

Oakley Logistics Center Project

SCH# 2019029113

Final Environmental Impact Report

Volume I of II (Chapters 1-4)

Prepared for
City of Oakley



December 2019

Prepared by



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Oakley Logistics Center Project Final Environmental Impact Report

SCH# 2019029113

Lead Agency

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Table of Contents

TABLE OF CONTENTS

VOLUME I

CHAPTER		PAGE
1.	Introduction and List of Commenters	1-1
1.1	Introduction	1-1
1.2	Background	1-1
1.3	Purpose of the Final EIR	1-2
1.4	List of Commenters	1-2
1.5	Certification of the Final EIR	1-2
1.6	Organization of the Final EIR	1-3
2.	Responses to Comments	2-1
2.0	Introduction	2-1
2.2	Responses to Comments	2-1
3.	Revisions to the Draft EIR Text	3-1
3.1	Introduction	3-1
3.2	Description of Changes	3-1
4.	Mitigation Monitoring and Reporting Program.....	4-1
4.1	Introduction	4-1
4.2	Compliance Checklist.....	4-1
4.3	Mitigation Monitoring and Reporting Program	4-2

VOLUME II

Appendices

Appendix A	Updated CalEEMod Results
Appendix B	Exhibits from the Lozeau Drury (Laborers International Union of North America, Local Union 324) Comment Letter



1. Introduction and List of Commenters

1. INTRODUCTION AND LIST OF COMMENTERS

1.1 INTRODUCTION

This Final Environmental Impact Report (EIR) contains comments received during the public review period of the Oakley Logistics Center Project Draft EIR. This document has been prepared by the City of Oakley, as Lead Agency, in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, Section 15132. The Introduction and List of Commenters chapter of the Final EIR discusses the background of the Draft EIR and purpose of the Final EIR, and provides an overview of the Final EIR's organization.

1.2 BACKGROUND

The Draft EIR identified the proposed project's potential impacts and the mitigation measures that would be required to be implemented. The following environmental analysis chapters are contained in the Oakley Logistics Center Project Draft EIR:

- Air Quality and Greenhouse Gas Emissions;
- Biological Resources;
- Hydrology and Water Quality;
- Transportation and Circulation; and
- Utilities and Service Systems.

In accordance with CEQA, the City of Oakley used the following methods to solicit public input on the Draft EIR:

- Notice of Preparation (NOP) for the Draft EIR was released for a 30-day public review from February 20, 2019 to March 21, 2019.
- A public scoping meeting was held on March 6, 2019 to solicit public comments regarding the scope of the Draft EIR. The NOP comment letters are included as Appendix C to the Draft EIR.
- On October 15, 2019, the Draft EIR was delivered to the State Clearinghouse for distribution to state agencies, resulting in a 45-day public review period from October 16, 2019 to December 3, 2019.
- On October 16, 2019, a Notice of Availability (NOA) of the Draft EIR was posted to the City's website, and mailed to local agencies and interested members of the public.
- The City posted the Draft EIR on the City of Oakley website.
- Copies of the Draft EIR are available for review at the City of Oakley Community Development Department at 3231 Main Street, Oakley, CA 94561 and the Freedom High School public library at 1050 Neroly Road, Oakley, CA 94561.

All public comments received on the Draft EIR are listed in this chapter, and written responses to comments are included in Chapter 2, Response to Comments, as discussed in more detail in Section 1.4 of this chapter.



1.3 PURPOSE OF THE FINAL EIR

Pursuant to CEQA Guidelines Section 15132, this Final EIR consists of the following:

1. The Draft EIR (Released October 16, 2019);
2. Comments received on the Draft EIR (Chapter 2 of this Final EIR);
3. Revisions to the Draft EIR (Chapter 3 of this Final EIR);
4. A list of persons, organizations, and public agencies commenting on the Draft EIR (included as Section 1.4 of this chapter); and
5. Any other information added by the Lead Agency.

Although CEQA requires responses for “significant environmental issues” only, the City has provided responses to all comments. This is not intended to expand the City’s legal obligations under CEQA but rather to maximize opportunities for sharing information and increasing public understanding regarding the project and related review process.

1.4 LIST OF COMMENTERS

The City of Oakley received six comment letters during the public comment period on the Draft EIR for the proposed project, and two letters were received after the close of the comment period. The comment letters were authored by the following agencies, and other interested persons. The letters are organized by the order in which they were received.

- Letter 1 Contra Costa Mosquito & Vector Control District
- Letter 2 Lozeau Drury (Laborers International Union of North America, Local Union 324)
- Letter 3 Department of Toxic Substances Control
- Letter 4 Ironhouse Sanitary District
- Letter 5 East Bay Regional Park District
- Letter 6 Adams Broadwell Joseph & Cardozo
(Oakley Residents for Responsible Development)
- Letter 7 California State Lands Commission
- Letter 8 City of Antioch

1.5 CERTIFICATION OF THE FINAL EIR

State law requires that the City make several types of CEQA “findings” at the time of final action on the project. Findings describe the conclusions reached regarding particular issues, including specific evidence in support of those conclusions. The Final EIR typically provides much of the substantial evidence to support these findings. The required findings for the project are as follows:

- Certification of the Final EIR (CEQA Guidelines Section 15090) – These findings support the adequacy of the Final EIR for decision-making purposes. The Lead Agency must make the following three determinations in certifying a Final EIR:
 1. The Final EIR has been completed in compliance with CEQA.
 2. The Final EIR was presented to the decision-making body of the Lead Agency, and the decision-making body reviewed and considered the information in the Final EIR prior to approving the project.
 3. The Final EIR reflects the Lead Agency’s independent judgment and analysis.
- Findings Regarding Significant Impacts and Project Alternatives (CEQA Guidelines



Section 15091) – These findings explain how the City chose to address each identified significant impact, including the mitigation measures adopted or an explanation of why such measures are infeasible. A discussion of the feasibility of project alternatives is also required by this section (see also CEQA Guidelines Section 15126.6(f)).

Pursuant to CEQA Guidelines, section 15093(b), when a Lead Agency approves a project that would result in significant unavoidable impacts, the agency must state in writing the reasons supporting the action (Statement of Overriding Considerations). The Statement of Overriding Considerations shall be supported by substantial evidence. The Oakley Logistics Center Project would result in significant and unavoidable impacts related to air quality and greenhouse gas emissions as well as Transportation and Circulation; thus, a Statement of Overriding Considerations must be adopted if the project is approved.

1.6 ORGANIZATION OF THE FINAL EIR

The Final EIR is organized into the following four chapters.

1. Introduction and List of Commenters

Chapter 1 provides an introduction and overview of the document, describes the background of the Draft EIR and the purposes of the Final EIR, provides a list of commenters, and describes the organization of the Final EIR.

2. Responses to Comments

Chapter 2 presents the comment letters received, and responses to each comment. Each comment letter received has been numbered at the top and bracketed to indicate how the letter has been divided into individual comments. Each comment is given a number with the letter number appearing first, followed by the comment number. For example, the first comment in Letter 1 would have the following format: 1-1. The response to each comment will reference the comment number.

3. Revisions to the Draft EIR Text

Chapter 3 summarizes changes made to the Draft EIR text including clarifications, modifications, and amplifications of the analysis. Section 15088.5 of the State CEQA Guidelines states that a lead agency is required to recirculate a Draft EIR when “significant new information” is added to the document after public notice is given of the availability of the Draft EIR for public review under Section 15087 but before certification. Pursuant to this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not considered “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the City has decided not to implement. “Significant new information” requiring recirculation includes any of the following:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.



3. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
4. The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The modifications to the Draft EIR identified in Chapter 3 have been examined with these requirements and obligations in mind. The City has determined that the provisions of Section 15088.5 of the CEQA Guidelines are not triggered and recirculation of this EIR is not required. A more detailed description of this determination will be included in the CEQA Findings of Fact described above.

4. Mitigation Monitoring and Reporting Program

CEQA Guidelines, Section 15097, requires lead agencies to adopt a program for monitoring the mitigation measures required to avoid the significant environmental impacts of a project. The intent of the Mitigation Monitoring and Reporting Program (MMRP) is to ensure implementation of the mitigation measures identified within the EIR for the Oakley Logistics Center Project.



2. Responses to Comments

2. RESPONSES TO COMMENTS

2.0 INTRODUCTION

This chapter contains responses to City commission comments and comment letters from other agencies or interested persons submitted regarding the Oakley Logistics Center Project (proposed project) Draft Environmental Impact Report (EIR).

2.1 RESPONSES TO COMMENTS

Each bracketed comment letter is followed by numbered responses to each bracketed comment. The responses amplify or clarify information provided in the Draft EIR and/or refer the reader to the appropriate place in the document where the requested information can be found. Comments that are not directly related to environmental issues (e.g., opinions on the merits of the project that are unrelated to its environmental impacts) are either discussed or noted for the record. Where revisions to the Draft EIR text are required in response to the comments, such revisions are noted in the response to the comment, and are also listed in Chapter 3 of this Final EIR. All new text is shown as double underlined and deleted text is shown as ~~struck through~~.





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October 17, 2019

Joshua McMurray
City of Oakley
3231 Main Street
Oakley, CA 94561

CITY OF OAKLEY
Planning Department

OCT 24 2019

RECEIVED

Re: Oakley Logistics Center Draft EIR

Dear Mr. McMurray,

Thank you for the opportunity to express the position of the Contra Costa Mosquito & Vector Control District (the District) regarding the draft EIR for the Oakley Logistics Center project located near Bridgehead Road in Oakley.

As a bit of background, the District is tasked with reducing the risk of diseases spread through vectors in Contra Costa County by controlling them in a responsible, environmentally-conscious manner. A “vector” means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates. Under the California Health and Safety Code, property owners retain the responsibility to ensure that the structure(s), device(s), other project elements, and all additional facets of their property do not produce or harbor vectors, or otherwise create a nuisance. Owners are required to take measures to abate any nuisance caused by activities undertaken and/or by the structure(s), device(s), or other feature(s) of their property. Failure by the property owner to adequately address a nuisance may lead to abatement by the Contra Costa Mosquito & Vector Control District and civil penalties up to \$1,000 per day pursuant to California Health & Safety Code §2060-2067.

Potential impacts to human health by disease vectors is not properly addressed under CEQA—an oversight that has created problems for mosquito abatement and vector control agencies throughout California. The analysis for a project should consider evidence of potential environmental impacts, even if such impacts are not specifically listed on the Appendix G checklist. [State CEQA Guidelines, § 15063(f)]. To determine whether Public Health & Safety may be significantly impacted, lead agencies should refer to the California Health & Safety Code § 2000-2093 for definitions and liabilities associated with the creation of habitat conducive to vector production and to guidance provided by local mosquito and vector control districts/agencies in their determination of environmental impacts. More specifically, would the project:

- a) Increase the potential exposure of the public to disease vectors (e.g., mosquitoes, flies, ticks, and rats)?
- b) Increase potential mosquito/vector breeding habitat (i.e., areas of prolonged standing/ponded water like wetlands or stormwater treatment control BMPs and LID features)?

1-1

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**Letter 1
Cont'd**

**1-1
Cont'd**

Careful considerations for design, construction, operation, and maintenance measures should be employed to ensure the detention basins, catch basins, storm drain lines and associated features, landscaping, and all other facets of the project do not create standing water that remains in excess of 72 hours in order to prevent creating suitable mosquito breeding habitat. Addressing these concerns in the environmental review and project planning phases can not only better protect public health and reduce the need for pesticide applications for vector control efforts, but avoid costly retrofits and fines for property owners in the future. Please don't hesitate to contact the District should you have any questions or need anything further.

Sincerely,



Jeremy Shannon
Vector Control Planner
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jshannon@contracostamosquito.com



LETTER 1: CONTRA COSTA MOSQUITO AND VECTOR CONTROL DISTRICT, JEREMY SHANNON

Response to Comment 1-1

As discussed on page 4.3-14, the majority of stormwater falling on the project site would be directed to 33 bioretention basins and flow-through planters on the project site. Although the basins are designed to slow stormwater, the proposed design of each basin includes permeable materials, overflow inlets, and a perforated subdrain to control the volume of water within each bioretention area, and allow for draining of stormwater. As discussed on page 4.3-14 of the Draft EIR, the Stormwater Management Plan prepared for the proposed project includes sizing for each drainage management area to ensure that stormwater falling on the site is directed to a properly sized bioretention facility. This would ensure that excessive ponding would not occur, as all stormwater would be directed to managed and properly maintained facilities.

After stormwater is treated, the water would flow to a drainage outfall and into the tidally influenced wetland. The site design would also include a weir to help prevent inflow of Delta waters to the project drainage system, which would prevent excessive pooling of water or flooding on the site that could attract mosquitos. As required by Mitigation Measure 4.3-4, the final Improvement Plans submitted to the City will include water quality protection features for both construction and long-term conditions. The improvements would ensure that standing water would not accumulate and the design features and maintenance of the bioretention basins would reduce the risk of vectors on the project site.

While the potential exists for the proposed construction activities to displace rodents from the project site, the site has been heavily disturbed during past industrial use and is currently undergoing remediation activities. Thus, the proposed construction activities would not substantially increase rodent displacement relative to what is currently occurring on-site. It should be noted that rodents displaced due to construction of the proposed project would likely move to the Delta and open spaces to the north of the project site, rather than the developed areas to the south of the site. Furthermore, as discussed on page 4.1-37 of the Draft EIR, the nearest residences are located within a mobile home park situated 800 feet south of the southernmost portion of the project site. The mobile home park is separated by railroad tracks, which could impede rodent travel. Thus, if any rodents are displaced by the project, such residences would not likely be impacted.

Based on the above, while standing water can attract insects which could spread vector diseases, the proposed project would include construction of stormwater infrastructure that would properly manage on-site stormwater to reduce the potential for insects to breed on-site. In addition, potential displacement of rodents from the site would not be anticipated to put surrounding residents at substantially greater risk related to pests.



Letter 2



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December 3, 2019

By E-mail

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Oakley, CA 94561
mcmurray@ci.oakley.ca.us

Re: Comment on the Draft Environmental Impact Report for the Oakley Logistics Center Project (SCH No. 2019029113).

Dear Mr. McMurray:

2-1

I am writing on behalf of Laborers International Union of North America Local Union 324 (“LIUNA”) concerning the Draft Environmental Impact Report (“DEIR”) for the Oakley Logistics Center Project (SCH No. 2019029113) (the “Project”) in Oakley. After reviewing the DEIR, we conclude that the DEIR fails to analyze all environmental impacts and implement all necessary mitigation measures. We request that the City of Oakley (“the City”) prepare a recirculated DEIR (“RDEIR”) in order to address the concerns discussed below.

This comment has been prepared with the assistance of wildlife biologist Shawn Smallwood Ph.D, environmental consulting firm SWAPE, and traffic expert Daniel T. Smith. Dr. Smallwood’s comment and curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety. SWAPE’s comment and curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety. Mr. Smith’s comment and curriculum vitae are attached as Exhibit C hereto and are incorporated herein by reference in their entirety.

2-2

I. PROJECT DESCRIPTION

The property for the Project is approximately 375.7 acres, located at 6000 Bridgehead Road in the City of Oakley and is identified by Assessor’s Parcel Numbers (APNs) 037-020-008, -009, -010, -014, through -022. The Project site would be approximately 143.3 acres, consisting of five buildings, totaling 2 million square feet with an accompanying 1,358 parking spots.

The Project would demolish existing structures and utility remnants and construction of the proposed buildings would be over two phases. Specific uses for the proposed buildings



2-2
Cont'd

Oakley Logistics Center Project
December 3, 2019
Page 2 of 12

would be subject to site-specific development standards in the proposed Planned Unit Development (“PUD”). Access to the Project site would be provided by a main entrance located at the intersection of Wilbur Avenue and Bridgehead Road, with two secondary access points on Bridgehead Road.

II. LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code (“PRC”) § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal. App. 4th 98, 109.

2-3

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley* 52 Cal.3d at 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” PRC § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The EIR is the very heart of CEQA. *Dunn-Edwards* 9 Cal.App.4th at 652. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be



Oakley Logistics Center Project
December 3, 2019
Page 3 of 12

insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings Cty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets* 91 Cal. App. 4th at 1355 (emphasis added) (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*, “A prejudicial abuse of discretion occurs ‘if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’” *Berkeley Jets* 91 Cal. App. 4th at 1355. More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.

Sierra Club v. Cty. of Fresno (2018) 6 Cal.5th 502, 510, citing *Laurel Heights Improvement Assn.* 47 Cal.3d at 405. “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” *Id.* at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” *Id.*, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197 (*Bakersfield*). As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

Id. at 514.

III. DISCUSSION

A. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

2-3
Cont'd

2-4



Oakley Logistics Center Project
December 3, 2019
Page 4 of 12

2-4
Cont'd

The comment of Dr. Shawn Smallwood is attached as Exhibit A. Dr. Smallwood has identified several issues with the DEIR for the Project. His concerns are summarized below.

1. The DEIR provides an inadequate baseline to analyze the Project's impacts on biological resources at the Project site.

The DEIR states that 10 special-status species of wildlife "are considered to have a low or moderate potential to occur within the subject property." DEIR, p. 4.2-35. However, Dr. Smallwood himself detected 11 special-status species on the Project site after only a brief survey restricted to the western edge of the Project site. Ex. A, p. 7. Further, another 31 special-status species of birds have been detected near the Project site according to eBird records. *Id.* Based on Dr. Smallwood's review of the available habitat descriptions, range maps, sighting records, and the 662 trees located on the site, 60 special-status species of vertebrate wildlife have the potential to occur on the Project site. *Id.* Dr. Smallwood notes that there may be 1,000s of nests located on the property with the capacity to produce tens of thousands of birds – a large percentage of which would be destroyed by the Project. *Id.*, p. 7.

2-5

Dr. Smallwood also notes that without the benefit of appropriate surveys, the City dismisses potential impacts on special-status species of bats because no acoustic detectors were deployed, nor were any surveys performed at night using a thermal-imaging camera or eyes on the sky. *Id.* at 8. Without being informed by these appropriate surveys, the City cannot rule out any of the bat species in Table 3 of the DEIR as dependent on the site for foraging or stopover roosting habitat. *Id.*

2-6

Dr. Smallwood also points out that the DEIR makes additional mistakes in determining and analyzing the impacts to biological resources on the Project site. First, the DEIR provides a flawed analysis of potential burrowing owl impacts, starting by pigeon-holing burrowing owls into an unrealistically narrow portion of the environment. The DEIR states "[b]urrowing owls inhabit dry open rolling hills, grasslands, desert floors, and open bare ground with gullies and arroyos." DEIR, p. 4.2-35. However, Dr. Smallwood notes that in fact, "burrowing owls inhabit a variety of environments, so long as tall structures such as trees occur in low density (as is the case over large portions of the project site)." Ex. A, p. 8. Dr. Smallwood identified several other fallacies in the DEIR's analysis of burrowing owls including the following: whether ground squirrels occur on the site; that burrowing owls are discouraged from the site because the grassland areas are routinely mowed; and the City's conclusions over burrowing owl occurrence likelihoods without having performed detection surveys. *Id.* Dr. Smallwood disproves all of these fallacies and concludes that the DEIR's conclusions should be founded on the appropriate detection surveys, which have not yet been performed at the Project site. *Id.* at 8, 12.

2-7

Second, the DEIR's analysis of golden eagle impacts fails to incorporate specific impacts to the species that are recognized in the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("ECCC HCP/NCCP") but are specifically called out as not covered by the ECCC HCP/NCCP. Dr. Smallwood highlights wind turbine collisions and the expansion of the Los Vaqueros Reservoir as specific impacts that are recognized by the ECCC HCP/NCCP. *Id.* at 13. Since a majority of the Project site is within the ECCC HCP/NCCP area,



2-7 Cont'd	<p>Oakley Logistics Center Project December 3, 2019 Page 5 of 12</p> <p>and the DEIR relies on it within its Biological Resources analysis, Dr. Smallwood concludes that the DEIR needs to be revised in light of these additional impacts and how they bear cumulatively on the loss of stopover and flyover habitat for golden eagles due to the Project. <i>Id.</i></p>
2-8	<p>Third, the City concludes that Swainson's hawks will not nest on the Project site because the "Del Antico Basin is surrounded by subdivisions and a vineyard." DEIR, p. 4-36. Dr. Smallwood points out that this conclusion is reached right after summarizing Swainson's hawk nest attempts at the Project site in 2011, 2012, and 2018, and Swainson's hawk sightings on the site in 2019. Ex. A, p. 13. "In reality, Swainson's hawks will nest in urban environments, so long as they are within one mile of foraging habitat." <i>Id.</i> The Project will permanently remove at least one nest site, and would cause a significant impact on Swainson's hawks' access to forage. For these reasons, Dr. Smallwood states that the EIR must be revised to appropriately address these impacts and so that it is informed by detection surveys that meet California Department of Fish and Wildlife's ("CDFW") guidelines. <i>Id.</i></p>
2-9	<p>Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. <i>Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.</i> (2010) 48 Cal. 4th 310, 321. Section 15125(a) of the CEQA Guidelines states in pertinent part that a lead agency's environmental review under CEQA:</p> <p>"...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."</p> <p>See, <i>Save Our Peninsula Committee v. County of Monterey</i> (2001) 87 Cal.App.4th 99, 124-125 ("Save Our Peninsula.") By failing to correctly assess the presence of wildlife at the site, the DEIR fails to provide an accurate baseline from which to analyze the Project's impacts on wildlife.</p>
2-10	<p>2. <u>The DEIR fails to adequately address the potential adverse impact on habitat fragmentation and wildlife movement.</u></p> <p>After reviewing the DEIR, Dr. Smallwood identified that the DEIR fails to analyze the Project site for potential impacts on wildlife movement in the area. Ex. A, p. 14. The DEIR states that "significant wildlife movement corridors do not exist within the land area adjacent to the project site, including the off-site utility improvement areas." DEIR, p. 4.2-41. However, as Dr. Smallwood points out, this statement is based on a false CEQA standard. Ex. A, p. 13. CEQA asks whether a project will "Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors . . ." <i>Id.</i> The CEQA standard requires the agency to address impacts to wildlife movement regardless of whether the movement is channeled by a corridor. <i>Id.</i> Through Dr. Smallwood's expertise and observations, volant wildlife target open spaces for travel paths, even</p>



2-10
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Oakley Logistics Center Project
December 3, 2019
Page 6 of 12

if they have to fly over some urbanized areas to do so. *Id.* at 14. While at the Project site, Dr. Smallwood even noticed thousands of blackbirds of multiple species flying over the Project site. *Id.* Because many species of wildlife likely use the Project site for movement across the area, and because the Project would further cut wildlife off from stopover and staging habitat, the DEIR should be revised to adequately address the Project's potential impacts on habitat fragmentation and wildlife movement.

