Section 21081.6 of the Public Resources Code Section nor the corresponding provision in Section 15097 of the CEQA Guidelines require that an EIR or MND analyze or describe the mitigation monitoring or reporting program. There is no legal requirement that a mitigation monitoring program be made available for public review before project approval. See *Christward Ministry v. County of San Diego*, 13 CA4th 31, 48 (1993). Accordingly, SWAPE's argument is not supported by law.

For these reasons, the Tiered IS/MND appropriately tiered off the operational air quality analysis in the Final EIR.

B. The City Did Implement All Feasible Mitigation to Reduce Significant Air Quality and GHG Impacts.

SWAPE argues that the Tiered IS/MND fails to implement all feasible mitigation measures to reduce air quality and GHG impacts. (Exhibit D SWAPE Letter, p. 5) That is incorrect. The Tiered IS/MND identified and recommended compliance with all of the air quality mitigation measures in the Final EIR that apply to the Project and the CPC incorporated them as required environmental mitigation measures in the CPC Determinations. Regarding the feasible mitigation measures that SWAPE suggested for GHG impacts, no additional mitigation measures beyond those identified in the Tiered IS/MND are required because either the proposed mitigation measure (1) does not apply to the Project, (2) is already required for the Project through regulatory compliance or (3) is a required environmental measure for the Project. Refer to Sections I.C and II.F of this memorandum and Sections 2.14 and 3 of the First ESA Memo for more details.

C. The CalEEMod Modeling Used the Correct Land Use Types and Sizes.

SWAPE is dissatisfied with the response in Section 2.4 of the First ESA Memo and maintains that the air quality significance determination is unsubstantiated because the air quality modeling in the Tiered IS/MND failed to include the correct land use types and sizes, particularly the size and type of parking. (Exhibit D SWAPE Letter, pp. 6-7) That assertion is meritless for several reasons.

First, SWAPE contends that the modeling should have used the "Parking Lot" land use type instead of the "Unenclosed Parking with Elevator" land use type for the Project's surface parking. SWAPE claims that,

although the surface parking may have a lower energy intensity value, that does not mean that it has lower emissions. (Exhibit D SWAPE Letter, pp. 6-7) That is incorrect. The CalEEMod includes seven land use types for parking (1) Enclosed Parking Structure, (2) Enclosed Parking with Elevator, (3) Other Asphalt Surfaces, (4) Other Non-Asphalt Surfaces, (5) Parking Lot, (6) Unenclosed Parking Structure, and (7) Unenclosed Parking with Elevator. (CalEEMod User's Guide, p. 24) In this case, the Project includes structured parking above- and below-grade and surface parking. (Tiered IS/MND, Figures A-32-38) ESA conservatively modeled the structured below-grade parking as "Enclosed Parking with Elevator," and structured above-grade parking and surface parking as "Unenclosed Parking with Elevator." Modeling the Project's surface parking as "Unenclosed Parking with Elevator" rather than "Parking Lot" is more conservative because "Parking Lot" use has a much lower overall energy intensity than both "Unenclosed Parking with Elevator." This is because the "Unenclosed Parking with Elevator" accounts for the energy used for both lighting and the elevator machinery. Whereas, the "Parking Lot" is only accounting for lighting. This in fact means that for the same number of parking spaces, "Unenclosed Parking with Elevator" does result in greater overall emissions than "Parking." Therefore, the Tiered IS/MND conservatively estimates energy use and emissions associated with the proposed parking in each phase. Therefore, as discussed in Section 2.4 in the First ESA Memo, the parking land use types were appropriate and accurate.