2-11

3. The DEIR fails to address the potential significant impacts on wildlife from vehicle collisions due to increased traffic from the Project.

According to the DEIR, the Project would generate about 4,292 daily trips. DEIR, p. 4.4-20. The increase in vehicle trips are likely to result in increased wildlife fatalities because vehicle collisions kill wildlife. Ex. A, p. 14. However, Dr. Smallwood points out that the City failed to analyze the impacts of the Project's added road traffic on special-status species of wildlife. *Id.* According to Dr. Smallwood many of the animals that would be killed by the traffic generated by the Project would be located far from the Project's construction footprint because they would be crossing roads traversed from cars and trucks originating from or headed toward the Project site. *Id.* Vehicle collisions account for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts of such collisions have often been found to be significant at the population level. *Id.* at 15-16. In terms of avian mortality, it is estimated that vehicle collisions result in the death of 89 million to 340 million birds per year. *Id.* at 16. Because the impact of vehicle collisions on wildlife was not addressed in the DEIR, the EIR must be revised to appropriately assess the wildlife mortality that the Project will cause due to increased traffic on existing roadways, and should also provide mitigation measures for such impacts.

2-12

4. The DEIR fails to adequately mitigate the adverse impacts on biological resources.

The DEIR relies on the ECCC HCP/NCCP as the mechanism that would adequately mitigate impacts to special-status species within the portion of the Project site included in the ECCC HCP/NCCP permit area. DEIR, p. 4.2-512. However, as Dr. Smallwood points out, the City's conclusion is not supported by substantial evidence because wildlife, such as burrowing owls, are rapidly declining in numbers and productivity despite the mitigation measures provided for in the ECCC HCP/NCCP. Ex. A, p. 17. Dr. Smallwood concludes that it is insufficient to merely pay the ECCC HCP/NCCP mitigation fee, and that the City should also follow CDFW's guidelines to adequately mitigate the impacts caused by the Project. *Id.*

2-13

Dr. Smallwood also identifies several more problems with the mitigation proposed in the DEIR for impacts to biological resources. For example, Dr. Smallwood notes that due to the flawed interpretation of the CEQA standard and the scientific definition of "corridor," the City erroneously concludes no mitigation is required for project impacts on wildlife movement in the region. *Id.* at 18. Since many special-status species of wildlife use the Project site for stopover, staging, and flyover habitat, the loss of access to this site will increase the distance between remaining open species and will increase the energy costs of wildlife movement in the region. *Id.*



2-13 Cont'd	<p>Oakley Logistics Center Project December 3, 2019 Page 7 of 12</p>
2-14	<p>Since the DEIR does not address these impacts, it must be revised and address how these impacts should be mitigated. <i>Id.</i> Further, only 10% of the special-status species in the DEIR Tables 2 and 3 are covered by the ECCC HCP/NCCP, which means that payment of the ECCC HCP/NCCP mitigation fees wouldn't mitigate the Project's impacts to 90% of the special-status species potentially occurring at the Project site. <i>Id.</i> at 19.</p>
2-15	<p>Due to Dr. Smallwood's analysis of the DEIR and the potential significant impacts the Project will have on biological resources, the City must prepare and circulate a revised DEIR incorporating the above concerns and suggested mitigation measures.</p>
2-16	<p>B. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Air Quality</p> <p>SWAPE, an environmental consulting firm, reviewed the air quality analysis in the EIR. SWAPE's comment letter is attached as Exhibit B and their findings are summarized below.</p> <p>The DEIR for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the DEIR. This results in an underestimation of the Project's emissions. As a result, the DEIR fails to provide substantial evidence that the Project will not have significant air quality impacts and an RDEIR is required to properly analyze these potential impacts.</p>
2-17	<p>Specifically, SWAPE identified the following issues with the DEIR's input parameters:</p>
2-18	<ul style="list-style-type: none"> • unsubstantiated reduction in carbon intensity factor;
2-19	<ul style="list-style-type: none"> • failure to account for total amount of material import/export;
2-20	<ul style="list-style-type: none"> • incorrectly assumes tier 4 final equipment;
2-21	<ul style="list-style-type: none"> • failure to include all demolition;
2-22	<ul style="list-style-type: none"> • unsubstantiated mobile mitigation measures; and • unsubstantiated energy mitigation measure.
2-23	<p>SWAPE's analysis on these issues can be found in Exhibit B, pages 2-9.</p> <p>Additionally, the DEIR fails to implement all feasible mitigation measures to reduce emissions. The DEIR determines that the Project's VOC and NOx emissions would exceed the thresholds set forth by the Bay Area Air Quality Management District ("BAAQMD"). DEIR, p. 4.1-31, Table 4.1-8. As a result, the Project proposes several mitigation measures to reduce the Project's VOC and NOx emissions. <i>Id.</i> at 4.1-31. Even after implementing these mitigation measures, however, the DEIR concludes that the Project's construction NOx emissions would still be significant. <i>Id.</i> While SWAPE agrees that the Project would result in a significant construction NOx impact, SWAPE finds the DEIR's conclusion that these impacts are</p>



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	Oakley Logistics Center Project December 3, 2019 Page 8 of 12
2-23 Cont'd	“significant and unavoidable” to be incorrect. Ex. B, p. 9. SWAPE examined the DEIR and found that not all feasible mitigation measures were implemented in the DEIR. <i>Id.</i> at 10. SWAPE listed additional mitigation measures that should be identified and incorporated in an EIR in order to reduce the Project’s air quality impacts to the maximum extent possible. <i>Id.</i> at 21–25. These include, among other examples, using ultra-low sulfur diesel fuel (ULSD) or a biodiesel blends to fuel equipment on site, using electric and hybrid powered construction equipment and the use of a construction vehicle inventory tracking system.
2-24	An agency may adopt a statement of overriding considerations only <i>after</i> it has imposed all feasible mitigation measures to reduce a project’s impact to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.) CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. (Pub. Res. Code § 21002.) As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has “[e]liminated or substantially lessened all significant effects on the environment where feasible.” Until all feasible mitigation is reviewed and incorporated into the Project’s design, impacts from construction NOx cannot be considered significant and unavoidable.
2-25	C. The DEIR Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions The DEIR concludes that the Project will not have a significant health risk impact on nearby sensitive receptors. But in making this conclusion, the City never conducted a construction or operational health risk assessment (“HRA”) for nearby, existing sensitive receptors. DEIR, p. 4.1-40. The DEIR attempts to provide a number of justifications for why the City did not include a construction or operational HRA, but as SWAPE explains, none of the justifications are adequate. Ex. B, pp. 10–12.
2-26	In an effort to determine the Project’s potential health risk to nearby sensitive receptors, SWAPE prepared a screening-level HRA. The results demonstrate that the Project may have a significant health-risk impact. SWAPE found that the excess cancer risk for children located approximately 400 meters away, over the course of the Project construction and operation, is approximately 12 in one million. <i>Id.</i> at 15. The excess cancer risk over the course of a residential lifetime is approximately 21 in one million. <i>Id.</i> The BAAQMD threshold for excess cancer risk is 10 in one million. Because the child and lifetime cancer risks exceed the BAAQMD’s significance threshold of 10 in one million, the City must prepare an RDEIR with a revised HRA which makes a reasonable effort to connect the Project’s air quality emissions and the potential health risks posed to nearby receptors.
2-27	D. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project from Greenhouse Gases The DEIR determined that the Project will have significant and unavoidable Greenhouse Gas (“GHG”) impacts even after the implementation of mitigations measures. DEIR, p. 4.1-50.
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2-27
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Oakley Logistics Center Project
December 3, 2019
Page 9 of 12

However, SWAPE also reviewed the DEIR's GHG analysis and found that the DEIR's analysis was incorrect for several reasons.

First, the DEIR evaluates the Project's consistency with AB 32, SB 32, and the CARB Scoping Plan. However, these policies do not qualify as Climate Action Plans (CAPs) and therefore the DEIR cannot rely on them to determine the Project's GHG impact significance. Ex. B, pp. 16-17.

2-28

Second, the DEIR asserts that the Project would comply with AB 32 because the Project's emissions would be below the BAAQMD's service population efficiency threshold of 4.6 MT CO₂e/Service Population/Year (MT CO₂e/SP/year). However, this is incorrect because the DEIR relies on a flawed CalEEMod model to estimate the Project's GHG emissions and the DEIR compared the Project's emissions to the wrong target year. Ex. B, p. 18. If the DEIR used the correct threshold to adequately evaluate the Project's emissions, a significant impact would have been revealed that was not previously identified or addressed. *Id.*

2-29

Third, SWAPE's modeling demonstrates that the Project will result in a potentially significant GHG impact. SWAPE's updated CalEEMod output files disclose the Project's mitigated emissions, which include approximately 8,960.3 MT CO₂e of total construction emissions and approximately 18,224.6 MT CO₂e/year of annual operational emissions. *Id.* at 19. When SWAPE compared the Project's total GHG emissions to the BAAQMD's bright-line threshold of 1,100 MT CO₂e/year,¹ they found that the Project's GHG emissions exceeded the threshold.

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	298.68
Area	0.07
Energy	11,407.83
Mobile	4,250.91
Waste	1,215.38
Water	1,350.42
Total	18,523.28
Threshold	1,100.00
Exceed?	Yes

¹ "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: http://www.baaqmd.gov/~/_media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, p. 2-4.



Oakley Logistics Center Project
December 3, 2019
Page 10 of 12

2-29
Cont'd

Id. Since the Project will emit approximately 18,523.3 MT CO₂e/year, it exceeds the BAAQMD's 1,100 MT CO₂e/year threshold and a Tier 4 analysis is warranted. *Id.* at 20. SWAPE divided the Project's GHG emissions by a service population value of 2,542 people, as indicated in the DEIR, and found that the Project would emit approximately 7.3 MT CO₂e/SP/year. DEIR, p. 4.1-43. This exceeds the BAAQMD's substantial progress threshold of 2.6 MT CO₂e/SP/year. Ex. B, p. 20.

SWAPE Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Annual Emissions	18523.28
Service Population	2542.00
Service Population Efficiency	7.29
Threshold	2.60
Exceed?	Yes

Id. When correct input parameters are used to model the Project's emissions, the Project's total GHG emissions exceed the "Substantial Progress" efficiency threshold for 2030 of 2.6 MT CO₂e/SP/year, thus resulting in a significant impact not previously assessed or identified in the DEIR. *Id.* Therefore, SWAPE recommends the City conduct an updated GHG analysis in an RDEIR. *Id.*

2-30

Fourth, SWAPE's analysis of the DEIR found the assertion that the Project's GHG impact would be unavoidable also to be incorrect. *Id.* SWAPE's review of the Project's proposed mitigation measures demonstrates that the DEIR failed to implement all feasible mitigation measures and therefore the DEIR's conclusion was unsubstantiated. *Id.* Since SWAPE's analysis demonstrates that the Project's GHG emissions may result in a potentially significant impact, SWAPE identified many mitigation measures that are applicable to the Project and likely feasible. *Id.* at 21-27.

Due to SWAPE's GHG analysis and findings, an RDEIR must be prepared for the Project taking into consideration the issues addressed in SWAPE's analysis, and additional mitigation measures should be implemented where necessary.

2-31

E. The DEIR Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Traffic.

Certified Traffic Engineer Daniel T. Smith, PE reviewed the DEIR and found that the fundamental problem with the DEIR's traffic analysis is that it analyzes the vast majority of the almost 2 million square foot development as general warehouse use, the lowest traffic generating use among the potential uses allowed under the Planned Unit Development ("PUD") zoning proposed for the Project. Ex. C, p. 1. Therefore, the DEIR fails to comply with CEQA's requirement of a good faith effort to disclose impacts. *Id.*



Oakley Logistics Center Project
December 3, 2019
Page 11 of 12

2-32

The DEIR states that the proposed Project requires a rezone to amend the zoning designation of the site from Specific Plan (SP-3) to Planned Unit Development (P-1). DEIR, p. 1-2. Due to the rezoning of the site, “the buildings are assumed to be capable of accommodating a range of light industrial, warehousing, distribution, e-commerce fulfillment, and light manufacturing uses . . .” *Id.* at 3-7. However, as Mr. Smith points out, the DEIR Transportation and Circulation Analysis section evaluates all but 7.56 percent of the Project as general warehouse use. Ex. C, p. 2. Most of the permissible uses under the PUD generate traffic at rates considerably higher than the trip generation for warehouse use applied to the majority of the Project in the DEIR. *Id.*

Mr. Smith created a table to show the disparity of total and peak period trips between the remaining 92 percent of square foot uses assumed in the DEIR as warehouse uses and trips if considered for other permissible uses in the P-1 zoning.

DAILY AND PEAK HOUR TRIP GENERATION COMPARISON

Land Use	Quantity	Daily Total	AM Pk Tot. ²	PM Pk Tot.
150 Warehousing	1,835.404	3,193	312	349
110 Light Industrial	1,835.404	9,104	1,285	1,156
140 Manufacturing	1,835.404	7,213	1,138	1,230
155 E-Commerce Fulfill	1,835.404	15,014	1,083	2,515
156 Hi Cube Parcel Hub	1,835.404	14,224	1,285	1,175

2-33

Id. at 3. This table shows that the alternative permissible uses would generate from 4,020 to 11,821 more daily trips than the assumed warehouse use evaluated in the DEIR. *Id.* Mr. Smith concludes that this table makes clear several things: 1) had a reasonable mix of uses been considered in the analysis, the number of traffic impacts disclosed and/or the severity of impacts would be greater; 2) the DEIR’s decision to consider the entire 1,835,404 square feet at the lowest trip generating use permissible in the P-1 zoning is inconsistent with CEQA’s demand of a good faith effort to disclose impacts; and 3) had the traffic from a more likely mix of uses in the proposed Project been considered, this would have cast the Reduction Footprint Alternative in an even more favorable light. *Id.*

For these reasons, Mr. Smith concludes that the DEIR’s Transportation and Circulation analysis does not meet the requirements of CEQA and that a revised analysis that considers a logical mix of permissible uses must be performed and the DEIR recirculated. *Id.*

IV. CONCLUSION

2-34

For the foregoing reasons, LIUNA Local Union 324 and its members living in the City of Oakley and the surrounding areas, urge the City to complete a revised DEIR addressing the Project’s significant impacts and mitigation measures.

² We note that the column headings for the AM and PM peak hour trip totals in DEIR Table 4.4-4 are mislabeled. The AM and PM trip totals are actually presented in the columns labeled “Out”.



**Letter 2
Cont'd**

**2-34
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Oakley Logistics Center Project
December 3, 2019
Page 12 of 12

Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,



Michael Lozeau
Paige Fennie
Lozeau | Drury LLP



LETTER 2: LOZEAU DRURY (LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 324)

The letter submitted by the commenter included references to three exhibits that were appended to the commenter's letter. The body of the comment letter presented above, summarizes, in pertinent part, each exhibit. As such, the following responses to comments include information related both to the body of the comment letter as well as the referenced sections of each of the three appended exhibits. The commenter's exhibits have been included in this EIR as Appendix B.

Response to Comment 2-1

The comment is introductory. The specific concerns brought forth by the commenter are presented in further detail in the remainder of the letter and are addressed in further detail in the responses below.

Response to Comment 2-2

The comment provides a summary of the project description and does not address the adequacy of the Draft EIR.

Response to Comment 2-3

The comment provides background information regarding CEQA and CEQA case law; does not address the adequacy of the Draft EIR.

Response to Comment 2-4

The comment states that the Draft EIR provides an inadequate baseline to analyze impacts to biological resources by not identifying and conducting surveys for every special-status wildlife species, as well as common wildlife species, that may occur in the overall 375.7+/- acre property.

While the entire subject property is approximately 375.7+/- acres, development of the logistics center would only occur on approximately 143.3+/- acres within the southwestern portion of the subject property, the vast majority of which has been highly disturbed by prior use of the site for chemical manufacturing and the ongoing soil and groundwater remediation activities.

The Draft EIR (page 4.2-2) describes that the project is subject to the requirements of the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (ECCCHCP). The ECCCHCP authorizes take coverage pursuant to the Federal Endangered Species Act (FESA) and the California Endangered Species Act (CESA), and provides compensatory mitigation for 28 special-status plant and animal species. Because the ECCCHCP provides a regional approach to the protection of endangered species, participants in the ECCCHCP permitting process are provided streamlined permitting from the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW). It is also important to note that the ECCCHCP assumes the presence of covered species if suitable habitat is present, negating the need for exhaustive project-specific wildlife surveys.

Additional information on special-status species that may occur in the greater project vicinity but are not covered by the ECCCHCP can be found in the *East Contra Costa County Habitat Conservation Plan Assessment of Plan/Natural Community Conservation Plan: Assessment of Plan Effects on CEQA Species* (H.T. Harvey & Associates, 2015). The Assessment provides a



programmatic, cumulative CEQA effects analysis for non-covered species, taking into account impacts of all covered activities, including all adverse and beneficial effects of covered development activities and conservation measures. With the exception of two special-status plants that have no potential to occur on the project site, the cumulative effects of the ECCCHCP on each species analyzed were determined to be beneficial or neutral to those species.

Table 4.2-3 of the Draft EIR describes 40 special-status wildlife species that potentially occur in the project site and/or off-site improvement areas; ten of these species are then addressed in detail in the text. Table 4.2-3 lists all special-status species in CDFW's California Natural Diversity Database (CNDDDB) in four USGS 7.5-minute topographic quadrangles (240+/- square miles) surrounding the site and all species identified in the USFWS IPaC Trust Resource Report. This table does not include birds on "watch lists" or raptors that are only protected by Fish and Game Code of California. However, the Draft EIR (page 4.2-61) also identifies that "other avian species" protected under the Migratory Bird Treaty Act (MBTA) and Fish and Game Code of California, many of which are common species, could use the site.

The Draft EIR (pages 4.2-49 through 4.2-63) includes mitigation measures sufficient to protect all species of nesting birds. The Draft EIR also provides off-site compensatory habitat mitigation for the conversion of habitat through the ECCCHCP, the purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, and the potential purchase of burrowing owl credits at a CDFW-approved mitigation bank.

In summary, the inventory and impact analysis in the Draft EIR adequately addresses wildlife resources, and the proposed mitigation measures set forth in the Draft EIR (pages 4.2-49 through 4.2-63) would reduce the potential project impacts to wildlife resources to a less-than-significant level.

Response to Comment 2-5

The comment states that the Draft EIR dismisses potential project impacts to special-status bats by not undertaking acoustic surveys for bats. Table 4.2-3 of the Draft EIR addresses pallid bat and western red bat, which were identified in the CNDDDB search, and concludes both species are unlikely to occur on the site due to lack of suitable habitat. The site does not contain the suitable "habitat element" for Townsend's big-eared bat as defined in the ECCCHCP Planning Survey Report (PSR) (Draft EIR Appendix E). Furthermore, Table 4.2-3 of the Draft EIR concludes that the site does not provide suitable habitat for pallid bats. Considering that the site does not provide suitable habitat for pallid bats or Townsend's big-eared bat, conducting further study for the presences of either species is unnecessary. Table 4.2-3 of the Draft EIR acknowledges western red bat could use on-site habitats for occasional roosting; however, the use of the site by western red bats is unlikely given that the species is not known to be widespread in the project area. Other bat species may also use on-site habitats for occasional foraging or roosting. Although the aforementioned bat species are not necessarily anticipated to occur within the project site, the combination of off-site compensatory habitat through the ECCCHCP, the purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, and the potential purchase of burrowing owl credits at a CDFW-approved mitigation bank would be sufficient to also reduce the potential project impacts to bats to a less-than-significant level.



Response to Comment 2-6

The comment states that the Draft EIR does not provide an adequate impact analysis of the potential project impacts to burrowing owl, partially related to inadequate surveys. As described in Response to Comment 2-4 above, the ECCCHCP assumes the presence of covered species if suitable habitat is present, negating the need for exhaustive project-specific wildlife surveys, including protocol-level population inventory surveys for burrowing owl. The Draft EIR appropriately characterizes the grasslands in the project site and the Del Antico Basin as potentially suitable for burrowing owl (Draft EIR pages 4.2-35 through 4.2-36). Further, the proposed mitigation measures for burrowing owl (Draft EIR pages 4.2-51 through 4.2-53) would provide compensatory habitat mitigation and minimize take, thereby reducing the potential project impacts to burrowing owl to a less-than-significant level.

Response to Comment 2-7

The comment states that the Draft EIR does not provide an adequate analysis of the potential project's contribution to cumulative impacts to golden eagle. The majority of the site consists of urban areas that do not provide suitable habitat for golden eagle. Further, the site is located many miles from the rolling hills with cliffs that provide preferred nesting habitat for this species. In combination, these factors limit the project's potential contribution to cumulative impacts to golden eagle. Cumulative impacts to wildlife resources, including golden eagle, are addressed in the Draft EIR in the context of the ECCCHCP and the City's General Plan (pages 4.2-71 through 4.2-73). The proposed mitigation measures for golden eagle (Draft EIR pages 4.2-51 through 4.2-53) would provide compensatory habitat mitigation and minimize take, thereby reducing the potential project impacts to golden eagle and the potential project's contribution to cumulative impacts to golden eagle to a less-than-significant level.

Response to Comment 2-8

The comment states that the Draft EIR does not provide an adequate impact analysis of the potential project impacts to Swainson's hawk, partially related to inadequate surveys. The comment also highlights confusion between the Draft EIR's discussion of the potential for occurrence of Swainson's hawk in the 143.3+/-acre logistics center site and the Del Antico Basin. The Draft EIR appropriately characterizes the grasslands in the project site and the Del Antico Basin as potentially suitable for Swainson's hawk (Draft EIR pages 4.2-36 through 4.2-37). Also, as noted in Response to Comment 2-4 above, the ECCCHCP assumes the presence of covered species if suitable habitat is present, negating the need for exhaustive project-specific wildlife surveys, including protocol-level population inventory surveys for Swainson's hawk. Further, the proposed mitigation measures for Swainson's hawk (Draft EIR pages 4.2-54 through 4.2-58) would provide compensatory habitat mitigation and minimize take, thereby reducing the potential project impacts to Swainson's hawk to a less-than-significant level.

Response to Comment 2-9

The comment largely repeats the concerns presented in Comment 2-4 that the Draft EIR does not provide an accurate baseline of wildlife at the site due to inadequate surveys. As described in Response to Comment 2-4, the ECCCHCP assumes the presence of covered species if suitable habitat is present, negating the need for exhaustive project-specific wildlife surveys. The majority of the 143.3+/-acre logistics center site is within the ECCHCP permit area and the PSR has been reviewed and approved by the East Contra Costa County Habitat Conservancy. For the 24.3+/-acres of the site outside the ECCHCP permit area, the Draft EIR describes the results of habitat mapping and characterization, general wildlife surveys, focused surveys for rare plants, and a



fisheries habitat assessment. The Draft EIR also contains a delineation of jurisdictional Waters of the U.S. and wetlands (ECCCHCP PSR in Draft EIR Appendix E), and a tree inventory (Draft EIR Appendix F) encompassing the 143.3+/- acre logistics center site. Finally, the Draft EIR provides information from prior biological surveys at the site conducted in support of the ongoing soil and groundwater remediation project.

Response to Comment 2-10

The comment states that the Draft EIR does not provide an adequate impact analysis of the potential project impacts to wildlife movement. As described in Response to Comment 2-4, development of the logistics center would only occur on approximately 143.3+/- acres within the southwestern portion of the subject property, the vast majority of which has been highly disturbed by prior use of the site for chemical manufacturing and the ongoing soil and groundwater remediation activities. The Draft EIR (page 4.2-69) correctly characterizes the 143.3+/- acre logistics center site as having limited value for wildlife movement due to being surrounded by development on three sides. In contrast, the Draft EIR acknowledges the San Joaquin River and tidal wetlands, located to the northeast of the 143.3+/- acre logistics center site, as a notable wildlife movement corridor.

Response to Comment 2-11

The comment states that the Draft EIR does not provide an adequate impact analysis of the potential project impacts to wildlife from increased vehicle collisions. As described in Response to Comment 2-7, cumulative impacts to wildlife resources are addressed in the Draft EIR in the context of the ECCCHCP and the City's General Plan (pages 4.2-71 through 4.2-73). The proposed mitigation measures for wildlife (Draft EIR pages 4.2-51 through 4.2-53) would provide compensatory habitat mitigation and minimize take, thereby reducing the potential project impacts to wildlife to a less-than-significant level.

It should be noted that some of the studies cited by the commenter do not reflect the scale and setting of the proposed development. For example, the Brown et al. 2016 study is related to bird and bat impacts at old wind turbines, specifically related to the Altamont Pass. Collision data presented in that study is related to collision with wind turbines, not vehicles. Similarly, the project site and vicinity are not similar to the conditions at Vasco Road per the Mendelsohn et al. 2009 study, where a four-lane highway bisects habitat used by a multitude of migratory terrestrial wildlife species. In fact, contrary to the comment, according to the San Francisco Bay Area Regional Highway Hotspots figure presented in the Shilling et al. 2017 study, the project site is not located in an area identified as a major hotspot for wildlife traffic incidents. The nearest area to the project site shown on the map as a potential conflict area is located east of the site, near the City of Antioch, along State Route 4, and the concentration of conflict areas within the east bay area increases, due to the increase in volume of vehicle traffic, along I-680 between the south bay area and along the SR 4 to I-80 to I-580 route heading south.

Conflicts between vehicle traffic on roadways and wildlife is a statewide issue. One specific project would not be expected to cause an increase in traffic volumes such that a substantial or exceptional increase in the potential for traffic collisions would result. Similarly, any collisions associated with one specific project would not be numerous enough or of sufficient frequency to result in population-wide changes in wildlife movement patterns. The overall increase in vehicle traffic on roadways in proximity to the proposed project would be relatively minor compared to the existing volume of vehicle traffic in the region. As such, while vehicle traffic related to the proposed



project has a minimal potential to result in slight increases in wildlife vehicle conflicts, the increase would not be considered to substantially interfere with wildlife populations or movement on a regional level. Thus, vehicle conflicts with wildlife related to an increase in traffic would not be sufficient to alter movement patterns of any species or pose a substantial risk to the overall population of any particular species.

Response to Comment 2-12

The comment states that the ECCCHCP does not provide adequate mitigation for the project's impacts to biological resources. As described in Response to Comment 2-4, the Draft EIR (page 4.2-2) describes the ECCCHCP and its regional approach to the protection of endangered species. The USFWS and CDFW are signatory to the ECCCHCP and have approved the mitigation for the 28 species covered by the ECCCHCP, including burrowing owl.

Response to Comment 2-13

The comment largely repeats the concerns brought forth in Comment 2-10 that the Draft EIR does not provide adequate mitigation for the project's impacts to wildlife movement, but focuses on occasional "stopover", "staging" and "fly over" uses. As described in Response to Comment 2-4, the Draft EIR (page 4.2-69) correctly characterizes the 143.3+/- acre logistics center site as having limited value for wildlife movement due to being surrounded by development on three sides. The Del Antico Basin also has limited value for wildlife movement due to being surrounded by development.

Response to Comment 2-14

See Response to Comment 2-12. Further, as described in Response to Comment 2-4, the cumulative effects of the ECCCHCP on each non-covered species analyzed in the *East Contra Costa County Habitat Conservation Plan Assessment of Plan/Natural Community Conservation Plan: Assessment of Plan Effects on CEQA Species* (H.T. Harvey & Associates, 2015) were determined to be beneficial or neutral to those species. The proposed mitigation measures set forth in the Draft EIR (Draft EIR pages 4.2-49 through 4.2-63) would reduce the potential project impacts to wildlife resources to a less-than-significant level.

Response to Comment 2-15

The comment summarizes the concerns brought forth in Comments 2-4 through 2-14 that the Draft EIR does not provide an adequate impact analysis of the potential project impacts biological resources. See Responses to Comments 2-4 through 2-14, particularly Responses to Comments 2-4 and 2-9. In summary, the inventory and impact analysis in the Draft EIR adequately addresses wildlife resources, and the proposed mitigation measures set forth in the Draft EIR (Draft EIR pages 4.2-49 through 4.2-63) would reduce the potential project impacts to wildlife resources to a less-than-significant level.

Response to Comment 2-16

The methodology used in preparation of the air quality analysis is presented within the Method of Analysis section of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, beginning on page 4.1-27 of the Draft EIR. The commenter's specific concerns regarding the air quality modeling inputs are discussed and addressed in further detail in Responses to Comments 2-17 through 2-22.



Response to Comment 2-17

As stated within the Method of Analysis section of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, on page 4.1-29 of the Draft EIR, the CO₂ intensity factor was adjusted within CalEEMod in order to reflect PG&E's anticipated progress towards the State Renewables Portfolio Standard (RPS) goal by 2030. The associated footnote to this statement, included on page 4.1-29 of the Draft EIR, provides a link to the California Public Utilities Commission (CPUC) website, specifically to a webpage that provides a brief overview of the State's current RPS legislation and current RPS levels. As presented on that webpage:

The CPUC implements and administers RPS compliance rules for California's retail sellers of electricity, which include large and small investor-owned utilities (IOUs), electric service providers (ESPs) and community choice aggregators (CCAs). The California Energy Commission (CEC) is responsible for the certification of electrical generation facilities as eligible renewable energy resources and adopting regulations for the enforcement of RPS procurement requirements of public owned utilities (POUs).

Accordingly, the CPUC and CEC ensure compliance with the State RPS legislation.

The default CO₂ intensity factor of 641.35 lb/MWhr within CalEEMod is based on 2008 data, when PG&E's RPS percentage was at 12. As of 2016, PG&E had already exceeded the statewide goal of 20 percent by 2017 set by Senate Bill 1078 in 2002, with an RPS of 33 percent.¹ An RPS of 33 percent correlates to a CO₂ intensity factor of 294 lb/MWhr. According to the most recent CPUC RPS annual report, PG&E had an RPS percentage of 39 in the year 2018, which already exceeds the State's 2020 goal of 33 percent. Because PG&E has consistently met and exceeded the statewide RPS goals, and because CPUC and CEC ensure compliance with the statewide goals, it is reasonable to assume that PG&E would continue to, at a minimum, meet the Statewide goals. Accordingly, the inclusion of the assumed compliance with Statewide RPS goals in the analysis of the Draft EIR is adequate.

Response to Comment 2-18

As stated on page 3-16 of the Project Description chapter of the Draft EIR:

Elevations for the proposed buildings would be between approximately 19 and 22 feet with adjacent truck docks being approximately four feet below the finished floors. Cuts and fills for the site are anticipated to roughly balance; thus, net import/export of soil would not likely be required. If import/export is necessary it will likely be less than 25,000 cubic yards of material.

The commenter is correct that the modeling conducted does not account for the theoretical potential for import/export of 25,000 cubic yards of material to occur during construction of the proposed project. However, as concluded in Chapter 4.1, Air Quality and Greenhouse Gas Emissions, of the Draft EIR, on page 4.1-31, despite implementation of all feasible mitigation measures, impacts associated with construction-related emissions of NO_x would remain significant and unavoidable. Inclusion of the potential import/export of soil would not change the conclusion within the Draft EIR.

¹ California Public Utilities Commission. 2017 Annual Report: Renewable Portfolio Standard [pg. 10]. November 2017. (Available at: https://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Nov%202017%20-%20RPS%20Annual%20Report.pdf)



Nonetheless, for disclosure purposes, the mitigated construction modeling for the proposed project has been updated to include the theoretical potential for import/export of 25,000 cubic yards of material. In addition, per Comment 2-20, the amount of building square footage to be demolished was also updated in the model. The updated CalEEMod outputs are included as Appendix A to this Final EIR. Based on the updated modeling, while construction emissions related to hauling truck trips during the demolition and grading phases generally increased, the total mitigated maximum daily construction emissions would not change from what is presented in Table 4.1-8 on page 4.1-31 of the Draft EIR.

Accordingly, consistent with the analysis included in the Draft EIR, the proposed project's mitigated construction-related emissions of ROG, PM₁₀, and PM_{2.5} would still be below the applicable thresholds of significance, and the mitigated construction-related emissions of NO_x would still exceed the applicable threshold of significance. Therefore, as discussed above, the significant and unavoidable impact identified in the Draft EIR remains and the overall analysis and conclusions of the Draft EIR would not change.

Response to Comment 2-19

The use of Tier 4 construction equipment during project construction was not assumed nor input into the unmitigated air quality project modeling. Based on the comment, Mitigation Measure 4.1-1(a) on page 4.1-31 of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, is hereby revised as follows:

- 4.1-1(a) *Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet California Air Resources Board (CARB) Tier 4 Final emissions standards or cleaner. The grading plans shall be submitted for review and approval by the Public Works and Engineering Department. In addition, all off-road equipment operating at the construction site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to 5 minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB.*

Idling shall be limited to five minutes or less for all on-road related and/or delivery trucks in accordance with CARB's On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. Clear Signage regarding idling restrictions should be placed at the entrances to the construction site.

Response to Comment 2-20

As stated on page 3-4 of the Project Description chapter of the Draft EIR, "[t]wo existing buildings, totaling approximately 11,778 sf and 2,640 sf, respectively, are located within the western portion of the subject property, near Bridgehead Road." The commenter is correct that the modeling conducted does not account for the entire existing building square footage to be demolished. Accordingly, the mitigated construction modeling for the proposed project has been updated to include the increase in the amount of demolition square footage. See Response to Comment 2-



18 above for further details regarding the updated modeling results. As discussed in Response to Comment 2-18, the overall analysis and conclusions of the Draft EIR would not change.

Response to Comment 2-21

As stated at the bottom of page 4.1-27 of the Draft EIR, “[t]he model applies inherent default values for various land uses, including trip generation rates based on the ITE Manual, vehicle mix, trip length, average speed, etc. However, where project-specific data was available, such data was input into the model.” Project-specific data includes the project’s inherent site features such as the proximity to the nearest bus stop and pedestrian connectivity in the vicinity. The nearest bus stop to the project site is located approximately 0.5-mile from the southern entrance to the project site, at Bridgehead Road and Main Street. In addition, as stated on page 4.1-45 of the Draft EIR, “[t]he proposed project would include provision of on- and off-site pedestrian facilities related to internal roadways and improvements to Bridgehead Road.” Thus, the inclusion of these inherent project features within the modelling is adequate.

Response to Comment 2-22

As discussed in detail on page 4.1-29 of the Draft EIR (relevant text has been bolded and italicized for emphasis):

The modeling performed for the proposed project included compliance with BAAQMD rules and regulations (i.e., low-VOC [volatile organic compounds] paints and low-VOC cleaning supplies), ***as well as with the 2019 California Building Energy Efficiency Standards Code. All buildings within the State of California are required to comply with the mandatory standards within the 2019 California Building Energy Efficiency Standards Code. CalEEMod Version 2016.3.2 assumes new structures would be built in accordance with the 2016 California Building Energy Efficiency Standards Code. The CalEEMod inputs for the proposed project were adjusted to reflect the energy efficiency improvements inherent in the 2019 California Building Energy Efficiency Standards Code over the 2016 California Building Energy Efficiency Standards Code.²⁸ The proposed project’s compliance with such would be verified as part of the City’s building approval review process.*** Furthermore, the CO₂ intensity factor was adjusted within CalEEMod in order to reflect PG&E’s anticipated progress towards the State RPS goal by 2030.²⁹ Project-specific vehicle trip data was provided by Abrams Associates, and the trip rate data was applied to the project modeling.

As stated in the excerpt, compliance with California’s building codes (California Code of Regulations [CCR], Title 24) is already assumed in CalEEMod. However, the model has not been updated to reflect the more recent 2019 California Building Energy Efficiency Standards Code, and still assumes the 2016 California Building Energy Efficiency Standards Code. According to the CEC, non-residential buildings are anticipated to use 30 percent less energy under the 2019 standards, in comparison to the 2016 standards. In order to capture the increased reduction in energy due to the more recent California Building Energy Efficiency Standards Code, the standard method of application in the model is to apply the increase as a direct percent exceedance over the existing Title 24 standards, where the existing Title 24 standards in the model are the 2016 standards.

Response to Comment 2-23

A number of the commenter’s suggested measures are associated with replacing and/or retrofitting equipment. As discussed throughout Chapter 4.1, and specifically stated in Table 4.1-14 on page 4.1-45, “[u]se of Tier 4 engines in compliance with Mitigation Measure 4.1-1(a) would



ensure that diesel equipment used during project construction would be lower emitting than any current emission standard.” Accordingly, use of Tier 4 engines either surpasses any reductions that the suggested measures could offer and/or supersedes the measures. In addition, page 4.1-16 of the Draft EIR includes the following:

On July 26, 2007, CARB adopted a regulation to reduce DPM and NO_x emissions from in-use (existing), off-road, heavy-duty diesel vehicles in California.²⁰ Such vehicles are used in construction, mining, and industrial operations. The regulation is designed to reduce harmful emissions from vehicles by subjecting fleet owners to retrofit or accelerated replacement/repower requirements, imposing idling limitations on owners, operators, renters, or lessees of off-road diesel vehicles. [...]

As stated on page 4.1-36 of the Draft EIR, “[a]ll construction equipment and operation thereof would be regulated per CARB’s In-Use Off-Road Diesel-Fueled Fleets Regulation.³² The In-Use Off-Road Diesel Vehicle Regulation includes emissions reducing requirements such as limitations on vehicle idling, disclosure, reporting, and labeling requirements for existing vehicles, as well as standards relating to fleet average emissions and the use of Best Available Control Technologies.”

Furthermore, some of the suggested measures provided by the commenter are not readily enforceable and/or feasible. For example, as stated in Table 4.1-14 on page 4.1-45 of the Draft EIR, “the commercial availability of renewable diesel in the project area is currently unknown.” Thus, requiring use of such fuels may not be enforceable or feasible.

The commenter does not provide measurable details or evidence of the effectiveness of any of the suggested measures. Because the effectiveness of the measures is unknown, a determination that implementation of the measures would be sufficient to reduce construction emissions of NO_x to below the applicable threshold of significance cannot be made with any certainty. Furthermore, the commenter does not provide any evidence that the efficacy of the suggested measures would surpass the efficacy of Mitigation Measures 4.1-1(a) and 4.1-1(b). Due both to the uncertain feasibility of the suggested measures and the lack of evidence provided by SWAPE that the suggested measures would surpass the efficacy of mitigation measures within the Draft EIR, even if the suggested measures were to be included, a less-than-significant conclusion could not be made. The proposed project incorporates measures to the maximum extent measurably feasible. Overall, the Draft EIR’s conclusion that a significant and unavoidable impact would occur related to construction NO_x emissions remains adequate.

Response to Comment 2-24

See Response to Comment 2-23.

Response to Comment 2-25

The Draft EIR identifies the potential for truck mounted refrigeration units (TRUs) to result in substantial DPM emissions. TRUs are typically powered by diesel generators, which represent additional sources of DPM in areas frequented by heavy duty haul trucks. However, TRUs can be provided electrical power at loading docks to avoid the need for idling of the TRU. Consequently, Mitigation Measure 4.1-3 of the Draft EIR requires the provision of electrical outlets sufficient to provide power to any truck mounted transportation refrigerated units accessing the proposed loading docks, and prohibits engine idling in excess of five minutes. The provision of electrical power at all loading docks would eliminate the additional emissions from the use of TRUs at loading docks within the project site. Consequently, even without quantification of the efficacy of



Mitigation Measure 4.1-3, because the mitigation measure would eliminate the source of the impact (i.e., emissions from on-site use of the TRUs), the measure can be determined to be effective.

SWAPE's claim that the "OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors"² is misleading. The quoted text from SWAPE's report cites page 8-18, within Section 8.2.10, of the OEHHA guidance document as the source of this information; however, page 8-18 does not contain such a recommendation. Rather, page 8-18 includes recommendations related to how to conduct a health risk assessment for short-term projects, not whether or not short-term projects should be evaluated if such projects exceed two-months. The likely source of SWAPE's claim is presented in the following quoted text from page 8-18 the OEHHA Guide:

Due to the uncertainty in assessing cancer risk from very short-term exposures, we do not recommend assessing cancer risk for projects lasting less than two months at the MEIR. We recommend that exposure from projects longer than 2 months but less than 6 months be assumed to last 6 months (e.g., a 2-month project would be evaluated as if it lasted 6 months). Exposure from projects lasting more than 6 months should be evaluated for the duration of the project. In all cases, for assessing risk to residential receptors, the exposure should be assumed to start in the third trimester to allow for the use of the ASFs (OEHHA, 2009). Thus, for example, if the District is evaluating a proposed 5-year mitigation project at a hazardous waste site, the cancer risks for the residents would be calculated based on exposures starting in the third trimester through the first five years of life.

Based on the quoted text above, SWAPE appears to misconstrue the OEHHA's recommendation that projects shorter than two months not be analyzed, as direction that all projects longer than two months be analyzed. However, in the context of the entire paragraph presented above, the OEHHA guide seems instead to be providing recommendations on the exposure periods to be used during health risk assessments without providing direct guidance as to whether or not a health risk assessment should be prepared. In fact, in the Introduction section of the OEHHA Guide, OEHHA states "[t]he Hot Spots Act requires that each local Air Pollution Control District or Air Quality Management District (hereinafter referred to as District) determine which facilities will prepare an HRA."³ The quoted text from the Introduction section of the OEHHA Guide demonstrates that OEHHA Guide is not intended to define what projects must be assessed in a health risk assessment, but instead that the guide is intended to establish consistent methodologies for the assessment of health risks where such assessments are deemed necessary by other entities. The conclusion that the OEHHA Guide is intended to provide methodological guidance rather than prescriptive guidance on when a health risk assessment should be prepared is supported by the first paragraph of the section cited by SWAPE, section 8.2.10 of the OEHHA Guidelines:

The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation. Frequently, the issue of how to address cancer risks from short-term projects arises.