Second, SWAPE contends that the physical improvements associated with the Project were not included in the respective phases and that the First ESA Memo failed to substantiate this alleged omission. (Exhibit D SWAPE Letter, p. 7) That is also untrue. For each construction phase, the overall size of the Site includes the area for physical improvements (see pages A-49 through A-56 of the Tiered IS/MND), and that area is accounted for in CalEEMod. As discussed in Section 2.4 of the First ESA Memo, these physical improvements were included as part of their respective phases and relate to the increase in off-road equipment number and usage hours. All the square footage for each land use type for each phase that was modeled corresponds to the land use types and phases, as outlined in Section 5.1 of the Tiered IS/MND, except for Phase 6, which modeled 29 more parking spaces than in the project description.[7]

SWAPE also wrongly claims that the Tiered IS/MND only accounts for increases in "off-road equipment and usage hours" and that the "the IS/MND fails to consider all other factors that affect emissions, including on-road mobile equipment, fugitive dust, architectural coating activities, operational on-road vehicle traffic, area coating activities, landscaping equipment, and water usage, among other factors." (Exhibit D SWAPE Letter, pp. 7) In fact, as demonstrated in Appendix A-2 and Appendix F-2 to the Tiered IS/MND, which provide construction air pollutant and GHG emissions, respectively, and Appendix F-2 and F-3, to the Tiered IS/MND, which provide operational air pollutant and GHG emissions, respectively, the construction air quality and GHG analyses in the Tiered IS/MND do consider all other factors that affect emissions, including on-road mobile equipment, fugitive dust, architectural coating activities, operational on-road vehicle traffic, area coating activities, landscaping equipment, and water usage for air pollutant and GHG emissions. In further fact, as shown in Appendix A-2 and Appendix F-2, construction air pollutant and GHG emissions are not only provided for off-road equipment and usage hours, but also for on-road mobile equipment (including trucks and construction worker vehicles), fugitive dust, and architectural coating activities, as applicable. As shown in Appendix A-3 and Appendix F-3, operational air pollutant and GHG emissions are provided for operational on-road vehicle traffic, area coating activities, landscaping equipment, and water usage, as well as solid waste, as applicable.

---

7 This was an addition error and does not affect the significance conclusion in the Tiered IS/MND as it conservatively increased Project emissions.

SWAPE relatedly claims that the open space, streets, sidewalks, and other amenities were not included in the modeling, but CalEEMod does not have any land use types that correspond to streets, sidewalks, and other amenities and instead includes them in the lot acreage for the site. On pages 28 and 29 of the CalEEMod Users Guide (November 2017), it gives an example of a mixed-use project and asks for the lot acreage, the building square footage, and parking lot square footage. The model takes the total lot acreage and subtracts the building footprints, parking footprints, and any open spaces with the remaining space use for driveways, sidewalks, and landscaping/open space. Thus, the emissions for on-road mobile equipment, fugitive dust, architectural coating activities, operational on-road vehicle traffic, area coating activities, landscaping equipment and water usage, among other factors, for physical improvements are included in the CalEEMod runs.

Third, SWAPE asserts that inaccurate land use sizes were used in CalEEMod (Exhibit D SWAPE Letter, p. 7), and references its prior comments in the First SWAPE Letter. This assertion made on page 7 of Exhibit D of the SWAPE Letter references their comments made in the First SWAPE Letter (at pages 4-6). The First SWAPE Letter stated that a plaza in Phase 3. That is untrue. As previously discussed, that plaza was included as part of the physical improvements in the CalEEMod Modeling.

SWAPE also claims a "discrepancy," noting that with respect to Phase 5, Figure A-36 states there will be 168 Condo/Townhouse units, but it was modeled as 15 units of "Apartments Mid Rise" and 153 units of "Condo/Townhouse". (Exhibit D SWAPE Letter, p. 7) This was due to the distinction made in Figure A-36 of the Tiered IS/MND, which states that "15 of the Condo units are two story Work/live units located at grade level." Because there is no Work/live land use type in CalEEMod, ESA used the closest surrogate – "Apartment Mid Rise" – for modeling purposes based on the anticipated energy use and vehicle trips characteristic of Work/live units. The "Condo/Townhouse" land use type is not appropriate for the proposed Work/live units because the defaults assume greater energy use and vehicle trips than anticipated for Work/live units.