² SWAPE. *Technical Memorandum: Comments on the Oakley Logistics Center Project (SCH No. 2019029113)* [pg. 11]. November 22, 2019.

³ Office of Environmental Health Hazard Assessment. *Air Toxics Hot Spots Program Risk Assessment Guidelines* [pg 1-3]. February 2015.



Based on the text above, Section 8.2.10, which SWAPE interprets as recommending health risk assessments for short-term projects, seems to instead be intended to provide information for such projects, without making conclusions as to where or when such health risk assessments should be prepared.

In the absence of a requirement from OEHHA to prepare a health risk assessment for project construction, the Draft EIR relied on several other sources of information to determine whether such a health risk assessment was warranted.

One broadly applicable guidance document is the CARB's *Air Quality and Land Use Handbook: A Community Health Perspective* (CARB Handbook).⁴ The CARB's Handbook summarizes common sources of TACs and provides information related to the evaluation of such sources. One category of TACs discussed within the CARB's Handbook is DPM. A key finding of the CARB's Handbook, and the research summarized therein, is that emissions of DPM are highly dispersive, and concentrations diminish rapidly with distance from the source. In particular, studies included in the CARB's Handbook indicate that pollutant concentrations decrease substantially within the first 300 feet from sources of DPM. The dispersion of DPM from construction equipment would occur similarly to the rapid dispersion of DPM discussed in the CARB's Handbook. Thus, DPM emitted from construction equipment would disperse rapidly with distance, reducing the potential health risks to nearby receptors as distance increases from the source. Because DPM is highly dispersive, the fact that construction equipment would operate intermittently throughout the entire approximately 141.8-acre project site would have a large effect on the potential for project construction to result in health-related impacts through emissions of DPM. The large area of the project site, and the separation of the site from the nearest residential receptors would allow DPM to disperse and concentrations to decrease prior to exposure of receptors at the nearest residences. Such dispersal reduces the likelihood that the proposed project would result in health-related impacts.

In addition to the dispersive nature of DPM, as discussed on page 4.1-36 of the Draft EIR, the highly regulated nature of off-road equipment within California, and the required implementation of Mitigation Measure 4.1-1(a) would serve to reduce DPM emissions from project construction to the maximum extent feasible. As noted on page 4.1-36 of the Draft EIR:

All construction equipment and operation thereof would be regulated per CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation.³² The In-Use Off-Road Diesel Vehicle Regulation includes emissions reducing requirements such as limitations on vehicle idling, disclosure, reporting, and labeling requirements for existing vehicles, as well as standards relating to fleet average emissions and the use of Best Available Control Technologies. In addition, Mitigation Measure 4.1-1 requires the use of Tier 4 compliant engines for all pieces of off-road equipment. Tier 4 compliant engines reduce PM emissions, including DPM, to the maximum extent practicable. In fact, comparing the estimated unmitigated and mitigated emissions related to project construction, presented in Table 4.1-7 and Table 4.1-8, demonstrates that estimated PM_{2.5} emissions would be reduced by approximately 80 percent through the implementation of Tier 4 engines. DPM is a subset of PM_{2.5}; thus, the reduction in PM_{2.5} is considered to represent a reduction in DPM emissions. Considering the intermittent nature of construction equipment operating within an influential distance to the nearest sensitive receptors, the relatively short duration of construction activities, and the implementation of Tier 4 engines, the likelihood that sensitive receptors would be

⁴ California Air Resources Board. *Air Quality and Land Use Handbook: A Community Health Perspective*. April 2005.



exposed to high concentrations of DPM for any extended period of time would be low. Thus, construction of the proposed project would not be expected to expose sensitive receptors to substantial concentrations of TACs.

Considering the information presented above, as well as the discussion presented in Impact 4.1-3, a quantitative analysis of health risks related to project construction is not warranted, as the specific details of project construction have been analyzed and determined not to represent a significant risk to public health.

The distance related findings presented within the CARB's Handbook also relate to the analysis of TAC emissions from distribution centers. Specifically, based on the dispersive nature of DPM, the CARB's Handbook recommends that distribution centers are only likely to result in health risks to residents within 1,000 feet of the center. As discussed on page 4.1-36 and 4.1-37 of the Draft EIR:

The proposed project would involve development of approximately 143.3 acres within the larger 375.7-acre subject property. Although portions of the 143.3-acre project site are within 1,000 feet from the nearest sensitive receptors to the southwest of the project site, other portions of the project site are separated from the nearest receptor by much greater distances. Furthermore, the CARB's principal concern related to distribution centers is DPM emissions from diesel vehicles resulting from the movement of goods to and from distribution centers. The amount of heavy-duty vehicle use as well as the distribution of such vehicles within the site determines the pattern of DPM emissions, and the potential for such emissions to disperse off-site and effect nearby receptors. The greatest amount of DPM emissions from the project site would occur in areas of the project site experiencing frequent diesel vehicle traffic and diesel vehicle idling. Diesel truck travel within the site would occur within the proposed internal roadways, while truck idling would primarily occur within the loading dock areas of the project site.

As further discussed on page 4.1-37 of the Draft EIR only one proposed loading dock is within 1,000 feet of the nearest receptor, while all other loading docks and drive aisles are at least 1,500 feet from the nearest receptor. Based on the CARB's guidance, sources of DPM outside of 1,000 feet from the nearest receptor would not be anticipated to experience elevated health risks from on-site operations. The drive aisle and loading dock within 1,000 feet from the nearest receptor is specifically analyzed in the chapter, and appropriate mitigation is incorporated into the Draft EIR to avoid potential impacts. Consequently, the level of analysis included in the Draft EIR is justifiable and logical considering existing guidance from CARB.

Response to Comment 2-26

The health risk screening analysis prepared by SWAPE contains serious flaws that lead to significant overestimation of emissions concentrations and erroneous conclusions regarding the project-related health risks.

The SWAPE health risk screening analysis focuses on the potential health risks from emissions of diesel particulate matter (DPM), which, as discussed throughout Chapter 4.1 of the Draft EIR, is a toxic air contaminant (TAC). The California Air Resources Board (CARB) notes that over 90 percent of DPM is less than one micrometer (μm) in diameter. Consequently, DPM represents a



subset of particulate matter less than 2.5 μm in diameter ($\text{PM}_{2.5}$).⁵ $\text{PM}_{2.5}$, in turn, is a subset of the broader category of particulate matter less than 10 μm in diameter (PM_{10}). Therefore, as a pollutant category, $\text{PM}_{2.5}$ contains the vast majority, if not all, of DPM emissions, as well as other particulates. PM_{10} , in turn, contains all particulates within the $\text{PM}_{2.5}$ category as well as other larger particulates. Because of the small diameter of DPM, the CARB considers $\text{PM}_{2.5}$ as a suitable surrogate for DPM emissions. However, SWAPE has used the broader category of PM_{10} in their health risk screening analysis. By using PM_{10} rather than $\text{PM}_{2.5}$, SWAPE has likely overestimated the amount of DPM that would be emitted by project construction and operational emissions. The use of PM_{10} thus skews the health risk analysis to higher concentrations and higher health risks. It should be noted that the more accurate estimation of $\text{PM}_{2.5}$ emissions were available to SWAPE in their CalEEMod outputs for the project as well as the CalEEMod outputs provided in Appendix D of the Draft EIR.

The use of estimated PM_{10} emissions rather than the more precise metric of $\text{PM}_{2.5}$ emissions is the first method by which SWAPE overestimates project-related DPM emissions. The SWAPE analysis compounds this initial overestimation by incorporating an inaccurate estimation of construction emissions and greatly overestimating operational emissions.

In order to analyze health risks from construction-related DPM emissions, SWAPE uses the PM_{10} emissions estimates included in CalEEMod outputs prepared by SWAPE for the proposed project. As noted above, PM_{10} emissions likely overestimate project-related DPM emissions and skew the analysis towards greater health risks. However, in addition to the overestimation of DPM emissions through the use of PM_{10} as a surrogate for DPM, the CalEEMod emissions estimates prepared by SWAPE do not include the engine tier mitigation required by Mitigation Measure 4.1-1(a). The use of higher tier engines has a dramatic effect on particulate matter emissions, including diesel particulate matter (DPM), with Tier 2 or 3 engines reducing PM emissions by 50 percent, and Tier 4 engines reducing DPM by 90 percent.⁶ By neglecting to incorporate the engine tier requirements imposed by Mitigation Measure 4.1-1(a), SWAPE incorrectly presents the health risks that may occur due to an unmitigated project. Because the proposed project would be subject to implementation of all mitigation measures included in the Draft EIR, presenting the health risks that would result without implementation of mitigation contained in the Draft EIR is inaccurate and misleading. In fact, the actual rate of DPM emissions during project implementation would be much lower than what the SWAPE analysis presents, and the calculated health risks presented by SWAPE are incorrect.

Moreover, SWAPE considerably overestimates the DPM emissions related to operations of the proposed project. SWAPE states that operations of the proposed project would result in emissions of approximately 302.6 pounds of DPM annually. The estimated annual emissions of DPM are based on SWAPE's CalEEMod outputs, and appear to originate from the total annual PM_{10} emissions related to mitigated project operations. However, the total annual PM_{10} emissions calculated by CalEEMod include sources that do not equate to DPM or on-site activities. For instance, total annual PM_{10} emissions include estimation of PM_{10} from energy sources. The consumption of energy on-site would not result in DPM emissions because the energy related PM_{10} emissions are a result of the combustion of natural gas within the site. Combustion of natural gas does not emit DPM, as natural gas does not contain diesel, and is a cleaner burning fuel

⁵ California Air Resources Board. *Overview: Diesel Exhaust & Health*. Available at: <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>. Accessed December 2019.

⁶ Vermeer. *Understanding Tier 4 Interim (Stage IIIB) Emissions Regulations*. 2012.



overall. Removing the energy related PM₁₀ emissions from consideration would reduce the estimated annual operational emissions of PM₁₀ from 302.6 pounds per year to approximately 75 pounds per year, a decrease of over 75 percent. However, even the use of PM₁₀ emissions only from the remaining sources would likely overestimate such emissions because CalEEMod includes emissions sources such as tire and brake wear when estimating PM₁₀ emissions from mobile source. PM₁₀ originating from tire and brake wear are not sources of DPM, and including such emissions in a health risk screening assessment leads to overestimation of potential health risks. In addition to the overestimation of DPM inherent in the use of PM₁₀ as a surrogate for DPM, and the inclusion of tire and brake wear emissions in the estimation of PM₁₀, the CalEEMod estimation of mobile sources PM₁₀ emissions does not only include PM₁₀ emitted at the project site or in the immediate vicinity of the site, but further includes PM₁₀ emissions over the entirety of the estimated vehicle travel distances. By assuming that nearby receptors would be exposed to all project-related operational PM₁₀ emissions, SWAPE ignores the fact that much of the estimated PM₁₀ emissions would occur on the regional roadway network, far removed from any nearby receptor. Consequently, the SWAPE analysis dramatically overestimates the amount of DPM emissions that would occur during project operations, and presents an inaccurate and misleading estimation of potential health risks.

Considering the above, the methodology implemented by SWAPE has fundamentally overestimated the concentrations of DPM during project construction and operations. First, the SWAPE analysis uses an unnecessarily broad metric for DPM, which inflates estimated DPM concentrations at each step of their analysis by incorporating other non-DPM particulate matter. Second, SWAPE's construction analysis ignores implementation of Mitigation Measure 4.1-1(a), which would dramatically reduce DPM emissions from project construction and reduce any potential health risks to nearby receptors. Third, the estimated operational emissions used to calculate health risks from the project are overestimated by at least 75 percent, and include sources that clearly do not equate to DPM. Not only are operational emissions of DPM overestimated, but SWAPE incorrectly assumes that all project-related PM₁₀ emissions from mobile sources would occur within the project site, when, in reality, such emissions would occur throughout the regional transportation network, the majority of which would not affect nearby receptors.

Because SWAPE's analysis represents inaccurate estimation of pollutant emissions, SWAPE's calculations of health risks are fundamentally flawed, and the health risks presented on pages 14 and 15 of the SWAPE analysis are incorrect and misleading. Accordingly, the health risks presented by the commenter are not valid, and the project has not been demonstrated to exceed BAAQMD's thresholds of significance for excess cancer risk. Therefore, a Revised Draft EIR and a health risk assessment are not warranted.

Response to Comment 2-27

As presented in the Introduction to the Analysis chapter of the Draft EIR, the standards of significance section of each of the technical chapters includes references to the specific Initial Study checklist questions consistent with Appendix G of the CEQA Guidelines. Accordingly, as stated on page 4.1-24 of Chapter 4.1 of the Draft EIR, consistent with Appendix G of the CEQA Guidelines, the EIR considers a significant impact associated with greenhouse gas (GHG) emissions to occur if the proposed project would result in any of the following:



- Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment; or
- Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.

Based on Appendix G of the CEQA Guidelines, the threshold of significance is based on a conflict with “any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of GHGs.” The applicable plans, policies, and regulations of all agencies adopted for the purpose of reducing the emissions of GHGs are explicitly included in the Draft EIR within the Regulatory Context section of the Air Quality and Greenhouse Gas Emissions chapter. As presented in detail within that section, Assembly Bill (AB) 32 (see page 4.1-18 of the Draft EIR), established an emissions reduction goal of reducing statewide emissions to 1990 levels by 2020. As part of implementation of AB 32, CARB prepared the *Climate Change Scoping Plan* (Scoping Plan) for California in 2013, which identifies GHG reduction measures that would be necessary to reduce statewide emissions as required by AB 32. Similarly, Senate Bill (SB) 32 (see page 4.1-20 of the Draft EIR) built on the previous GHG reductions goals set by AB 32 by requiring that the CARB ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by the year 2030. Following the 2013 Scoping Plan, the 2017 Scoping Plan sets a path for the achievement of California’s year 2030 GHG reduction goals. The Scoping Plan meets all of the criteria listed under “Plan Elements”, as set forth in Section 15183.59(b) of the CEQA Guidelines. Accordingly, AB 32 and the Scoping Plan, as well as SB 32, would be considered applicable plans, policies, or regulations of an agency adopted for the purpose of reducing the emission of GHGs. It should be noted that AB 32 and SB 32 are the most prominent State legislations related to GHG emissions, and the majority of GHG emissions thresholds set forth throughout the State are based on meeting or working towards the GHG emission reduction goals set forth within those legislations, including local qualified climate action plans (CAPs) and regional air district thresholds.

Section 15064.4(b) of CEQA Guidelines states the following:

- (b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:
- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
 - (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.
 - (3) The 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. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project’s incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

A detailed discussion regarding the standards of significance used specifically for the GHG analysis within the Draft EIR is presented under the “GHG Emissions” section on page 4.1-26. As specifically stated on page 4.1-26 of the Draft EIR:



The BAAQMD developed a threshold of significance for project-level GHG emissions in 2009. The District's approach to developing the threshold was to identify a threshold level of GHG emissions for which a project would not be expected to substantially conflict with existing California legislation. At the time that the thresholds were developed, the foremost legislation regarding GHG emissions was AB 32, which established an emissions reductions goal of reducing statewide emissions to 1990 levels by 2020.²⁶ If a project would generate GHG emissions above the threshold level, the project would be considered to generate significant GHG emissions and conflict with AB 32.

The Bay Area Air Quality Management District (BAAQMD) has prepared their own *CEQA Air Quality Guidelines* (May 2017), which is intended to be used for assistance with CEQA review. A discussion of the applicable BAAQMD regulations is provided within the Regulatory Context section of the Air Quality and Greenhouse Gas Emissions chapter of the Draft EIR, beginning on page 4.1-22 of the Draft EIR. Section 2.2 of the BAAQMD's Air Quality CEQA Guidelines provide in detail the justification and substantial evidence supporting their adopted thresholds and how they are applicable to be used for CEQA analysis. Accordingly, use of the BAAQMD thresholds of significance is considered appropriate per Section 15064.4(b)(3) of CEQA Guidelines.

In addition, pursuant to CEQA Guidelines Section 15064.4(b)(2), the lead agency is charged with determining a threshold of significance that is applicable to the project. As stated on page 4.1-25 of the Draft EIR, "[f]or the analysis within this EIR, the City has elected to use the BAAQMD's thresholds of significance." As further stated on page 4.1-27 of the Draft EIR and based on the discussions provided under the "GHG Emissions" section of the Air Quality and Greenhouse Gas Emissions chapter: "[b]y using the BAAQMD thresholds of significance for GHG, the updated SB 32 thresholds, and the local actions within Appendix B of the 2017 Scoping Plan, the City would comply with Section 15064.4(b)(3) of the CEQA Guidelines [...]."

It should be noted that a qualified CAP is an option lead agencies may use in order to tier and streamline the CEQA analysis of GHG emissions. Section 15183.5 of the CEQA Guidelines provides direction on tiering and streamlining the analysis of GHG emissions, where Section 15064.4(b), specifically, provides direction on using a plan for the reduction of GHG emissions, such as a CAP, in order to streamline future analysis. As stated in Section 15064.4(c), a plan for the reduction of GHG emissions must be adopted following certification of an EIR or adoption of an environmental document in order to be used in the impact analysis of later projects. A local qualified CAP has not been prepared or adopted by the City of Oakley.

Response to Comment 2-28

See Responses to Comments 2-16 through 2-22 above with respect to project modeling. In addition, see Response to Comment 2-27 with respect to the use of the correct thresholds for project analysis. The Draft EIR already concludes that a significant and unavoidable impact related to GHG emissions would occur, even with implementation of all feasible mitigation measures (see page 4.1-50 of the Draft EIR). The commenter's suggestion to use an alternative threshold of significance, which would similarly continue to result in an overall significant impact related to GHG emissions, would not change the conclusions presented in the Draft EIR.

Response to Comment 2-29

See Responses to Comments 2-16 through 2-22 above with respect to the project modeling – in particular, with regard to the project's operational emissions modeling, Response to Comment 2-17 (related to adjusting the CO₂ intensity factor), Response to Comment 2-21 (regarding



consideration of the project's inherent site features), and Response to Comment 2-22 (regarding the project's consistency with the 2019 California Building Energy Efficiency Standards Code). As discussed in those responses, the modeling conducted as part of the Draft EIR for project operations is adequate. Accordingly, without inclusion of similar adjustments to the modeling as were applied to the modeling conducted as part of the Draft EIR, the commenter's modeling results for operational emissions cannot be considered sound.

Furthermore, the Draft EIR already concludes that a significant and unavoidable impact related to GHG emissions would occur, even with implementation of all feasible mitigation measures (see page 4.1-50 of the Draft EIR). Thus, even if the commenter's methodology and modeling were to be considered, a significant and unavoidable impact related to GHG emissions would remain, and the conclusions presented in the Draft EIR would not change.

Response to Comment 2-30

Mitigation Measure 4.1-5(c) on page 4.1-50 of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, includes a number of recommended measures; however, the list is explicitly not intended to be exhaustive. Furthermore, as specifically stated on page 4.1-50 of the Draft EIR (relevant text has been italicized for emphasis):

Implementation of the following mitigation measures would reduce GHG emissions from operation of the proposed project. However, ***unless subsequent GHG emissions analysis can be performed to show otherwise***, the impact is assumed to remain *cumulatively considerable and significant and unavoidable*.

While the commenter's suggested additional measures could be added to the list provided in Mitigation Measure 4.1-5(c), due to the uncertain nature of the applicability, feasibility, and measured effectiveness of the suggested measures, the conclusions presented in the Draft EIR would not change. In addition, some of the suggested measures are not applicable to the proposed project or have already been included in Mitigation Measure 4.1-5(c). For instance, provision of electric vehicle parking, installation of renewable energy systems, promotion of resharing and other forms of alternative transportation including bicycling, and use of native/drought-tolerant vegetation are all included in Mitigation Measure 4.1-5(c) as presented in the Draft EIR. Given the nature of the proposed project, some of the suggested measures are clearly not applicable or would not have an effect on GHG emissions or climate change, such measures include, integration of affordable and below market rate housing, requiring residential parking permits, planting low-VOC emitting shade trees, and use of formaldehyde-free insulation. Nevertheless, the City has chosen to include additional measures into Mitigation Measure 4.1-5(c). Consequently, page 4.1-50 of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, is hereby revised as follows:

- 4.1-5(c) *Improvement Plans and building plans for the proposed project shall identify all feasible mitigation measures developed in coordination with the BAAQMD and as determined by the City of Oakley Planning Division to reduce significant impacts to the extent feasible. Mitigation Measures may include, but would not be limited to, BAAQMD's recommended mitigation measures such as the following:*



- Orient buildings to maximize passive solar heating;
- Install programmable thermostat timers;
- Limit outdoor lighting requirements;
- Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting;
- Provide education on energy efficiency to tenants. Provide information on energy management services for large energy users;
- Meet “reach” goals for building energy efficiency and renewable energy use;
- Limit the use of outdoor lighting to only that needed for safety and security purposes;
- Require use of electric or alternatively fueled sweepers with HEPA filters;
- Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use;
- Prohibit gas powered landscape equipment and implement electric yard equipment compatibility;
- Provide local shuttles;
- Implement area or cordon pricing;
- Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site;
- Install a system to reutilize gray water;
- Use locally-sourced water supply;
- Use of minimal amounts of concrete and asphalt;
- Use of groundcovers rather than pavement to reduce heat reflection;
- Shade HVAC equipment from direct sunlight;
- Install high-albedo white thermoplastic polyolefin roof membrane;
- Use recycled-content gypsum board;
- Require all buildings to become “LEED” and “WELL” certified;
- Increase in insulation such that heat transfer and thermal bridging is minimized in proposed structures;
- Limit air leakage through the structure and/or within the heating and cooling distribution system;
- Installation of dual-paned or other energy efficient windows;
- Installation of automotive devices to turn off lights where they are not needed;
- Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);
- Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;
- Dedicate land on-site to facilitate future connections with the Big Break Regional Trail;
- Promote ridesharing, transit, bicycling, and walking for work trips through dedication of preferential parking spaces, provision of on-site bicycle parking, provision of end-of-trip facilities such as bicycle lockers and on-site showers;
- Subsidize employee transit passes;



- Install electric vehicle charging infrastructure in excess of existing CBSC requirements;
- Provide charging stations and preferential parking spots for electric vehicles;
- Install energy star appliances;
- Install solar water heating;
- Install on-site renewable energy systems;
- Use water efficient landscapes and native/drought-tolerant vegetation;
- Provide outdoor electrical outlets to allow for use of electrically powered landscaping equipment;
- Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and
- Purchase carbon credits to offset project annual emissions. Carbon offset credits shall be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by CARB, BAAQMD, or the City of Oakley.