SWAPE asserts an additional "discrepancy" regarding the operations CalEEMod run. SWAPE states that the model used 1,009 units of "Apartments mid-rise," instead of 841 "apartment units" and 168 "condo units" as stated in the Tiered IS/MND (p. A-1). (Id.) For the CalEEMod model, 1,009 "mid-rise apartments" were conservatively modeled because the mobile trip rates are higher for mid-rise apartments than for condominiums (CalEEMod User's Manual Appendix D, p. D-87). This yielded a conservative estimate for emissions.

For these reasons, there are no size discrepancies between the project description in the Tiered IS/MND and CalEEMod modeling that underestimate Project emissions and the Tiered IS/MND CalEEMod used the correct land use types and sizes.

D. The Changes to Model Defaults for Off-Road Construction Equipment Unit Amounts and Usage Hours Were Substantiated.

SWAPE contends that several manual changes to the defaults for off-road construction equipment unit amounts and usage hours in the models used to determine the air quality impacts associated with the construction of Phases 1, 2, 3, 4, 7 and 8 were unsubstantiated. (Exhibit D SWAPE Letter, pp. 7-8) That is incorrect. Some defaults were modified to incorporate project-specific information for off-road equipment and usage hours in order to model properly a maximum construction workday. (Tiered IS/MND, Appendix A, pp. 37-38, 85-86, 122-123, 154-155, 219-220, 250-251, 284-285) As SWAPE must know, these default modifications were necessary to

more accurately calculate the Project's construction air quality impacts.[8]

SWAPE asserts that it cannot trust that the project-specific information for off-road equipment and usage hours is correct. (Exhibit D SWAPE Letter, pp. 7-8) This point is not well-taken. The Project's off-road equipment and usage hours for the eight-phase Project were prepared in consultation with the Applicant and its construction consultant. It reasonably anticipates that phase construction would occur over a 15-year period with some potential overlap in the construction of certain phases. In accordance with the CalEEMod User's Guide (page 32), ESA selected the type and quantity of off-road equipment needed for each construction phase and defined the daily usage schedule in close coordination with the Applicant and its construction consultant. SWAPE fails to present any reason or evidence that the project information is unreasonable or inappropriate. For these reasons, the manual changes to off-road equipment unit amounts and usage were substantiated and maximum daily Project emissions were not underestimated in this regard.

E. The Construction Schedule Changes Are Substantiated.

SWAPE is dissatisfied with the response provided in Section 2.7 of the First ESA Memo and maintains that the manual changes to the construction schedule in the CalEEMod are unsubstantiated. SWAPE acknowledges that the construction assumptions provided in Appendix A to the Tiered IS/MND reflect the changes manually inputted into CalEEMod. However, SWAPE contends that it cannot trust that the construction schedule is correct. (Exhibit D SWAPE Letter, pp. 8-9) This point is not well-taken, to say the least.

The Project's construction schedule for the eight-phase Project, as stated in the project description in the Tiered IS/MND and applied in the air quality modeling in Appendix A to the Tiered IS/MND, was prepared in consultation with the Applicant and its construction consultant. It reasonably anticipates that phased construction would occur over a 15-year period with some potential overlap in the construction of certain phases. Notably, SWAPE makes no suggestion that the construction schedule is unreasonable or inappropriate.

We also note that CalEEMod is designed to allow the user to change the defaults to reflect site or project-specific information, when available, provided that information is supported by substantial evidence. (CalEEMod User's Guide, p.12-13) The CalEEMod instructions state on page 17: "[t]o indicate when construction of the project will begin, the user will need to insert a date in the Start of Construction field. The date when construction will start triggers a rolling calendar that starts with the construction start date and follows by various construction phases that will be populated with default date ranges in the Construction screen." In this case, the default date ranges for the subphases were changed based on the project-specific information as outlined in Appendix A to the Tiered IS/MND (Tiered IS/MND, Appendix A, pp. 32, 80, 117, 150, 182, 214, 246, 278) and noted in Section 1.3 in the CalEEMod runs (Id., pp. 33-34, 81-82, 118-119, 151-152, 215-216, 247-248, 279-280).