If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by to City of Oakley Planning Division. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.

The foregoing revisions serve to increase the specificity of Mitigation Measure 4.1-5(c); however, the efficacy of the additional measure included in Mitigation Measure 4.1-5(c) cannot be quantified at this time. Thus, even with implementation of the foregoing revisions, project-related operational GHG emissions are anticipated to continue to conflict with relevant statewide goals and targets, and the project would continue to result in a significant and unavoidable impact. Therefore, the analysis and conclusions presented in the Draft EIR remain adequate.

Response to Comment 2-31

The applicant for the proposed project specializes in warehousing projects and has a track record of developing these kinds of projects with employee densities and traffic volumes consistent with the Institute of Transportation Engineer's (ITE) warehousing category. Because the proposed project is proposed to be a warehousing project, the use of ITE's light industrial or manufacturing rates would clearly overstate the trip generation from the proposed project. The only reason a portion of the project is now identified as an e-commerce fulfillment center is because a tenant was subsequently identified that expressed an interest in constructing that particular use. As a result, the project description was revised and the Draft EIR was updated to reflect that specific



portion of the project was now proposed to be an e-commerce fulfillment center instead of warehousing.

Response to Comment 2-32

The comment notes that due to the proposed re-zoning “the buildings are assumed to be capable of housing a range of light industrial, warehousing, distribution, e-commerce fulfillment, and light manufacturing uses [...]” The buildings would also theoretically be capable of many other uses that would generate higher trip generation than warehousing, including retail, office, institutional uses, etc. However, the fact that the proposed warehouse buildings could potentially accommodate other uses does not necessarily mean that the City will approve use permits for a higher trip generating use (without additional environmental review) if the proposal were to differ substantially from the proposed project.

Response to Comment 2-33

The comment stating a different mix of uses would have been appropriate fails to recognize that the other uses mentioned are not proposed for the warehousing portion of the site, and using the trip generation rates for those categories would actually overstate the trip generation from the project. Furthermore, the statement that the use of a different mix of uses “would have cast the Reduction Footprint Alternative in an even more favorable light” is not supported by the facts, including the extensive evidence presented in the Draft EIR. Please note that, as a result of several rounds of thorough review by City staff and other consultants, the resulting transportation impacts and mitigations for this project are very comprehensive and there are no other borderline conditions or impacts that would be expected to be triggered if a higher trip generation were used, based on a different mix of industrial uses.

The proposed project is located directly adjacent to a freeway interchange, and a sensitivity analysis of both the project entrance intersection and the adjacent freeway interchange indicated there is definitely sufficient capacity to accommodate a project with a more traffic intensive mix of uses (i.e., without triggering additional impacts or mitigations). In addition, the conclusion that there would be significant unavoidable impacts to freeway operations in the area has already been analyzed, identified, and fully disclosed in the Draft EIR. Thus, this conclusion would not change, even if the Draft EIR were to use higher trip generation rates. In summary, although the proposed project is primarily warehousing (and this is not anticipated to change), there is no evidence that, even if there were changes to the project description (to include higher trip generating industrial uses), this would actually change any of the conclusions regarding the project's transportation impacts or required mitigations.

Response to Comment 2-34

The comment is a conclusion statement and does not directly address the adequacy of the Draft EIR.



Letter 3



Jared Blumenfeld
Secretary for
Environmental Protection

Department of Toxic Substances Control

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



Gavin Newsom
Governor

December 3, 2019

Mr. Joshua McMurray, Planning Manager
(sent via McMurray@ci.oakley.ca.us)
City of Oakley
3231 Main Street
Oakley, CA 94561

Subject: Response to Comments regarding the Oakley Logistics Center Project Draft Environmental Impact Report

Dear Mr. McMurray,

3-1

The Department of Toxic Substances Control (DTSC) has the following comments on the draft Environmental Impact Report (EIR) for the Oakley Logistics Center Project. The information below was previously provided to you in a comment letter dated March 28, 2019 for the Notice of Preparation (NOP). DTSC is resubmitting the previous comments, as the previous comments were not addressed within the draft EIR. Additionally, the Land Use Covenant (LUC) specifies requirements for this project that are not included within the Draft EIR, the project description, nor in any project documents provided.

3-2

1. Portions of the project site may not be fully remediated by Chemours prior to construction of the proposed project. Although most of Chemours remediation is expected to be completed by Spring 2020, there will be ongoing operation and maintenance of the groundwater remedy for many years, including a phyto-remediation area and extensive monitoring well network. Per DTSC's final remedy decision document ([Statement of Basis, dated June 2018](#)), land use controls (e.g. land use covenant (LUC)) are required to ensure that any future redevelopment activities on site do not interfere with remedy features. These features include tree planting areas for the phyto-remediation in addition to monitoring wells or other remedy features.

3-3

- a. Please provide an analysis of the future redevelopment activity impacts on ongoing operation and maintenance of the groundwater remedy and how those impacts, if any, may be addressed in the Draft EIR.

3-4

- b. Please delineate the monitoring well and phyto-remediation locations within the proposed project on maps in the Draft EIR.

3-5

2. As stated in #1 above, portions of the project site may not be fully remediated by Chemours prior to construction of the proposed project. Vapor mitigation is required by DTSC for areas with subsurface VOC soil contamination, which will need to be considered in the building design and construction. Please provide an analysis of these



Letter 3
Cont'd

Mr. Joshua McMurray
DTSC Comments on Oakley Logistics Center DEIR
December 3, 2019
Page 2

3-5
Cont'd

future redevelopment activities to assess any impacts on implementation of the VOC contamination remedies and how those impacts, if any, may be addressed in the Draft EIR.

3-6

3. As stated in #1 above, portions of the project site may not be fully remediated by Chemours prior to construction of the proposed project. Per the final remedy, the Soil and Materials Management Plan must be implemented to ensure that contaminated soil handled at the site is properly managed in accordance with applicable laws, regulations, and best management practices. According to the Draft EIR, excavation and grading are included the future redevelopment activities. Please provide analysis to identify and assess potential impacts from the movement of contaminated soil and how those impacts, if any, may be addressed in the Draft EIR.

3-7

4. The existing hazardous waste post-closure permit is not discussed in the Draft EIR nor delineated in any figures provided.

a. Please delineate the post-closure area on the proposed project maps in the Draft EIR and provide description of the post-closure permit as part of the environmental setting of the project.

3-8

b. Provide discussion on the long-term maintenance of the post-closure area that is required by the existing post-closure permit and analyze the compatibility of project activities with the LUC in the Draft EIR.

3-9

5. There are several requirements within the LUC (attached) that should be disclosed within the Draft EIR including the prohibited uses, soil management (Soil Management Plan is attached), and prohibited activities. The Prospective Purchase Agreement (PPA) includes remediation of the property, environmental restrictions, and development requirements.

3-10

The above comments must be addressed to properly identify, avoid, minimize, and/or mitigate significant impacts under CEQA. If you have any questions or would like any clarification on DTSC's comments, please contact me at (916) 255-3988 or email at robert.irving@dtsc.ca.gov or Candace Hill, Senior Environmental Planner at (916) 255-6681 or candace.hill@dtsc.ca.gov.

Sincerely,



Robert Irving
CEQA Unit Supervisor, Permitting Division
Department of Toxic Substances Control



LETTER 3: DEPARTMENT OF TOXIC SUBSTANCES CONTROL, ROBERT IRVING

Response to Comment 3-1

A discussion of the remediation process and the specific role of the DTSC is included on page 3-1 of the Draft EIR, within the Background section. While the remediation process is independent of the proposed project, a summary of the efforts has been included in the Draft EIR. In response to the comment, page 3-4 of the Draft EIR is hereby revised as follows:

In 2013, DuPont separated its chemical segment from its other businesses and remedial obligations for the site were transferred to Chemours who is working with DTSC on the remediation efforts. Most recent, on June 29, 2018, DTSC certified a Mitigated Negative Declaration (MND) for the remaining remediation work. In addition, a Land Use Covenant (LUC) was developed on May 31, 2019 and agreed upon by the DTSC and Chemours Company FC, LLC. The purpose of the LUC is to control exposure to contamination through specifically defined restrictions, as well as ensure remediation for environmental contamination is performed as necessary based on the site conditions.

The above revision is for informational purposes and does not alter the analysis or conclusions within the Draft EIR.

Response to Comment 3-2

As discussed on page 7 of the Oakley Logistic Center Initial Study (Appendix A of the Draft EIR), remediation efforts have been evaluated in the Chemours Oakley Site Mitigated Negative Declaration certified by DTSC. As shown in Figure 3-6 of the Draft EIR, the proposed project would not develop the northwestern portion of the site, which is where phyto-remediation and well monitoring would occur. All ongoing operation and maintenance of the groundwater remedy would be outside of the proposed project area of development. Consistent with the LUC, the proposed project would not conduct activities in the Restricted Area, including drilling for water, extraction or removal of groundwater, or any activities that may interfere with the effectiveness of remediation and monitoring.

Response to Comment 3-3

Maintenance of the groundwater remediation would be performed by Chemours and overseen by DTSC. Construction and remediation would occur in accordance with the requirements of the LUC. Development of the proposed project would occur as areas of the site complete remediation. As discussed on page 38 of the Initial Study for the proposed project (Appendix A of the Draft EIR), construction would occur within areas that have been fully remediated. As such, any equipment or remediation tools, such as trucks for soil hauling or testing equipment, would be removed as part of remediation completion in each area.

Additionally, as discussed in Response to Comment 3-2, the proposed project would not interfere with the effectiveness of the remediation work and monitoring. The proposed project would not develop within the area of ongoing remediation. As seen in Figure 3-6 of the Draft EIR, the proposed project would not include development in the northwestern portion of the site where phyto-remediation and monitoring wells would occur. Thus, the project would not interfere with maintenance of the groundwater remedy.



Furthermore, as discussed on page 4.3-17 of the Draft EIR, the project site has been covered with impervious surfaces for several years and is not considered a source of considerable groundwater recharge. Additionally, the proposed project includes a Stormwater Control Plan to ensure the project would not create or contribute runoff which would include sources of polluted water, or otherwise degrade surface or groundwater quality.

Response to Comment 3-4

Figure 3-6 on page 3-9 of the Draft EIR is hereby revised in order to delineate the monitoring well and phyto-remediation locations (see figure below). The revision is for clarification purposes and does not change the analysis or conclusions of the Draft EIR. It should be noted that the requested revisions to Figure 3-6 confirm that the locations of the monitoring well and phyto-remediation locations are outside of the proposed development area.

Response to Comment 3-5

As discussed above, remediation efforts have been analyzed in a separate Mitigated Negative Declaration certified by the DTSC. Evaluation of volatile organic compound (VOC) soil gas concentrations have been included in the Final Soils and Materials Management Plan. As stated on page 4.0-3 of the Draft EIR, all future operators at the project site are required to comply with the Soil and Materials Management Plan for the project site. As stated on page 7 of the Oakley Logistics Center Initial Study (Appendix A of the Draft EIR), construction would occur within areas that have been fully remediated. However, should remediation activities still be occurring on the subject property, redevelopment of the site would only occur pursuant to the development procedures and limitations within the LUC as approved by DTSC. Additionally, construction would occur in phases which would allow for accommodation of any potential remediation activities. Thus, VOC soil concentrations within the proposed development area would be remediated fully prior to construction of new buildings. Remediation would occur in accordance with the LUC and Soil and Materials Management Plan, with which the proposed project would not conflict.

In order to provide further clarity, the following revision is hereby made to page 1-1 of the Draft EIR:

The site has been undergoing remedial and cleanup work for soil and groundwater contamination. The site is highly disturbed from its previous use as a chemical plant and as a result of the remediation efforts. Construction of the proposed structures on the project site would occur in accordance with the procedures set forth by the Department of Toxic Substances Control (DTSC).

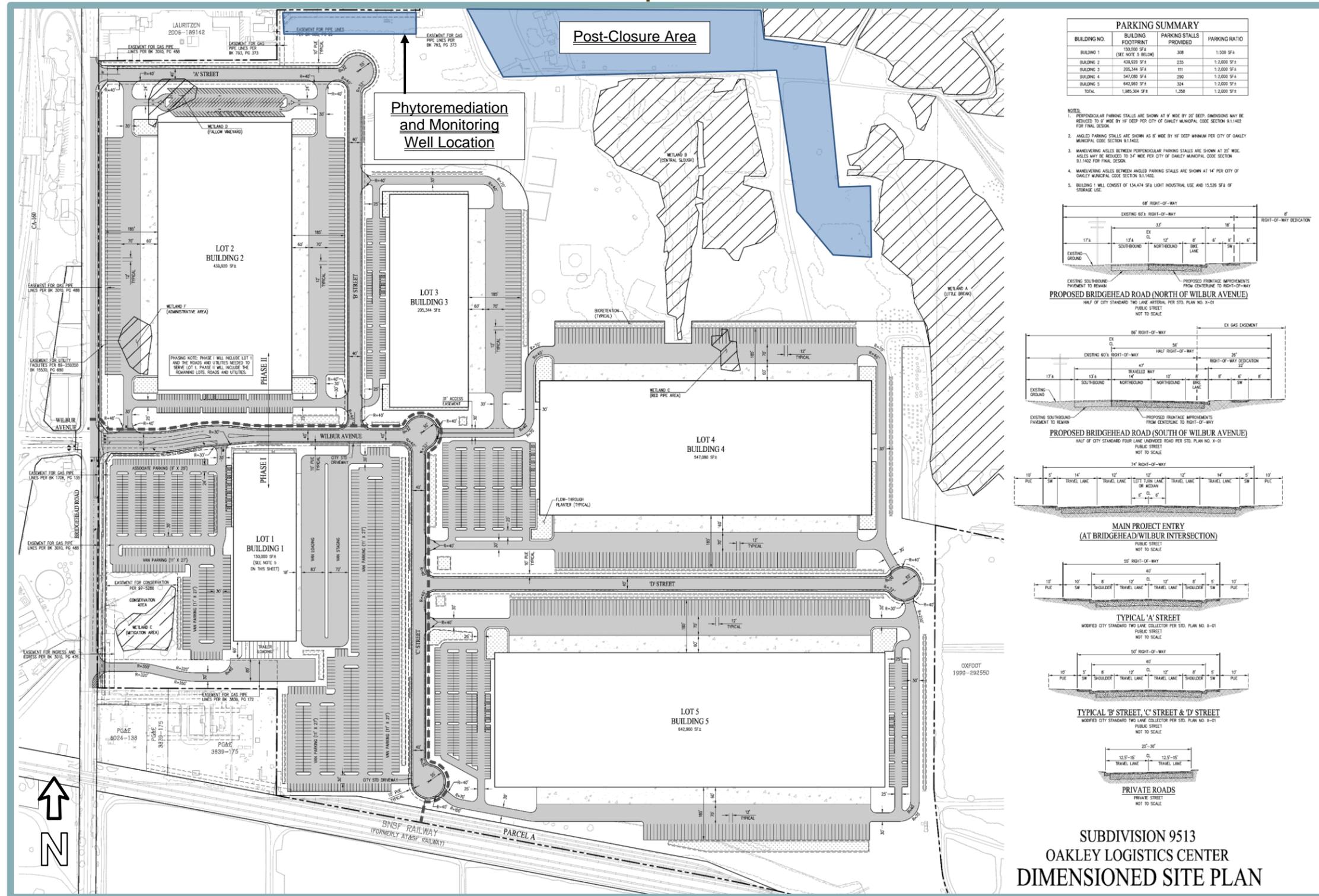
The above revision is for clarification purposes and does not change the analysis or conclusions of the Draft EIR.

Response to Comment 3-6

Please see Response to Comment 3-5. As stated on page 4.0-3 of the Draft EIR, all future operators at the project site are required to comply with the Soil and Materials Management Plan for the project site. The remediation efforts will adhere to all soil requirements set forth by the DTSC. Pursuant to the LUC, activities that will disturb the soil (e.g., excavation, grading, or trenching) will not occur within the project site without approval of a Soil and Materials Management Plan.

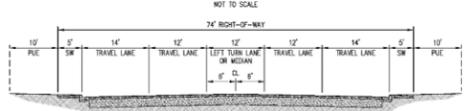
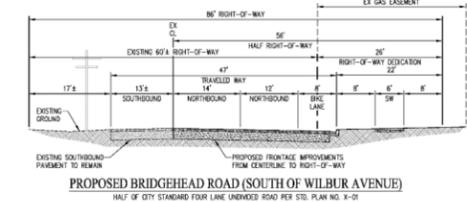
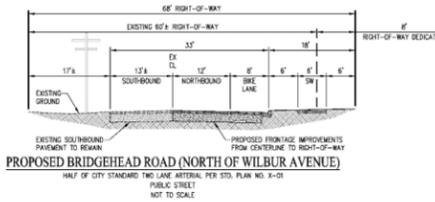


Figure 3-1
Development Plan



PARKING SUMMARY			
BUILDING NO.	BUILDING FOOTPRINT	PARKING STALLS PROVIDED	PARKING RATIO
BUILDING 1	150,000 SF ² (SEE NOTE 5, BELOW)	308	1:500 SF ²
BUILDING 2	439,820 SF ²	233	1:2,000 SF ²
BUILDING 3	205,344 SF ²	111	1:2,000 SF ²
BUILDING 4	547,080 SF ²	290	1:2,000 SF ²
BUILDING 5	642,868 SF ²	324	1:2,000 SF ²
TOTAL	1,985,304 SF ²	1,266	1:2,000 SF ²

- NOTES:
- PERPENDICULAR PARKING STALLS ARE SHOWN AT 8' WIDE BY 20' DEEP. DIMENSIONS MAY BE REDUCED TO 6' WIDE BY 18' DEEP PER CITY OF OAKLEY MUNICIPAL CODE SECTION 81.1402 FOR FINAL DESIGN.
 - ANGLED PARKING STALLS ARE SHOWN AS 8' WIDE BY 18' DEEP MINIMUM PER CITY OF OAKLEY MUNICIPAL CODE SECTION 81.1402.
 - MANEUVERING AISLES BETWEEN PERPENDICULAR PARKING STALLS ARE SHOWN AT 25' WIDE. AISLES MAY BE REDUCED TO 24' WIDE PER CITY OF OAKLEY MUNICIPAL CODE SECTION 81.1402 FOR FINAL DESIGN.
 - MANEUVERING AISLES BETWEEN ANGLED PARKING STALLS ARE SHOWN AT 14' PER CITY OF OAKLEY MUNICIPAL CODE SECTION 81.1402.
 - BUILDING 1 WILL CONSIST OF 134,474 SF² LIGHT INDUSTRIAL USE AND 15,526 SF² OF STORAGE USE.



SUBDIVISION 9513
OAKLEY LOGISTICS CENTER
DIMENSIONED SITE PLAN



Response to Comment 3-7

The following revision to text is hereby made to page 3-4 of the Draft EIR, in response to the comment:

This remediation work is being performed in two field seasons. The first field season started in August/September 2018, and the anticipated completion date for this work is mid-2019. The anticipated start date for the second field season is August or September 2019, and the anticipated completion date is January or February 2020. Following remediation, the project site is subject to post closure care pursuant to the Hazardous Waste Facility Post-Closure Permit (PCP), issued by DTSC on December 7, 2011. The PCP requires the closure and decommission of the East Basin, West Basin, Emergency Basin, and Ponds A, B, and C located within the northeastern portion of the project site.

The above revision is for informational purposes and does not change the analysis or conclusions of the Draft EIR.

In addition, the post-closure area has been indicated on Figure 3-6 of the Draft EIR, as shown in the revised figure above. The development of the proposed project would not interfere with the post-closure area, and thus, would not conflict with the PCP. Maintenance of the post-closure area would be performed pursuant to the requirements of the LUC and PCP, which would be performed by Chemours and overseen by the DTSC.

Response to Comment 3-8

See Response to Comment 3-7 and 3-9. Additionally, the proposed project's development as an industrial site would not conflict with the prohibited uses set forth in Article IV of the LUC. Furthermore, the long-term maintenance of the post-closure area is not a component of nor the responsibility of the proposed project.