The detailed construction schedule inputted into CalEEMod was a reasonable forecast of anticipated construction period and SWAPE offers no evidence whatsoever to the contrary. As noted on page A-44 of the Tiered IS/MND, "[t]he phasing plan [for the Project] includes an estimate of when each area of the Project will be constructed based on the anticipated future market conditions". For these reasons, construction subphases for each phase were accounted for in the construction assumptions and maximum daily Project emissions were not

[8] CalEEMod was designed with default assumptions supported by substantial evidence to the extent available at the time of programming. However, CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA. CalEEMod User's Guide, pp. 12-13.

underestimated in this regard.

F. The Reduction to Acres of Grading Is Substantiated.

SWAPE again claims that the acres of grading for the project phases used in the CalEEMod models to determine the Project's construction air quality impacts were manually reduced and that these reductions were not justified. More specifically, SWAPE now asserts that the default number of acres of grading is calculated based off of the Project's inputted number and type of construction equipment, and that by manually reducing the Project's acres of grading values, despite the fact that the acres of grading were already calculated based on the manually inputted construction schedule, the models underestimate the Project's construction-related emissions. (Exhibit D SWAPE Letter, pp. 9-10)

SWAPE is wrong. To begin with, the acres of grading are not determined solely by inputting the construction schedule. Instead, the acres of grading are based on a variety of information, including the type of equipment, the number of days of grading, the total acreage a specific piece of equipment can grade in an 8-hour workday, and the acreage of the phase areas. As stated on page 28 of the CalEEMod User's Guide, "after the user has completed entering all of the land uses for the project, CalEEMod will add the lot acreage values for each land use and the total will be reflected in the lot acreage box located at the bottom of the screen. The value in the total lot acreage box cannot be modified by the user." Though the "total lot acreage" cannot be modified by the user, the default acreage of the individual land uses may be changed to correspond to a project's actual acres, which is what ESA did in this case. This is particularly important for dense, multi-story developments like the Project because the default CalEEMod assumptions do not account for dense multi-story or high-rise projects that may develop a smaller footprint and thus result in less grading acreage as compared to a sprawling low-rise development. In other words, because the Project includes multi-story buildings, the default land acreages for each land use are inaccurate and substantially higher than the actual acreage of the project phase areas. The Project is more compact and has a smaller building footprint than the defaults assume. Therefore, it was entirely reasonable and appropriate to modify the default acreage of the individual land uses for the Project.

For these reasons, the grading acreages were changed accordingly in CalEEMod after ESA inputted the Project-specific construction schedule, square footages of the buildings, numbers and hours of equipment usage, and the acreage of the phase areas. Therefore, the Project's construction air quality emissions were properly estimated based on CalEEMod and Project-specific data.

G. The Tiered IS/MND Correctly Modeled Tier 4 Final Mitigation.

SWAPE argues that the mitigation measure MM-AQ-1 fails to specify between Tier 4 Interim equipment and Tier 4 Final equipment, which SWAPE raises because Tier 4 Final equipment is more efficient than Interim equipment. (Exhibit D SWAPE Letter, p. 10) This is incorrect. Section 2.10 of the First ESA Memo explained that mitigation measure WC-AQ-1 in the Final EIR, as incorporated into the Tiered IS/MND as mitigation measure MM-AQ-1, refers to the Tier 4 Final standards unless otherwise specifically stated.