Response to Comment 3-9

For disclosure purposes, page 3-4 of the Draft EIR is hereby revised as follows:

The site has been highly disturbed and altered over the years by the DuPont operations and remediation efforts. The remediation efforts will allow areas of the site to develop with industrial and commercial uses (in the 143.3-acre project site) and recreational uses (on the 232.4-acre remainder area). Development within the remediated areas would adhere to the requirements set forth in Article IV of the LUC. As stated in the document, prohibited uses on the site include residences, hospitals, schools, day cares, and recreational land uses within the Central Slough Wetland. Furthermore, the development of the project would not occur until the Soil and Materials Management Plan has been pre-approved by the DTSC in writing.

Additional information on the cleanup efforts for the site can be found at <https://dtsc.ca.gov>.

The above revision to text does not change the analysis or conclusions of the Draft EIR.

Additionally, the proposed project would adhere to any requirements set forth in the LUC, Soil and Materials Management Plan, and Prospective Purchase Agreement which require any continual efforts by the project applicant.

Response to Comment 3-10

The comment does not directly address the adequacy of the Draft EIR.



Letter 4



IRONHOUSE SANITARY DISTRICT
450 Walnut Meadows Drive
Oakley, CA 94561
Telephone: (925) 625-2279 * Fax: (925) 625-0169

December 2, 2019

Joshua McMurray, Planning Manager
City of Oakley
3231 Main St, Oakley, CA 94561

Subject: Ironhouse Sanitary District Comments on Oakley Logistics Center Draft
EIR dated October 2019

Dear Mr. McMurray,

We are providing this letter in response to the Oakley Logistics Center Draft EIR dated October 2019 (Sch# 2019029113). As you are aware, the District provided comments to Coleman Engineering, consultant to the Oakley Logistics Center (OLC) team, on the OLC Lift Recommendations Memo (Coleman Memo) that is referenced in and included in Appendix I of the Draft EIR. The Coleman Memo was not accepted by the District; comments were conveyed on October 28, 2019 by email, and are attached for reference.

4-1

The District, City, and OLC spoke by phone on November 25, 2019 to discuss these comments. The discussion focused on an alternative wastewater configuration that is not included in the Coleman Memo. However, the conference call was not conclusive, and as of the date of this letter, the outstanding lift station issues have not been fully resolved. Therefore, the wastewater infrastructure concepts that are discussed in the Draft EIR remain preliminary and are expected to change prior to final design. New wastewater infrastructure must be designed to the District's satisfaction, including meeting the District's engineering standards, addressing operating and maintenance concerns, and the other items related to system capacity and conveyance as outlined in the November 25, 2019 email.

Sincerely,

Chad Davisson
General Manager



Letter 4
Cont'd

Vivian Housen

From: Vivian Housen <vhousen@housenassociates.com>
Sent: Monday, October 28, 2019 10:51 AM
To: 'Megan Shaw'
Cc: 'jvogan@cbandg.com'; 'hposadas@cbandg.com'; 'Chad Coleman'; 'solana@isd.us.com'; 'whyte@isd.us.com'; 'mjaudalso@housenassociates.com'; zimmerman@isd.us.com
Subject: RE: Oakley Logistic Center

Megan,

Thank you for providing the Oakley Logistics report. The report recommends an option that conveys flows from the Lauritzen lift station to a new Oakley Logistics Center pump station, and demolishes the existing Lauritzen station and associated forcemain. Can you please provide the pipe profile for this option to confirm that there is sufficient grade to implement this option.

The design flows listed do not appear to include projected buildout flows from the Marina area. Can you confirm that you have included these flows, or alternatively, adjust the projected flow to account for the buildout flows.

If the existing Lauritzen forcemain is to be decommissioned, the private connections to the existing Lauritzen forcemain must be confirmed by the developer in advance. For example, East Bay Regional Parks District and Driftwood Marina may pump into the forcemain and thereby require some level of infrastructure to remain in operation.

Confirming the condition of the existing lift stations, and identifying any improvements that are required to accommodate the new flows and also meet current safety or code requirements is the responsibility of the developer. The opinions of District staff are provided as background information only, and do not replace the analyses that are required to confirm the current needs at existing lift stations.

It is not clear whether the Oakley Logistics pump station is intended to stay private or be transferred to the District. Please provide more information on how the proposed station will be accessed and operated in the future.

Thank you,
Vivian

Vivian Housen, P.E.
Principal | V. W. Housen & Associates

1777 N. California Blvd. Suite 330
Walnut Creek, CA 94596

p: 925-518-3487
www.housenassociates.com

From: Megan Shaw [<mailto:megan@coleman-eng.com>]
Sent: Thursday, September 26, 2019 1:44 PM
To: vhousen@housenassociates.com
Cc: jvogan@cbandg.com; hposadas@cbandg.com; Chad Coleman; solana@isd.us.com; whyte@isd.us.com; mjaudalso@housenassociates.com
Subject: Oakley Logistic Center



**Letter 4
Cont'd**

Hi Vivian,

Attached is the updated Oakley Logistic Center Lift Recommendations Memo. We are looking to get a fairly quick response with any comments so that we can keep moving forward. Please let us know if you have any questions or concerns.

Thank you,
Megan


COLEMAN
ENGINEERING
916-791-1188



LETTER 4: IRONHOUSE SANITARY DISTRICT, CHAD DAVISSON

Response to Comment 4-1

As discussed on page 4.5-16, the sanitary sewer memo prepared by Coleman Engineering calculated peak flows associated with the proposed project as well as developed a proposed design for sanitary sewer flows. While the wastewater infrastructure design plan has not yet been finalized, the design evaluated in the Draft EIR provides a conservative analysis, as the proposed improvements would include construction of a new lift station on the project site as well as construction of a new pipeline within Bridgehead Road and upgrades to the existing Bridgehead pump station. While the final flow rates would be reviewed in the final plans, the improvements to the surrounding sewer infrastructure have been conservatively analyzed in the Draft EIR. The final wastewater infrastructure design plan would likely result in similar impacts to the project site and surrounding area as was analyzed in the Draft EIR.

Pursuant to Section 6.7.204 of the City of Oakley Municipal Code, any project proposing to discharge sewage into the City system must apply for a permit from the City. Prior to approval of the permit, the final wastewater infrastructure plans and specifications will be reviewed by the City Engineer to ensure that the proposed work meets acceptable sanitary engineering standards and that the final design satisfies the requirements of the Ironhouse Sanitary District.

The email attachments to the letter above were included for background information and do not specifically address the adequacy of the Draft EIR.



Letter 5



December 3, 2019

Joshua McMurray, Project Planner
City of Oakley
3231 Main Street
Oakley, CA 94561
Via email: to McMurray@ci.oakley.ca.us

RE: Draft Environmental Impact Report for the Proposed Oakley Logistics Center Project

Dear Mr. McMurray:

The East Bay Regional Park District (Park District) appreciates the opportunity to provide comments on the proposed Oakley Logistics Center Project (project) Draft Environmental Impact Report (DEIR). The Park District previously commented on the project's Initial Study as well as the Notice of Preparation for this DEIR (see attached).

As encouraged in the Park District's previous comments, this project provides the opportunity for a future Big Break Regional Trail to Antioch Pier Trail connection, partially through the Oakley Logistics Center site, using a public access easement. This potential trail connection is included in the Oakley 2020 General Plan where it is identified as a potential regional trail, and in Oakley's *Parks, Trails, and Recreation Master Plan 2020*, and also in the Park District's 2013 Master Plan. This future trail connection is also designated by the Delta Protection Commission as the "Great California Delta Trail," a hiking and biking trail connecting all five counties in the Delta region. An on site trail connection would provide a safe commuting option for future employees of the Logistics Center, and a public amenity for passive recreation with views of the Delta.

5-1 The current Big Break Regional Trail ends a half mile east of the project, at Big Break Road. The future trail connection through the Logistics Center site which is suggested by the Park District should be designed to Caltrans standards to provide a safe recreational and transportation corridor that meets ADA requirements, and built at the time of Phase I project construction by the developer, as has been done elsewhere in Contra Costa County. The future trail on site alignment should traverse the entire project site east to west to intersect with Bridgehead Road, where the Caltrans District 4 Bike Plan proposes development of Class II bike lanes on State Highway 160 across the Antioch Bridge to Sacramento County.

The future trail connection would eventually provide a critical link west to the San Francisco Bay Trail in Martinez, offering shoreline access at strategic locations, and south to the Marsh Creek Regional Trail. The project offers an opportunity to construct this trail segment near a severely disadvantaged community, identified by the California Department of Water Resources. As proposed without a trail connection, the project will prevent local and regional efforts to complete this important regional trail link for the residents of Oakley and surrounding communities, unless a public trail access easement is included in the conditions of approval and made an allowable use in the Planned Development zoning designation of this site. With the opportunity for development on 143 acres of the former DuPont chemical manufacturing facility, the Park District requested in previous comments that the DEIR project description include this trail connection through the project site.

5-2 The trail connection was not included in the project description, and so the potential impacts of the proposed Logistics Center on the users of a future trail connection through the site were not studied in the DEIR.

5-3 The Park District notes the DEIR includes two mentions of this proposed on-site trail connection, both in relation to greenhouse gas emissions (GHG) reductions:

Board of Directors

Ayn Wieskamp President Ward 5	Ellen Corbett Vice-President Ward 4	Dee Rosario Treasurer Ward 2	Colin Coffey Secretary Ward 7	Whitney Dotson Ward 1	Dennis Waespi Ward 3	Beverly Lane Ward 6	Robert E. Doyle General Manager
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McMurray, Josh
December 2, 2019
2 | Page

5-3
Cont'd

1. Mitigation measure 4.1-5(c) suggests one potential mitigation measure for GHG reduction is to "Dedicate land on-site to facilitate future connections with the Big Break Regional Trail." (pg. 4.1-50). The Park District notes this measure is the same as the Park District's recommendation in this letter and in previous communications.
2. Table 4.1-14, "Project Consistency with the (CARB) 2017 Scoping Plan." for the suggested measure, "Require the design of bike lanes to connect to the regional bicycle network," the DEIR says:

The project applicant has not committed to accommodating a proposed extension of the Big Break Regional Trail through the project site. Although the project would include the provision of bicycle lanes along Bridgehead Road, because the project would not include provision of connections to Big Break Regional Trail, which is a regional bicycle network, the project compliance with this suggested measure is uncertain at this time. (pg. 4.1-46).

5-4

While the project applicant has not "committed" to a trail connection through the project site, the Park District recognizes the project's request for both a General Plan Amendment and a rezoning, which are two of a number of discretionary actions that are being requested of the City of Oakley, and suggests the City require an on-site trail connection as a condition of project approval, if not as a stand-alone Mitigation Measure for GHG reduction.

5-5

As roadway infrastructure improvements are planned for Bridgehead Road, to meet the project's needs and the specifications of the Oakley 2020 General Plan, the Park District would like the opportunity to work with the City to improve access to the Antioch-Oakley Shoreline, which will likely be used as an amenity by future employees of the new Logistics Center, given its proximity to the project, less than a half mile from the Wilbur Avenue entrance.

5-6

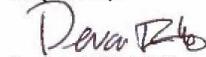
The DEIR identifies the project at full buildout and operation as generating over 4,000 average daily trips (Table 4.4-4). Because a future on-site connection between Big Break Regional Trail and the Antioch Pier Trail was not included in the Draft EIR Project Description, the traffic analysis in the EIR does not fully analyze the project's potential impacts to future commuters on bicycles using such a trail connection. The Park District suggests the Final EIR revisit the analysis of Section 4.12, "Pedestrians, Bicycles and Non-Motorized Vehicular Travel," with the assumption that a Big Break Regional Trail to Antioch Pier Trail connection is made to and through the project site, and consider whether such an off-road commuter trail connection would be safer for bicyclists than on-road bicycle facilities such as bike lanes on Bridgehead Road.

5-7

The Park District sees the benefit of a public access easement for a future trail connection through the project site, to allow the regional trail network to continue along the Delta Recreation area of the future Logistics Center, because it gives the public a recreational amenity and a new transportation connection, as envisioned in Oakley's *Parks, Trails, and Recreation Master Plan 2020*.

Thank you for the opportunity to provide comments on the DEIR for this project. The Park District looks forward to continuing to participate in the planning of this project. If you have any questions or concerns, please contact me at (510) 544-2325, or by e-mail at DReiff@ebparks.org.

Respectfully,



Devan Reiff, AICP
Principal Planner

Cc: Colin Coffey, Director
Robert Doyle, General Manager
Brian Holt, Chief of Planning/GIS

attachments



LETTER 5: EAST BAY REGIONAL PARK DISTRICT, DEVAN REIFF

Response to Comment 5-1

The comment is a summary of planning efforts associated with a multi-use trail (Big Break Regional Trail) in the project vicinity. The comment does not address the adequacy of the Draft EIR.

Response to Comment 5-2

Page 4.4-6 of the Draft EIR states the following regarding the Big Break Regional Trail system:

The CCTA's Countywide Bicycle and Pedestrian Plan includes a wide variety of goals and policies supportive of bicycle and pedestrian infrastructure planning and identifies future pedestrian and bicycle facilities throughout the County. The Countywide Bicycle and Pedestrian Plan identifies a future bicycle route extending east to west through the northern portion of the project site.⁵

As noted on page 4.1-46 of the Draft EIR, the project applicant has not committed to accommodating a proposed extension of the Big Break Regional Trail through the project site. Thus, construction of such an extension was not included in the Project Description chapter of the Draft EIR.

Response to Comment 5-3

The comment quotes the Draft EIR, but does not address the adequacy.

Response to Comment 5-4

The comment does not address the adequacy of the Draft EIR. However, the commenter's suggestion has been forwarded to the decision-makers for their consideration.

Response to Comment 5-5

The comment does not address the adequacy of the Draft EIR. However, the commenter's suggestion has been forwarded to the decision-makers for their consideration.

Response to Comment 5-6

Given that construction of a Big Break Regional Trail extension is not included as a component of the proposed project, and future construction of such an extension through the site is uncertain, analysis of potential bicycle and pedestrian impacts on such an extension within the EIR is not warranted. In addition, the EIR is not required to include a comparison of differences in safety concerns between a potential bicycle trail extension and the proposed bicycle lanes along Bridgehead Road. The proposed Bridgehead Road bicycle lanes would be designed to meet applicable City of Oakley standards, and would not result in any substantial safety hazards for bicyclists.

Response to Comment 5-7

The comment does not address the adequacy of the Draft EIR. However, the commenter's suggestion has been forwarded to the decision-makers for their consideration.



ADAMS BROADWELL JOSEPH & CARDOZO

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NIRIT LOTAN
AARON M. MESSING
WILLIAM C. MUMBY
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

*Admitted in Colorado

December 3, 2019

Via Email and U.S. Mail

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Joshua McMurray
Planning Manager
City of Oakley
3231 Main Street
Oakley, CA 94561
Email: mcmurray@ci.oakley.ca.us

Libby Vreonis
City Clerk
City of Oakley
3231 Main Street
Oakley, CA 94561
Email: vreonis@ci.oakley.ca.us

Re: Extension of the Comment and Review Period and Request for Documents Referenced in the Draft EIR, Oakley Logistics Center Project (SCH No. 2019029113), DA 01-18, DR 12-18, GP 04-18, RZ 08-18, TM 05-18

Dear Mr. Cole, Mr. McMurray and Ms. Vreonis:

We are writing on behalf of the Oakley Residents for Responsible Development ("Oakley Residents") concerning the Oakley Logistics Center Project (SCH No. 2019029113), DA 01-18, DR 12-18, GP 04-18, RZ 08-18, TM 05-18 ("Project") to respectfully request:

1. that the City provide the below-listed documents, as well any other documents referenced in the Draft Environmental Impact Report ("Draft

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6-1

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6-1
Cont'd

December 3, 2019
Page 2

EIR”) prepared for the Project, as required by Section 21092(b)(1) of the California Environmental Quality Act (“CEQA”);¹

2. that the City extend the public review and comment period on the Draft EIR **by at least 45 additional days** from the date that it makes the documents available; and
3. that the City postpone the December 17, 2019 joint City Council / Planning Commission hearing on the Project, until the City complies with CEQA.

Oakley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public impacts associated with Project development. Oakley Residents includes: the International Brotherhood of Electrical Workers Local 302; Plumbers & Steamfitters Local 159; Sheet Metal Workers Local 104; Sprinkler Fitters Local 483, their individual members and families, and other individuals that live and/or work in Oakley and the surrounding area.

Our requests are based on the City’s failure to make available to the public all the documents referenced in the Draft EIR prepared for the Project for the entire duration of the public comment period, as required by CEQA.

It is well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.² Thus, CEQA affords the public a right of access to the documents and supporting evidence that the lead agency relies upon to reach its conclusions and findings in a CEQA document.³ These documents must be made available to the public for the entire comment period.⁴

¹ Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 15, § 15000 et seq. (“CEQA Guidelines”).

² *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (Whatever the lead agency considers must be in the environmental review document; “what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

³ Pub. Resources Code, § 21092(b)(1); CEQA Guidelines, § 15087(c)(5).

⁴ Pub. Resources Code, § 21092(b)(1); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1385, fn. 12.



6-1
Cont'd

December 3, 2019
Page 3

The courts have held that the failure to provide even a few pages of a CEQA document for even a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional time for public review and comment on the CEQA document.⁵ “In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions ... agencies should ensure that they literally comply with this requirement.”⁶

In other words, the City was obligated to provide not just those documents specifically listed and numbered in the “list of references” section of the Draft EIR, but to provide all documents which the City referenced in its analysis and mitigation of impacts in the Draft EIR, and to make those documents available to the public for the *entire comment period*.

Here, the comment period began on October 16, 2019.⁷ On November 19, 2019, we submitted a request for immediate access to all documents referenced in the Draft EIR.⁸ On November 21, 2019, the City responded to our request by providing the documents listed in the Draft EIR’s Chapter 8, “References.” By limiting its response to just those documents listed in Chapter 8, the City failed to comply with CEQA, as this response did not include many documents which were referenced and cited in the Draft EIR, but were not listed in Chapter 8.

Based on our review, documents which were not provided include, *but are not limited to*, the following:

1. Department of Toxic Substances Control, Initial Study Chemours Oakley Site Sediment, Soil and Groundwater Corrective Studies (June 29, 2018);
2. 2010 Highway Capacity Manual;

⁵ *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 699.

⁶ Remy, Thomas, Moose & Manley, *Guide to the California Environmental Quality Act*, pp. 342-343 (Solano Press, 2007).

⁷ Notice of Availability for the Oakley Logistics Center Project Draft EIR (Oct. 16, 2019).

⁸ Letter from Janet Laurain to Libby Vreonis and Joshua McMurray *Request for Immediate Access to Documents Referenced in the DEIR and Separate Request for Public Records – Oakley Logistics Center Project (SCH #2019029113, DA 01-18, DR 12-18, GP 04-18, RZ 08-18)* (Nov. 19, 2019) attached hereto at **Exhibit A**.



6-1
Cont'd

December 3, 2019
Page 4

3. Caltrans, Guide for the Preparation of Traffic Impact Studies (Dec. 2002);
4. 2017 Countywide Comprehensive Transportation Plan (Sept. 2017);
5. East County Action Plan Routes for Routes of Regional Significance (Sept. 2017);
6. East County Action Plan, Final 2000 Update;
7. The City of Oakley's 2017 Traffic Impact Fee Update;
8. CARB Methods to Assess Co-Benefits of California Climate Investments, Vehicle Miles Traveled;
9. Contra Costa Transportation Authority, Contra Costa Countywide Bicycle and Pedestrian Plan; and
10. East Contra Costa County Habitat Conservation Plan / Natural Communities Conservation Plan (ECCC HCP/NCCP).

While we appreciate the City's efforts to provide access to the documents listed in Chapter 8, the City has otherwise failed to provide all documents referenced in the Draft EIR in its analysis and mitigation of impacts for the Project for the entire comment period, which began on October 16, 2019. This failure directly violates CEQA's procedural mandates.

To remedy this deficiency, the City must:

1. immediately provide access to all of the above-referenced documents, as well as any other documents not produced in response to our request;
2. extend the public review and comment period by at least **45 additional days** from the date that the City releases those documents; and
3. postpone the December 17, 2019 joint City Council / Planning Commission hearing on the Project, until the City complies with CEQA.

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**6-1
Cont'd**

December 3, 2019
Page 5

Please feel free to call or email me with any questions. Thank you for your prompt attention to this matter.

Sincerely,



Sara Dudley

SFD:ljl
Attachment

4567-007j



**LETTER 6: OAKLEY RESIDENTS FOR RESPONSIBLE DEVELOPMENT,
SARA DUDLEY**

Response to Comment 6-1

The documents mentioned in the letter have been available to the public. The City has made those materials available throughout the review period, and will continue to make those materials available, during business hours at City Hall. The request to extend the comment period on the Draft EIR and to postpone the joint City Council/Planning Commission hearing was not granted by City Staff. Lastly, the letter does not address the adequacy of the Draft EIR.



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



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Contact Phone: (916) 574-1890

December 6, 2019

File Ref: SCH #2019029113

Joshua McMurray,
Community Development Director
Community Development Department
3231 Main Street
Oakley, CA 94561

VIA REGULAR & ELECTRONIC MAIL (mcmurray@ci.oakley.ca.us)

Subject: Draft Environmental Impact Report (Draft EIR) for the Oakley Logistics Center Project, Contra Costa County

Dear Mr. McMurray:

7-1

The California State Lands Commission (Commission) staff has reviewed the subject Environmental Impact Report (EIR) for the Oakley Logistics Center Project (Project), which is being prepared by the City of Oakley (City). The City, as the public agency developing the area of the former DuPont Chemical Manufacturing Plant and is proposing to approve the Project is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses.