SWAPE also contends that the Tiered IS/MND failed to evaluate the feasibility of attaining Tier 4 construction equipment for the Project. (Exhibit D SWAPE Letter, pp. 10-11) This is also inaccurate. Section 2.10 of the First ESA Memo addressed the outdated information SWAPE relied upon in its argument. As discussed therein, mitigation measure MM-AQ-1 specifically requires that "[a] copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided at the time of mobilization of each

applicable unit of equipment" (Tiered IS/MND, pp. B-23-24). Section 2.10 of the First ESA Memo also referred to the CARB OFFROAD2017 model, which states that approximately 36 percent of the 2020 statewide construction fleet meets the Tier 4 Final standards. Data from the CARB OFFROAD2017 model shows that the 2021 statewide construction fleet would include 67,391 pieces of diesel equipment meeting Tier 4 Final emission standards, representing approximately 42 percent of the statewide construction fleet.[9] The Tier 4 Final equipment fleet populations will grow to 110,701 in 2025, 140,772 in 2030, and 156,072 in 2035; representing 65 percent, 80 percent, and 85 percent of the 2025, 2030, and 2035 statewide construction fleets, respectively.

This data reflects that there is, and will be, sufficient Tier 4 Final equipment available for individual construction projects in California. It is not necessary for the statewide construction fleet to be at or near 100 percent Tier 4 Final to ensure that Tier 4 Final equipment can be used for the construction of individual development projects. Typically, for projects that require the use of Tier 4 Final equipment, construction contractors would allocate the necessary equipment within their fleet that meet the Tier 4 Final standards to the project and assign other equipment that do not meet the Tier 4 Final standards to projects in other locales that do not require Tier 4 Final equipment. This is the anticipated arrangement for the Project.

In further support of this point, ESA, as a multidisciplinary environmental consulting firm that is currently, and has recently, worked on numerous developments projects in the Los Angeles in connection with the preparation of CEQA compliance documentation, has had recent discussions with contractors that bid on projects in the Los Angeles area as to their ability to provide Tier 4 Final construction equipment. The general consensus from these discussions has been that Tier 4 Final construction equipment can feasibly be provided for projects in the Los Angeles area because this type of equipment has been phased into construction fleets since 2014 due to California's regulation and reporting requirements (13 CCR, Section 2449). Furthermore, these contractors recognized that the South Coast Air Basin, which includes Los Angeles, is a designated nonattainment area for criteria air pollutants such as ozone and particulate matter, and that the use of Tier 4 Final equipment would be supportive of CARB and SCAQMD strategies to improve air quality in the Air Basin.

Furthermore, as discussed in MM-AQ-1, contractor(s) bid documents from successful contractor(s) must demonstrate the ability to supply equipment meeting the emissions standards ensuring that the emissions reductions will be achieved.

As such, the impact analysis in the Tiered IS/MND appropriately considers the use of Tier 4 Final equipment in analyzing the Project's construction air quality impacts.

H. The Operational GHG Mitigation Measures Were Substantiated.

SWAPE is dissatisfied with the responses in Section 2.12 of the First ESA Memo and maintains that the Tiered IS/MND fails to justify the inclusion of water- and waste-related operational mitigation measures (which include MM-U-4 and MM-U-12) in the CalEEMod GHG modeling. (Exhibit D SWAPE Letter, pp. 11-15) This argument is not well-taken.

First, the water-related operational mitigation measure MM-U-4 is justified because it is incorporated into the adopted Tiered IS/MND and MMP and is made enforceable as an environmental mitigation measure in the CPC

9 California Air Resources Board, OFFROAD2017 and 2017 Off-Road Diesel Emission Factor Update for NOX and PM, 2017. https://ww3.arb.ca.gov/msei/ordiesel/ordas_ef_fcf_2017.pdf. Accessed February 10, 2021.

Determinations. Section II.B of this memorandum includes detailed responses to this claim.

Second, the waste-related operational mitigation measure MM-U-12 is justified because it is incorporated into the adopted Tiered IS/MND and MMP and imposed on the Project as an environmental mitigation measure in the CPC Determinations. Section II.B of this memorandum includes detailed responses to this claim.

Third, while it may be correct that the CalEEMod defaults for water-related and waste-related mitigation measures are largely based on the CAPCOA Quantifying Greenhouse Gas Mitigation Measures, the Project-specific mitigation measures are generally consistent or superior to the CAPCOA Measures cited to by SWAPE including, WUW-1 regarding low-flow water fixtures, WUW-4 regarding water-efficient landscape irrigation, and SW-1 regarding recycling and composting services.

SWAPE relatedly asserts that the Tiered IS/MND failed to demonstrate consistency with the mitigation measures included in the CalEEMod model based on CAPCOA's Quantifying Greenhouse Gas Mitigation Measures, which are set forth in an August 2010 document. (Exhibit D SWAPE Letter, pp. 12-15) While SWAPE's claim is very difficult to understand, it seems to contend that, while the GHG modeling incorporates the water- and waste-related operational mitigation measures actually imposed on the Project (which include MM-U-4 and MM-U-12), those mitigation measures have not been "substantiated" because it has not been demonstrated that they are consistent with the CAPCOA mitigation measures. This is incorrect.

With regard to Measure WUW-1, MM-U-4 not only requires the installation of high-efficiency toilets, urinals, restroom faucets and showerheads as set forth in WUW-1, but it imposes additional water-saving measures above and beyond Measure WUW-1. In other words, MM-U4 is a more stringent measure and would result in greater water-savings than the CAPCOA Measure WUW-1.

Regarding Measure WUW-4, MM-U-4 requires water-efficient landscape irrigation techniques as set forth in the Measure WUW-4, including the use of recycle water for irrigation, water-based irrigation controller with rain shutoff, flow sensor and master valve shutoff, matched precipitation rates for sprinkler heads, and the like. While Measure WUW-4 says that certain information shall be provided by the Applicant regarding total expected water demand pre- and post-installation of smart irrigation, the CalEEMod does in fact show this information on pages 180-182 of Appendix F, specifically in Section 7.0 of Appendix F-3 to the Tiered IS/MND, which summarizes the water-savings resulting from the water-efficient landscape irrigation techniques. Therefore, MM-U-4 is generally consistent with CAPCOA Measure WUW-4.

Regarding Measure SW-1, waste disposal is estimated in CalEEMod based on the number of dwelling units for multi-family residential uses, the amount of building square footage for commercial, office and shopping uses, and the number of guest rooms for hotel uses. While Measure SW-1 says that certain information shall be provided by the Applicant regarding the amount of waste generated and waste reduced or diverted, the CalEEMod does in fact show this information on pages 169 and 182-184 of Appendix F, specifically in Section 8.0 of Appendix F-3, to the Tiered IS/MND, which summarizes the number of dwelling units for multi-family residential uses, the amount of building square footage for commercial, office and shopping uses, and the number of guest rooms for hotel uses, as well as the waste reductions or diversion resulting from recycling and composting. As discussed in the Tiered IS/MND, recycling and composting services are required as part of the City's Zero Waste Plan (Tiered IS/MND, Table B-10, p. B-110), which achieved a diversion rate of 76.4 percent as of 2011 reporting. (City of Los Angeles Department of Public Works, LA Sanitation, Zero Waste Progress Report, March 2013, p. 7). Accordingly, the Project CalEEMod included a diversion rate of 76 percent to account

for the City's Zero Waste Plan. For these reasons, MM-U-12 is generally consistent with CAPCOA Measure SW-1.

For these reasons, the GHG operational mitigation measures were substantiated.

I. The Tiered IS/MND Adequately Evaluated Diesel Particulate Matter Health Risk Emissions.

SWAPE repeats its claim that a HRA is required to evaluate the Project's TAC emissions with respect to diesel particulate matter, and it expresses dissatisfaction with the First ESA Memo responses regarding this potential human health risk impact.

SWAPE first contends that this topic was not adequately addressed in the Final EIR because project-specific construction information was not available at the time the Final EIR was prepared and certified. (Exhibit D SWAPE Letter, pp. 15-16) This argument misses the point. As discussed in the Tiered IS/MND (at pages B-40-41), the Final EIR addressed TAC impacts with respect to buildout under the WC2035 Plan, and demonstrated that that analysis is fully applicable to the Project.