7-2

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its



7-2
Cont'd

admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the state holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

7-3

Commission staff is presently analyzing the extent of its jurisdiction and interest in the subject property and negotiating with the Project developer to settle all issues surrounding title to the subject property.

This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

Project Description

The Project proponent (North Point Development) proposes to develop the former DuPont manufacturing plant encompassing a 143.3-acre Project site. The entire subject property consists of approximately 375.7 acres; however, the logistics center would only develop on approximately 143.3 acres within the southwest portion of the property. The remaining 232.4 acres of the subject property would remain natural, less some potential soil borrowing on areas that are both immediately adjacent to the 143.3-acre Project site and outside of any wetland or marsh areas.

7-4

The Project proponent's objectives and needs are as follows:

- Project Objective 1: Develop a logistics center with approximately 2,000,000 sf of Class A industrial light warehousing, e-commerce fulfillment, distribution, and light manufacturing space consisting of five buildings.
- Project Objective 2: Redevelop the former DuPont site with a robust logistics center that provides nearly 2,000 jobs for the region.
- Project Objective 3: Implement a key focus in the Oakley General Plan to develop industrial and like distribution uses on the site.
- Project Objective 4: Implement the City's vision in the General Plan to develop this site as a primary employment center.
- Project Objective 5: Allow the sensitive area designated "Delta Recreation" on the property to remain in its natural state.

The proposed Project would include construction of five buildings across the Project site ranging in size from 150,000 square feet (sf) to 642,960 sf for a total of approximately 1,985,304 sf. The proposed Project would include demolition of the existing structure and utility remnants and construction of the proposed buildings over two phases. Specific uses for the proposed buildings would be subject to site-specific development standards in the proposed Planned Unit Development.



J. McMurray

Page 3

December 6, 2019

7-4
Cont'd

The Draft EIR identifies the No Project (No Build) Alternative as the Environmentally Superior Alternative. The Project site is assumed to remain undeveloped under the Alternative and this alternative would not be preferred for the development of the logistics center project. Consequently, the impacts resulting from the proposed Project would not occur under the Alternative. However, leaving the site vacant with a dilapidated building and remnants of utility infrastructure could be considered urban blight.

Environmental Review

7-5

Commission staff requests that the City consider the following comments on the Project's Draft EIR, to ensure that impacts to State sovereign land are adequately analyzed for the Commission's use of the EIR to support any future Commission action related to the proposed Project.

General Comments

7-6

1. **Project Description:** A CEQA environmental document should be reviewed and edited by the lead agency to ensure accuracy and professionalism. This document does not appear to have an editor assigned to review for accuracy or professionalism. On pages 13, 21 and 76, the document refers to the "city of Davis". Also, on page 12 of the Project Summary, it identifies the past use of the site as "precious".

7-7

The Draft EIR must also identify the Commission as a potential owner of lands within the subject property. Commission staff requests submitting all copies of federal and State agency permits to ensure any future actions by the Commission are consistent with other permits.

7-8

2. **Public Agency Approvals:** The Commission, a public agency, has jurisdiction over sovereign waterways and identified filled lands of the State. There is a potential that portions of the proposed Project will encroach onto Public Trust lands and the Commission will require the Project proponent to address any impact or issue which will require an action from the Commission. Commission staff is presently negotiating with the Project proponent to resolve such concerns. The Commission will utilize the certified Final EIR from the City for any discretionary action.

Climate Change

7-9

3. **Greenhouse Gas (GHG):** A GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines should be included in the Draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Project, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible. For the proposed Project, it appears that the proposed Project construction emissions will



7-9
Cont'd

exceed identified thresholds. These thresholds will be amortized over a 25-year span to reduce the construction and operational emissions to a level below the 1,100 metric tons per year (CO₂e). A more extensive description and mitigation schedule for the impacts identified in the EIR should be provided in the certified EIR Mitigation Monitoring Program (MMP).

Biological Resources

7-10

4. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Project's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Project area via hull biofouling, or new species may be transported by soil in or on work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Plant invaders may disperse seeds from one area to another via dried mud and soils attached to vehicles from previous work areas. If the analysis in the Draft EIR finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).

Cultural Resources

7-11

5. Title to Resources: The Draft EIR should also mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the Commission (Pub. Resources Code, § 6313). Commission staff requests that the City consult with Staff Attorney Jamie Garrett should any cultural resources on state lands be discovered during construction of the proposed Project. In addition, Commission staff requests that the following statement be included in the EIR's MMP: "The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission."

Hazards and Hazardous Materials

7-12

6. The Site has supported a mix of industrial uses since the mid-1950s and agricultural uses prior to then. From 1956 to 1999, DuPont/Chemours operated a chemical manufacturing facility at the Site that commenced with the manufacture of chlorofluorocarbon (CFC) products under the trade name Freon®. Tetra-alkyl lead anti-knock gasoline additive compounds (AKCs) were manufactured at the Site beginning in 1957, and titanium dioxide (TiO₂) production began in 1963. All three product lines have been closed and the manufacturing area has been demolished.



7-12
Cont'd

Consultants acting on behalf of DuPont/Chemours have remediated the Site under direction of the appropriate agencies. The remediation is scheduled to be completed by January 2020. DTSC issued a restrictive land use covenant for the manufacturing area only.

The Draft EIR should include a brief history of all the past activities that have occurred on the Site and describe the direction the City and the Project proponent are proposing to continue monitoring on the Site and how the development will impact the future monitoring and Site activities. The Draft EIR should also include a schedule and description of continued oversight on the proposed development and state which entity would be responsible for the monitoring and reporting on the Site.

7-13

7. Hydrology/Water Quality:

Sea-Level Rise: Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located on the San Joaquin River in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The Site is identified by the Federal Emergency Management Agency as Zone AE. This Zone falls within the 100-year floodplain, which is considered an area at high risk for flooding. Commission staff recommends greater effort and mitigation measures be included in the development plan of the proposed Project to account for the potential impacts to future flooding events.

7-14

Mitigation and Monitoring

8. To avoid the improper deferral of mitigation, please ensure that mitigation measures included in the draft EIR avoid or reduce the identified impacts (especially those incorporating future plans) are presented as specific, feasible, enforceable obligations, or are presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (State CEQA Guidelines, § 15126.4, subd. (b)).

Prior to final action on the EIR, the City should provide an MMP pursuant to State CEQA Guidelines section 15074, subdivision (d). The MMP should include methods for coordination, timing for implementation of mitigation measures and list all parties and/or agencies, in addition to the City, responsible for ensuring compliance and enforcement through permit conditions, agreements or other measures during each phase of the Project.

7-15

Other Section(s)

9. Environmental Justice: The Draft EIR does not state whether the City intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Project. Commission staff believes the Draft EIR, as an informational public document, is an appropriate vehicle to disclose and



7-15
Cont'd

J. McMurray

Page 6

December 6, 2019

discuss how the proposed Project would attain or be consistent with the City's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the Draft EIR for the Project. We request that you consider our comments prior to certification of the Final EIR.

7-16

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available. Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
C. Huitt, Commission
N. Lavoie, Commission
M. Neal, Commission
J. Garrett, Commission



LETTER 7: CALIFORNIA STATE LANDS COMMISSION, ERIC GILLIES

Response to Comment 7-1

The comment is introductory, and does not directly address the adequacy of the Draft EIR.

Response to Comment 7-2

The comment provides background information about the role of the California State Land's Commission, but does not address the adequacy of the Draft EIR.

Response to Comment 7-3

The comment does not address the adequacy of the Draft EIR.

Response to Comment 7-4

The comment summarizes the proposed project, but does not address the adequacy of the Draft EIR.

Response to Comment 7-5

The comment does not address the adequacy of the Draft EIR, but has been noted by the project decision-makers.

Response to Comment 7-6

In response to the comment, the following excerpt from Pages 1-2, 2-2 and 3-16 of the Draft EIR is hereby revised:

Certification of the Environmental Impact Report, including adoption of Findings of Fact and a Statement of Overriding Considerations. Before the City can approve the proposed project, the City must certify that the EIR was completed in compliance with the requirements of CEQA, that the decision-making body has reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the City of Oakley Davis. The City would also be required to adopt Findings of Fact, and for any impacts determined to be significant and unavoidable, a Statement of Overriding Considerations, as part of project approval.

In addition, page 1-1 is revised as follows:

The subject property is site of the former DuPont Chemical Plant that produced chlorofluorocarbons, fuel additive anti-knock compounds (AKCs) and titanium dioxide between 1956 to 1997. The facility was demolished in 1999, less two dilapidated buildings and some remnant utility infrastructure. The site has been undergoing remedial and cleanup work for soil and groundwater contamination. The site is highly disturbed from its previous use as a chemical plant and as a result of the remediation efforts.

The foregoing revisions correct minor typographical errors and do not affect the analysis or conclusions presented in the Draft EIR.

Response to Comment 7-7

The identification of potential future owners of adjacent lands is not a requirement under CEQA; however, the commenter's suggestion has been forwarded to the decision-makers for their consideration.



Response to Comment 7-8

The comment has been noted and will be forwarded to decision-makers for their consideration.

Response to Comment 7-9

The comment does not provide specifics as to what level additional detail and schedule is being requested. Page 4.1-43 of the Draft EIR states the following regarding GHG emissions:

Compliance with AB 32

As shown in the table above, the project's total unmitigated annual GHG emissions in the first year of project operation, 2023, including amortized construction-related emissions, were estimated to be approximately 10,988.70 MTCO₂e/yr, which results in emissions of 4.32 MTCO₂e/SP/yr. Thus, implementation of the proposed project would result in emissions below the BAAQMD's 4.6 MTCO₂e/SP/yr threshold of significance for GHG emissions, and the proposed project would be considered to comply with the emissions reductions targets of AB 32.

Based on the above, the Draft EIR does address the project's associated GHG emissions and AB 32 compliance. Mitigation Measures 4.1-5(a)-(c) provide recommendations to reduce GHG impacts, but the overall impact is assumed to remain cumulatively considerable and significant and unavoidable. Mitigation Measures 4.1-5(a) and (b) provide a specific and implementable schedule ("Prior to issuance of a grading permit" and "Prior to issuance of building permits for each phase of development," respectively). Mitigation Measure 4.1-5(c) requires that improvement plans and building plans for the proposed project include all feasible mitigation measures as determined by the City. Therefore, the GHG mitigation measures include sufficient mitigation scheduling.

Response to Comment 7-10

The proposed project would not include the use of any aquatic vessels during construction or operations. Therefore, transport of aquatic invasive species would not occur as a result of the proposed project.

Page 4.1-30 of the Draft EIR states the following regarding BAAQMD's recommended Basic Construction Mitigation Measures:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

Measure 3 requires that construction tires be washed regularly to prevent dust. This mitigation measure helps to prevent the spread of invasive plant species seeds region-wide. In addition, ongoing remediation activities include the use of heavy equipment throughout the site as well as ground disturbance and vegetation removal. As a result, the habitat is already highly disturbed.

Response to Comment 7-11

The proposed project location is upland and construction would not occur within a tidal area. Thus, the potential to discover shipwrecks is limited. Further, the ongoing on-site remediation has



thoroughly disturbed the land of interest. Prior to approval, the ongoing remediation project underwent project-specific CEQA analysis whereby the cultural impacts of the remediation project were considered.⁷

Even though the likelihood is low, in response to the comment, Mitigation Measure V-I in the IS/MND is hereby revised as follows:

- V-1. *If buried archaeological, paleontological, and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the discovery and the developer shall immediately notify the Planning Division of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery, as appropriate. The archaeologist shall be required to submit to the City of Oakley Planning Division for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the area of discovery would not be allowed until the preceding work has occurred.*

The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.

The foregoing revision is for informational purposes and does not affect the analysis or conclusion of the EIR.

Response to Comment 7-12

Please see Response to Comment 3-1.

Response to Comment 7-13

Pages 4.3-8 and 4.3-9 of the Draft EIR quotes the City of Oakley General Plan requirements regarding flood protection:

- Policy 4.10.1 Work cooperatively with Contra Costa County Flood Control and Water Conservation District (CFCWCD) to ensure and enhance flood protection in the City of Oakley.
- Policy 8.2.3 Buildings in urban development near the shoreline of the Delta and in flood-prone areas shall be protected from flood dangers, including consideration of rising sea levels.
- Policy 8.2.4 Habitable areas of structures near the shoreline of the Delta and in flood-prone areas shall be sited above the highest water level expected during the life of the project, or shall be protected for the expected life of the project by levees of an adequate design.

The proposed project would be required to comply to the General Plan Policies above. In addition, page 4.3-20 states the following regarding exposure to flooding:

Development of the proposed project would include water detention facilities which would regulate and improve the current water flow on the project site. The detention

⁷ Department of Toxic Substances Control. California Environmental Quality Act Initial study: Chemours Oakley Site Sediment, Soil, and Groundwater Corrective Measures Studies. April 13, 2017.



basin would include an outfall to the marsh area and would be equipped with a flap gate to prevent inflows from the Delta during high tide events, thus reducing risk of flooding on the project site.

Based on the above, flood risk is addressed in the Draft EIR, and Mitigation Measure 4.3-5 responds to the aforementioned risk.

Response to Comment 7-14

Pursuant to CEQA guidelines, a Mitigation Monitoring and Reporting Program will be released in conjunction with the Final EIR (see Chapter 4 of this Final EIR). The mitigation included in the Draft EIR has not been deferred; instead, the mitigation measures included in the Draft EIR are specific, feasible, and enforceable.

Response to Comment 7-15

The comment addresses the topic of environmental justice. As the Commenter noted, the Project would rid this area of urban blight which would assist in furthering environmental justice. The City is currently updating their General Plan to address Environmental Justice per State Law and it would be premature to analyze any Environmental Justice issues without any policy direction from the General Plan. Moreover, analysis of environmental justice is not required under CEQA; however, the commenter's suggestion has been forwarded to the decision-makers for their consideration.

Response to Comment 7-16

The comment is a concluding statement, and does not discuss the adequacy of the Draft EIR.



3. Revisions to the Draft EIR Text

3. REVISIONS TO THE DRAFT EIR TEXT

3.1 INTRODUCTION

The Revisions to the Draft EIR Text chapter provides all corrections, additions, and revisions made to the Draft EIR. The changes represent minor clarifications and amplifications of the analysis contained in the Draft EIR and do not constitute significant new information that, in accordance with CEQA Guidelines Section 15088.5, would trigger the need to recirculate portions or all of the Draft EIR. Please refer to the discussion of this topic provided in Section 1.6 of Chapter 1, Introduction and List of Commenters.

It should be noted that in addition to the text revisions presented in Chapter 2 of this Final EIR in response to public comments, this chapter provides other text revisions to the Draft EIR initiated by the City of Oakley based upon further review of the document since its release to the public.

3.2 DESCRIPTION OF CHANGES

New text is double underlined and deleted text is ~~struck through~~. Text changes are presented in the page order in which they appear in the Draft EIR.

1 Introduction

Page 1-1 of the Draft EIR is hereby revised as follows:

The site has been undergoing remedial and cleanup work for soil and groundwater contamination. The site is highly disturbed from its preprevious use as a chemical plant and as a result of the remediation efforts. Construction of the proposed structures on the project site would occur in accordance with the procedures set forth by the Department of Toxic Substances Control (DTSC).

In addition, page 1-1 of the Draft EIR is hereby further revised as follows:

The subject property is site of the former DuPont Chemical Plant that produced chlorofluorocarbons, fuel additive anti-knock compounds (AKCs) and titanium dioxide between 1956 to 1997. The facility was demolished in 1999, less two dilapidated buildings and some remnant utility infrastructure. The site has been undergoing remedial and cleanup work for soil and groundwater contamination. The site is highly disturbed from its preprevious use as a chemical plant and as a result of the remediation efforts.

The above revision is for clarification purposes and does not change the analysis or conclusions of the Draft EIR.

The following excerpt from Pages 1-2, 2-2 and 3-16 of the Draft EIR is hereby revised as follows:

Certification of the Environmental Impact Report, including adoption of Findings of Fact and a Statement of Overriding Considerations. Before the City can approve the proposed project, the City must certify that the EIR was completed in compliance with the requirements of CEQA, that the decision-making body has reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the City of



Oakley Davis. The City would also be required to adopt Findings of Fact, and for any impacts determined to be significant and unavoidable, a Statement of Overriding Considerations, as part of project approval.

The foregoing revisions correct minor typographical errors and do not affect the analysis or conclusions presented in the Draft EIR.

2 Executive Summary

For clarification purposes, Table 2-1 beginning on page 2-6 in Chapter 2, Executive Summary, of the Draft EIR is hereby revised to reflect revisions made to mitigation measures as part of this Final EIR in the relevant chapters, as presented throughout this chapter. In addition, revisions to Mitigation Measure 4.2-2(d) and Mitigation Measure 4.2-8 are staff-initiated. Rather than include the entirety of Table 2-1 with revisions shown where appropriate, only the impacts for which mitigation has been revised or added are presented below. The revisions to the Executive Summary table are for clarification purposes only and do not change the conclusions of the Draft EIR. Please refer to the end of this chapter for Table 2-1.

3 Project Description

Page 3-4 of the Draft EIR is hereby revised as follows:

In 2013, DuPont separated its chemical segment from its other businesses and remedial obligations for the site were transferred to Chemours who is working with DTSC on the remediation efforts. Most recent, on June 29, 2018, DTSC certified a Mitigated Negative Declaration (MND) for the remaining remediation work. In addition, a Land Use Covenant (LUC) was developed on May 31, 2019 and agreed upon by the DTSC and Chemours Company FC, LLC. The purpose of the LUC is to control exposure to contamination through specifically defined restrictions, as well as ensure remediation for environmental contamination is performed as necessary based on the site conditions.

The above revision is for informational purposes and does not alter the analysis or conclusions within the Draft EIR.

Page 3-4 of the Draft EIR is hereby revised as follows:

This remediation work is being performed in two field seasons. The first field season started in August/September 2018, and the anticipated completion date for this work is mid-2019. The anticipated start date for the second field season is August or September 2019, and the anticipated completion date is January or February 2020. Following remediation, the project site is subject to post closure care pursuant to the Hazardous Waste Facility Post-Closure Permit (PCP), issued by DTSC on December 7, 2011. The PCP requires the closure and decommission of the East Basin, West Basin, Emergency Basin, and Ponds A, B, and C located within the northeastern portion of the project site.

The above revision is for informational purposes and does not change the analysis or conclusions of the Draft EIR.

Page 3-4 of the Draft EIR is hereby revised as follows:

The site has been highly disturbed and altered over the years by the DuPont operations and remediation efforts. The remediation efforts will allow areas of the site to develop with industrial and commercial uses (in the 143.3-acre project site) and recreational uses (on the 232.4-acre remainder area). Development within the remediated areas would adhere



to the requirements set forth in Article IV of the LUC. As stated in the document, prohibited uses on the site include residences, hospitals, schools, day cares, and recreational land uses within the Central Slough Wetland. Furthermore, the development of the project would not occur until the Soil and Materials Management Plan has been pre-approved by the DTSC in writing.

Additional information on the cleanup efforts for the site can be found at <https://dtsc.ca.gov>.

The above revision to text is for disclosure purposes and does not change the analysis or conclusions of the Draft EIR.

Figure 3-6 on page 3-9 of the Draft EIR is hereby revised in order to delineate the monitoring well and phyto-remediation locations (see figure on following page). The revision is for clarification purposes and does not change the analysis or conclusions of the Draft EIR.

4.1 Air Quality

Page 4.1-1 of Chapter 4.1, Air Quality and Greenhouse Gas Emissions, is hereby revised as follows:

BREEZE ENVIRON International Corporation and the California Air Districts. *California Emissions Estimator Model User's Guide Version 2016.3.2*. November 2017.

The forgoing staff-initiated revision is for informational purposes, and does not affect the analysis or conclusions in the Draft EIR.

Page 4.1-31 of Chapter 4.1 is hereby revised as follows:

- 4.1-1(a) *Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet California Air Resources Board (CARB) Tier 4 Final emissions standards or cleaner. The grading plans shall be submitted for review and approval by the Public Works and Engineering Department. In addition, all off-road equipment operating at the construction site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to 5 minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB.*

Idling shall be limited to five minutes or less for all on-road related and/or delivery trucks in accordance with CARB's On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. Clear Signage regarding idling restrictions should be placed at the entrances to the construction site.



Page 4.1-34 of Chapter 4.1 hereby revised as follows:

~~California Department of Transportation. Transportation Project-Level Carbon Monoxide Protocol. Revised December, 1997.~~

The foregoing citation is no longer required, and the revision does not affect the analysis or conclusions in the Draft EIR.