Moreover, as discussed in detail on pages 4-5 in Sheppard Mullin's May 22, 2020 letter to the CPC in response to a similar contention, a HRA is not required for the Project based on the California Supreme Court's decision in *Sierra Club v. County of Fresno*, 6 Cal. 5th 502 (2018), in particular because (1) the requirement for a health risk assessment related to air quality emissions only applies to air quality impacts for which an EIR is prepared and certified, which is not the case here, (2) even if *County of Fresno* applied to non-EIR CEQA documents, the analysis of TAC impacts in the Final EIR applies to the Project and is presumptively valid, and (3) even if *County of Fresno* applied to non-EIR CEQA documents, a health risk analysis with respect to air quality impacts is only required with respect to projects that have a significant air quality impact with respect to criteria air pollutants, which is not the case here.

Nonetheless, for informational purposes and to confirm that the Project would not have a significant TAC impact, ESA has prepared the Project HRA (in Attachment A hereto), which demonstrates that the cancer and non-cancer health risks associated with the Project's TAC emissions are well below the relevant significance thresholds. SWAPE's second argument is that mitigation measure WC-AQ-16 requires the preparation of a HRA. (Exhibit D SWAPE Letter, pp. 16-17) However, SWAPE appears to willfully ignore the introductory paragraph in WC-AQ-16, which unequivocally states that WC-AQ-16 only applies to projects that include sensitive receptors within 500 feet of the US-101 Ventura Freeway or other high-volume routes and major transportation corridors, rail yards and lines, distribution centers, industrial operations, or other substantial sources of TACs. (Final EIR, pp. V-9-10, Tiered IS/MND, p. B-22). As SWAPE must be aware, the Site is located more than 500 feet from the US-101 Ventura Freeway or any of other substantial sources of TACs, and SWAPE does not claim otherwise. Therefore, this mitigation measure is not applicable to the Project.

SWAPE's third argument is that, based on SCAQMD guidance, an HRA is required for the Project. (Exhibit D SWAPE Letter, pp. 17-18) This is misleading. SCAQMD's Mobile Source Toxics Analysis to which SWAPE refers states that it serves as an interim technical guidance for estimating potential DPM impacts from the following activities: (1) truck idling and movement (such as, but not limited to, truck stops, warehouse/distribution centers, or transit centers), (2) ship hoteling at ports, and (3) train idling. The Project, however, does not include any of those industrial-related activities. The number of large trucks visiting the Site would be miniscule compared to the volume of trucks at a truck stop, warehouse/distribution center or transit

center because the Project's uses consist primarily of multi-family housing and office, as well as hotel, restaurant and retail uses. Trucks will travel to and from the Site during construction, but that is for a limited time and involves a limited number of trucks.

Moreover, even if a project-level analysis was required for TAC emissions, the SCAQMD does not require preparation of a construction HRA. The SCAQMD has stated that it "currently does not have guidance on construction Health Risk Assessments."[10] Furthermore, SCAQMD's HRA procedures recommend evaluating risk from extended exposures measured across several years, and not for short-term construction exposures or for infrequent operational exposure to diesel truck deliveries or trash hauling.[11]

The fourth SWAPE claim is that the Project's construction-related health risk impact should be analyzed per the City's 2006 L.A. CEQA Thresholds Guide. (Exhibit D SWAPE Letter, p. 18) However, the Thresholds Guide does not specifically recommend an HRA for diesel particulate matter emissions from construction activities. It actually provides (on pages B.3-3-4) that a TAC analysis for a project and its associated demolition, site preparation, construction, and operation would be prepared by identifying the location and type of all sensitive uses in the vicinity that could be impacted by project emissions. Consistent with the Thresholds Guide, the Tiered IS/MND considered TACs on pages B-40-41 and determined that the Project's impact on off-site sensitive receptors would be less than significant, based on the analysis in the Final EIR that fully applied to the Project.

SWAPE's fifth claim is that a HRA is required based on guidance from the Office of Environmental Health Hazard Assessment Fourth ("OEHHA") and SCAQMD Governing Board Agenda #8b. (Exhibit D SWAPE Letter, pp. 18-19) This claim also lacks merit. To start with, the SCAQMD has clarified that the OEHHA Guidance Manual does not include CEQA significance thresholds applicable to construction activities, nor to the operation of non-stationary source projects such as this Project.[12] SCAQMD staff is still evaluating how to implement the OEHHA Guidance Manual under CEQA. To date, the SCAQMD has not conducted public workshops nor developed any policy relating to the applicability the revised 2015 OEHHA Guidance Manual for projects prepared by other public/lead agencies subject to CEQA or for mixed-use residential and commercial projects.

SWAPE relatedly states that the SCAQMD Governing Board Agenda #8b demonstrates that the SCAQMD considers OEHHA Guidance to be applicable to land use projects pursuant to CEQA. That is incorrect. The agenda looks at the potential impacts of new OEHHA risk guidelines on SCAQMD Programs. Under CEQA program impacts, the agenda merely states that 6 months of construction activities from a typical one-acre office

---

[10] South Coast Air Quality Management District, Final Environmental Assessment for: Proposed Amended Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory; Proposed Amended Rule 1401 – New Source Review of Toxic Air Contaminants; Proposed Amended Rule 1402 – Control of Toxic Air Contaminants from Existing Sources; SCAQMD Public Notification Procedures for Facilities Under the Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) and Rule 1402; and, SCAQMD Guidelines for Participating in the Rule 1402 Voluntary Risk, page 2-23, September 2016. The SCAQMD only applies the revised OEHHA Guidelines for operational impacts at stationary industrial source facilities that are in the AB 2588 Air Toxics Hot Spots program, which does not apply to the proposed Project.

[11] South Coast Air Quality Management District. 2015. *Risk Assessment (RA) Procedures for Rules 1401 and 212*. Available online at http://www.aqmd.gov/home/permits/risk-assessment. Accessed February 11, 2021.

[12] South Coast Air Quality Management District, Final Environmental Assessment for: Proposed Amended Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory; Proposed Amended Rule 1401 – New Source Review of Toxic Air Contaminants; Proposed Amended Rule 1402 – Control of Toxic Air Contaminants from Existing Sources; SCAQMD Public Notification Procedures for Facilities Under the Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) and Rule 1402; and, SCAQMD Guidelines for Participating in the Rule 1402 Voluntary Risk, pages 1-2 and 2-23, September 2016. Affected facilities are those in identified for the AB 2588 Air Toxics Hot Spots program, which does not include the proposed Project nor mixed-use projects like the proposed Project that are not stationary sources. Further, the SCAQMD states it “does not have guidance on construction Health Risk Assessments.”

project could cause significant risk. It also states that for projects where SCAQMD served as the lead agency, 10 to 16 projects in a two-year sample period would have needed to upgrade to EIRs if the OEHHA Guidance was applied to the construction activities. In the agenda, the initial SCAQMD staff recommendations include: (1) rely on risk management to address changes in risk assessment methodologies; (2) develop statewide toxic communication tools to explain OEHHA procedure changes; (3) maximize programmatic risk reduction opportunities through source-specific rulemaking; and (4) develop a work plan to phase in and to prioritize implementation of the revised OEHHA procedure. Nothing in the agenda has anything to do with requiring the preparation of a HRA. Furthermore, at present, the SCAQMD Governing Board has not adopted any guidance on the use of the 2015 OEHHA Guidance Manual for projects where the City is lead agency.

Finally, and once again, notwithstanding that a HRA is not required for this residential/commercial Project, ESA has prepared the full Project HRA, for informational purposes, to confirm that the Project would result in less-than-significant cancer and non-cancer impacts with respect to DPM emissions and demonstrates that SWAPE's screening-level HRA has no credibility.

For all the reasons discussed above, the Carpenters Appeals have no merit. On behalf of the Applicant, we respectfully request that the City Council deny the appeals and approve the Project.