Page 4.1-50 of Chapter 4.1 is hereby revised as follows:

4.1-5(c) *Improvement Plans and building plans for the proposed project shall identify all feasible mitigation measures developed in coordination with the BAAQMD and as determined by the City of Oakley Planning Division to reduce significant impacts to the extent feasible. Mitigation Measures may include, but would not be limited to, BAAQMD's recommended mitigation measures such as the following:*

- *Orient buildings to maximize passive solar heating;*
- *Install programmable thermostat timers;*
- *Limit outdoor lighting requirements;*
- *Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting;*
- *Provide education on energy efficiency to tenants. Provide information on energy management services for large energy users;*
- *Meet "reach" goals for building energy efficiency and renewable energy use;*
- *Limit the use of outdoor lighting to only that needed for safety and security purposes;*
- *Require use of electric or alternatively fueled sweepers with HEPA filters;*
- *Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use;*
- *Prohibit gas powered landscape equipment and implement electric yard equipment compatibility;*
- *Provide local shuttles;*
- *Implement area or cordon pricing;*
- *Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site;*
- *Install a system to reutilize gray water;*
- *Use locally-sourced water supply;*
- *Use of minimal amounts of concrete and asphalt;*
- *Use of groundcovers rather than pavement to reduce heat reflection;*
- *Shade HVAC equipment from direct sunlight;*
- *Install high-albedo white thermoplastic polyolefin roof membrane;*
- *Use recycled-content gypsum board;*
- *Require all buildings to become "LEED" and "WELL" certified;*
- *Increase in insulation such that heat transfer and thermal bridging is minimized in proposed structures;*



- Limit air leakage through the structure and/or within the heating and cooling distribution system;
- Installation of dual-paned or other energy efficient windows;
- Installation of automotive devices to turn off lights where they are not needed;
- *Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);*
- *Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;*
- *Dedicate land on-site to facilitate future connections with the Big Break Regional Trail;*
- *Promote ridesharing, transit, bicycling, and walking for work trips through dedication of preferential parking spaces, provision of on-site bicycle parking, provision of end-of-trip facilities such as bicycle lockers and on-site showers;*
- *Subsidize employee transit passes;*
- *Install electric vehicle charging infrastructure in excess of existing CBSC requirements;*
- *Provide charging stations and preferential parking spots for electric vehicles;*
- *Install energy star appliances;*
- *Install solar water heating;*
- *Install on-site renewable energy systems;*
- *Use water efficient landscapes and native/drought-tolerant vegetation;*
- *Provide outdoor electrical outlets to allow for use of electrically powered landscaping equipment;*
- *Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and*
- *Purchase carbon credits to offset project annual emissions. Carbon offset credits shall be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by CARB, BAAQMD, or the City of Oakley.*

If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by to City of Oakley Planning Division. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.

The foregoing revisions serve to increase the specificity of Mitigation Measure 4.1-5(c); however, even with implementation of the foregoing revisions, project-related operational GHG emissions are anticipated to continue to conflict with relevant statewide goals and targets, and the project



would continue to result in a significant and unavoidable impact. Therefore, the analysis and conclusions presented in the Draft EIR remain adequate.

Initial Study

Page 26 of the IS/MND is hereby revised as follows:

- V-1. *If buried archaeological, paleontological, and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the discovery and the developer shall immediately notify the Planning Division of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery, as appropriate. The archaeologist shall be required to submit to the City of Oakley Planning Division for review and approval a report of the findings and method of curation or protection of the resources. Further grading or site work within the area of discovery would not be allowed until the preceding work has occurred.*

The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.

The foregoing revision is reflected in Chapter 4, Mitigation, Monitoring, and Reporting Program, of this Final EIR. The revision does not affect the analysis or conclusions presented in the IS/MND or Draft EIR.



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
4.1 Air Quality and Greenhouse Gas Emissions			
4.1-1 Conflict with or obstruct implementation of the applicable air quality plan during project construction	S	<p>4.1-1(a) <i>Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet California Air Resources Board (CARB) Tier 4 <u>Final</u> emissions standards or cleaner. The grading plans shall be submitted for review and approval by the Public Works and Engineering Department. In addition, all off-road equipment operating at the construction site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to 5 minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB.</i></p> <p><i>Idling shall be limited to five minutes or less for all on-road related and/or delivery trucks in accordance with CARB's On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. Clear Signage regarding idling restrictions should be placed at the entrances to the construction site.</i></p>	SU
4.1-5 Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment, or conflict with an applicable plan, policy, or regulation adopted for the	S	4.1-5(c) <i>Improvement Plans and building plans for the proposed project shall identify all feasible mitigation measures developed in coordination with the BAAQMD and as determined by the City of Oakley Planning Division to reduce significant impacts to the extent feasible. Mitigation Measures may include, but</i>	SU



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
purpose of reducing the emissions of GHGs.		<p>would not be limited to, BAAQMD’s recommended mitigation measures such as the following:</p> <ul style="list-style-type: none"> • <u>Orient buildings to maximize passive solar heating;</u> • <u>Install programmable thermostat timers;</u> • <u>Limit outdoor lighting requirements;</u> • <u>Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting;</u> • <u>Provide education on energy efficiency to tenants. Provide information on energy management services for large energy users;</u> • <u>Meet “reach” goals for building energy efficiency and renewable energy use;</u> • <u>Limit the use of outdoor lighting to only that needed for safety and security purposes;</u> • <u>Require use of electric or alternatively fueled sweepers with HEPA filters;</u> • <u>Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use;</u> • <u>Prohibit gas powered landscape equipment and implement electric yard equipment compatibility;</u> • <u>Provide local shuttles;</u> • <u>Implement area or cordon pricing;</u> • <u>Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site;</u> • <u>Install a system to reuse gray water;</u> 	



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
		<ul style="list-style-type: none"> • <u>Use locally-sourced water supply;</u> • <u>Use of minimal amounts of concrete and asphalt;</u> • <u>Use of groundcovers rather than pavement to reduce heat reflection;</u> • <u>Shade HVAC equipment from direct sunlight;</u> • <u>Install high-albedo white thermoplastic polyolefin roof membrane;</u> • <u>Use recycled-content gypsum board;</u> • <u>Require all buildings to become “LEED” and “WELL” certified;</u> • <u>Increase in insulation such that heat transfer and thermal bridging is minimized in proposed structures;</u> • <u>Limit air leakage through the structure and/or within the heating and cooling distribution system;</u> • <u>Installation of dual-paned or other energy efficient windows;</u> • <u>Installation of automotive devices to turn off lights where they are not needed;</u> • <u>Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);</u> • <u>Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;</u> • <u>Dedicate land on-site to facilitate future connections with the Big Break Regional Trail;</u> • <u>Promote ridesharing, transit, bicycling, and walking for work trips through dedication of</u> 	



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
		<p><i>preferential parking spaces, provision of on-site bicycle parking, provision of end-of-trip facilities such as bicycle lockers and on-site showers;</i></p> <ul style="list-style-type: none"> • <i>Subsidize employee transit passes;</i> • <i>Install electric vehicle charging infrastructure in excess of existing CBSC requirements;</i> • <i>Provide charging stations and preferential parking spots for electric vehicles;</i> • <i>Install energy star appliances;</i> • <i>Install solar water heating;</i> • <i>Install on-site renewable energy systems;</i> • <i>Use water efficient landscapes and native/drought-tolerant vegetation;</i> • <i>Provide outdoor electrical outlets to allow for use of electrically powered landscaping equipment;</i> • <i>Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and</i> • <i>Purchase carbon credits to offset project annual emissions. Carbon offset credits shall be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by CARB, BAAQMD, or the City of Oakley.</i> <p><i>If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and</i></p>	



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
		<p>are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by to City of Oakley Planning Division. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.</p>	
4.2 Biological Resources			
<p>4.2-2 Have a substantial adverse effect, either directly or through habitat modifications, on Swainson's hawk.</p>	S	<p><i>Areas of the Project Site Outside the ECCC HCP/NCCP Permit Area</i> 4.2-2(d) Prior to initiation of ground disturbing activity for the project, the project applicant shall mitigate for the loss of suitable Swainson's hawk foraging habitat by implementing the following measure:</p> <ul style="list-style-type: none"> One acre of suitable foraging habitat shall be protected for each acre of suitable foraging habitat developed outside of the ECCC HCP/NCCP Permit Area. Protection shall be via purchase of mitigation bank credits or other land protection mechanism acceptable to <u>CDFW</u> the County. 	LTS



**Table 2-1
Summary of Impacts and Mitigation Measures**

Impact	Level of Significance Prior to Mitigation	Mitigation Measures	Level of Significance After Mitigation
		<p><i>Proof of purchase of mitigation credits as required per the above mitigation options, shall be provided to the Oakley Planning Division for review and approval prior to initiation of ground disturbance for any portion of the project site.</i></p>	
<p>4.2-8 Conflict with any local policies or ordinances protecting biological resources, such as the City of Oakley's Heritage and Protected Tree standards.</p>	<p>S</p>	<p><i>Entire Project Site and Off-Site Improvement Areas</i> 4.2-8 <i>Prior to project-related tree removal, the project applicant shall submit a tree removal permit application to the City. The permit application shall be prepared in accordance with Section 9.1.1112 and shall include the payment of tree removal or protection fees as required per the City's Municipal Code. The project applicant shall be required to comply with the standards included in Section 9.1.1112 of the City's Municipal Code by implementing one of the options provided in Section 9.1.1112(g)(11)(a), to the satisfaction of the prior to initiation of construction activities. The permit application shall be submitted to Community Development Department and approved by the Director of the Community Development Department or the Planning Commission, as applicable.</i></p>	<p>LTS</p>



4. Mitigation Monitoring and Reporting Program

4. MITIGATION MONITORING AND REPORTING PROGRAM

4.1 INTRODUCTION

Section 15097 of the California Environmental Quality Act (CEQA) requires all State and local agencies to establish monitoring or reporting programs for projects approved by a public agency whenever approval involves the adoption of either a “mitigated negative declaration” or specified environmental findings related to environmental impact reports.

The following is the Mitigation Monitoring and Reporting Program (MMRP) for the Oakley Logistics Center Project (proposed project). The intent of the MMRP is to ensure implementation of the mitigation measures identified within the Environmental Impact Report (EIR) for the proposed project. Unless otherwise noted, the cost of implementing the mitigation measures as prescribed by this MMRP shall be funded by the applicant.

4.2 COMPLIANCE CHECKLIST

The MMRP contained herein is intended to satisfy the requirements of CEQA as they relate to the EIR prepared for the proposed project. This MMRP is intended to be used by City staff and mitigation monitoring personnel to ensure compliance with mitigation measures during project implementation. Mitigation measures identified in this MMRP were developed in the EIR.

The EIR presents a detailed set of mitigation measures that will be implemented throughout the lifetime of the project. Mitigation is defined by CEQA Guidelines, Section 15370, as a measure that:

- Avoids the impact altogether by not taking a certain action or parts of an action;
- Minimizes impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifies the impact by repairing, rehabilitating, or restoring the impacted environment;
- Reduces or eliminates the impact over time by preservation and maintenance operations during the life of the project; or
- Compensates for the impact by replacing or providing substitute resources or environments.

The intent of the MMRP is to ensure the implementation of adopted mitigation measures. The MMRP will provide for monitoring of construction activities as necessary and in-the-field identification and resolution of environmental concerns.

Monitoring and documenting the implementation of mitigation measures will be coordinated by the City of Oakley. The table attached to this report identifies the mitigation measures, the monitoring action for each mitigation measure, the responsible party for the monitoring action, and timing of the monitoring action. The applicant will be responsible for fully understanding and effectively implementing the mitigation measures contained within the MMRP. The City will be responsible for monitoring compliance.



4.3 MITIGATION MONITORING AND REPORTING PROGRAM

The following table indicates the mitigation measure number, the impact the measure is designed to address, the measure text, the monitoring agency, implementation schedule, and an area for sign-off indicating compliance.



MITIGATION MONITORING AND REPORTING PROGRAM					
Oakley Logistics Center Project					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
Chapter 4.1 – Air Quality and Greenhouse Gas Emissions					
4.1-1	Conflict with or obstruct implementation of the applicable air quality plan during project construction.	<p>4.1-1(a) <i>Prior to issuance of a grading permit, the project applicant shall show on the grading plans via notation that the contractor shall ensure that all off-road heavy-duty diesel-powered equipment (e.g., rubber tired dozers, excavators, graders, scrapers, pavers, paving equipment, and cranes) to be used for each phase of construction of the project (i.e., owned, leased, and subcontractor vehicles) shall meet California Air Resources Board (CARB) Tier 4 Final emissions standards or cleaner. The grading plans shall be submitted for review and approval by the Public Works and Engineering Department. In addition, all off-road equipment operating at the construction site must be maintained in proper working condition according to manufacturer's specifications. Idling shall be limited to 5 minutes or less in accordance with the Off-Road Diesel Fueled Fleet Regulation as required by CARB.</i></p> <p><i>Idling shall be limited to five minutes or less for all on-road related and/or delivery trucks in accordance with CARB's On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation. Clear Signage regarding idling restrictions should be placed at the entrances to the construction site.</i></p>	City of Oakley Public Works and Engineering Department	Prior to issuance of a grading permit	
		<p>4.1-1(b) <i>All Improvement Plans for the proposed project shall identify, via notation, that all architectural</i></p>	City of Oakley Planning	Prior to approval of Improvement Plans	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<i>coatings, paints, finishes and adhesives used within the project site during project construction and operations shall be zero-VOC emitting. Furthermore, all future leases signed for proposed structures or operational spaces within the project site must contain binding language informing future tenants of the requirement that only zero-VOC architectural coatings, paints, finishes and adhesives may be used within the project site. Inclusion of such language within Improvement Plans for project construction shall be confirmed through submittal of Improvement Plans to the City of Oakley Planning Division for review and approval.</i>	Division		
4.1-2	Conflict with or obstruct implementation of the applicable air quality plan during project operation.	4.1-2 <i>Implement Mitigation Measure 4.1-1(b).</i>	See Mitigation Measure 4.1-1(b)	See Mitigation Measure 4.1-1(b)	
4.1-3	Expose sensitive receptors to substantial pollutant concentrations.	4.1-3 <i>Prior to issuance of building permits for each phase of development, the project applicant shall show on the building plans that all loading docks shall be equipped with dedicated electrical outlets sufficient to provide power to any truck mounted transportation refrigerated units accessing the loading docks. In addition, all loading docks shall be equipped with signage stating the following, "State regulations prohibit engine idling in excess of five minutes." The building plans shall be submitted for review and approval by the City of Oakley Building Division.</i>	City of Oakley Building Division	Prior to issuance of building permits	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
4.1-5	Generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment, or conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.	<p>4.1-5(a) <i>Implement Mitigation Measure 4.1-1(a).</i></p> <p>4.1-5(b) <i>Implement Mitigation Measure 4.1-3.</i></p> <p>4.1-5(c) <i>Improvement Plans and building plans for the proposed project shall identify all feasible mitigation measures developed in coordination with the BAAQMD and as determined by the City of Oakley Planning Division to reduce significant impacts to the extent feasible. Mitigation Measures may include, but would not be limited to, BAAQMD’s recommended mitigation measures such as the following:</i></p> <ul style="list-style-type: none"> • <i>Orient buildings to maximize passive solar heating;</i> • <i>Install programmable thermostat timers;</i> • <i>Limit outdoor lighting requirements;</i> • <i>Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting;</i> • <i>Provide education on energy efficiency to tenants. Provide information on energy management services for large energy users;</i> • <i>Meet “reach” goals for building energy efficiency and renewable energy use;</i> 	<p>See Mitigation Measure 4.1-1(a)</p> <p>See Mitigation Measure 4.1-3</p> <p>City of Oakley Planning Division</p> <p>BAAQMD</p>	<p>See Mitigation Measure 4.1-1(a)</p> <p>See Mitigation Measure 4.1-3</p> <p>Prior to approval of Improvement Plans and noted on building plans</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • Limit the use of outdoor lighting to only that needed for safety and security purposes; • Require use of electric or alternatively fueled sweepers with HEPA filters; • Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use; • Prohibit gas powered landscape equipment and implement electric yard equipment compatibility; • Provide local shuttles; • Implement area or cordon pricing; • Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site; • Install a system to reutilize gray water; • Use locally-sourced water supply; • Use of minimal amounts of concrete and asphalt; • Use of groundcovers rather than pavement to reduce heat reflection; • Shade HVAC equipment from direct sunlight; • Install high-albedo white thermoplastic polyolefin roof membrane; • Use recycled-content gypsum board; • Require all buildings to become "LEED" and "WELL" certified; • Increase in insulation such that heat transfer and thermal bridging is minimized in proposed structures; 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • <i>Limit air leakage through the structure and/or within the heating and cooling distribution system;</i> • <i>Installation of dual-paned or other energy efficient windows;</i> • <i>Installation of automotive devices to turn off lights where they are not needed;</i> • <i>Improve bike and pedestrian network (complete sidewalks, connection to adjacent areas, connection to bike network, etc.);</i> • <i>Implement bicycle and pedestrian facilities such as bike lanes, routes, and paths, bike parking, sidewalks, and benches;</i> • <i>Dedicate land on-site to facilitate future connections with the Big Break Regional Trail;</i> • <i>Promote ridesharing, transit, bicycling, and walking for work trips through dedication of preferential parking spaces, provision of on-site bicycle parking, provision of end-of-trip facilities such as bicycle lockers and on-site showers;</i> • <i>Subsidize employee transit passes;</i> • <i>Install electric vehicle charging infrastructure in excess of existing CBSC requirements;</i> • <i>Provide charging stations and preferential parking spots for electric vehicles;</i> 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • <i>Install energy star appliances;</i> • <i>Install solar water heating;</i> • <i>Install on-site renewable energy systems;</i> • <i>Use water efficient landscapes and native/drought-tolerant vegetation;</i> • <i>Provide outdoor electrical outlets to allow for use of electrically powered landscaping equipment;</i> • <i>Construct on-site or fund off-site carbon sequestration projects (such as tree plantings or reforestation projects); and</i> • <i>Purchase carbon credits to offset project annual emissions. Carbon offset credits shall be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by CARB, BAAQMD, or the City of Oakley.</i> <p><i>If off-site mitigation measures are proposed, the applicant must be able to show that the emission reductions from identified projects are real, permanent through the duration of the project, enforceable, and are equal to the pollutant type and amount of the project impact being offset. In addition, any off-site measures shall be subject to review and approval by to City of Oakley Planning Division. BAAQMD recommends that off-site mitigation projects occur within the nine-county Bay Area in order to reduce localized impacts and capture</i></p>			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>potential co-benefits. If BAAQMD has established an off-site mitigation program at the time a development application is submitted, as an off-site mitigation measure, the applicant may choose to enter into an agreement with BAAQMD and pay into the established off-site mitigation program fund, where BAAQMD would commit to reducing the type and amount of emissions identified in the agreement.</i></p>			
Chapter 4.2 – Biological Resources					
4.2-1	<p>Have a substantial adverse effect, either directly or through habitat modifications, on burrowing owl.</p>	<p>Areas of the Project Site Within the ECCC HCP/NCCP Permit Area and Off-Site Improvement Areas</p> <p>4.2-1(a) <i>Prior to the issuance of grading or construction permits for each phase of development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Development Fee in effect for Zone I in compliance with Article 7, Habitat Conservation Plan/Natural Community Conservation Plan Implementing Program, of the Oakley Municipal Code. The Development Fee will cover the development of habitat that primarily includes annual grassland. Payment of the Development Fee would address the loss of potential habitat of special-status plant species associated with grasslands. The fees would be used in part to protect these affected special-status plant species by bringing existing populations of the species under protection.</i></p>	<p>City of Oakley Planning Division</p> <p>Contra Costa County Conservancy</p>	<p>Prior to issuance of grading or construction permits for each phase of development within the ECCC HCP/NCCP Permit Area</p>	



<p align="center">MITIGATION MONITORING AND REPORTING PROGRAM Oakley Logistics Center Project</p>					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>Alternately, the project applicant may, in accordance with the terms of Oakley Municipal Code Article 7, offer to dedicate land in lieu of some or all of the mitigation fees. All applicable mitigation fees shall be paid, or an "in-lieu-of fee" agreement executed, prior to the issuance of a grading permit for the project.</i></p> <p><i>The Oakley Planning Division and the Contra Costa County Conservancy shall approve the final method of compliance with the ECCC HCP/NCCP provisions.</i></p> <p>4.2-1(b) <i>Preconstruction Survey</i></p> <p><i>Prior to any ground disturbance related to covered activities, a USFWS/CDFW- approved biologist will conduct a preconstruction survey in areas identified in the planning surveys as having potential burrowing owl habitat. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 1995).</i></p> <p><i>On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near</i></p>	<p>City of Oakley Planning Division</p> <p>CDFW</p>	<p>Prior to any ground disturbance related to covered activities within the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1 to August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1 to January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.</i></p> <p>Areas of the Project Site Outside the ECCC HCP/NCCP Permit Area</p> <p>4.2-1(c) <i>Preconstruction Survey</i></p> <p><i>Prior to any ground disturbance related to covered activities, a USFWS/CDFW-approved biologist will conduct a preconstruction survey in of potential burrowing owl habitat. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 2012).</i></p> <p><i>Compensatory Habitat Mitigation</i></p>	<p>City of Oakley Planning Division CDFW</p>	<p>Prior to any ground disturbance related to covered activities outside the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>If active owl burrows are identified during pre-construction surveys in areas of the project site outside of the ECCC HCP/NCCP Permit Area and the project would impact active burrows, the project applicant shall provide compensatory mitigation for the permanent loss of burrowing owl habitat at a ratio of 2.5 acres of higher quality owl habitat for every one acre of suitable owl habitat disturbed. The calculation of habitat loss may exclude acres currently occupied by hardscape or structures. Such mitigation may include the permanent protection of land that is deemed to be suitable burrowing owl habitat through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, or the purchase of burrowing owl conservation bank credits from a CDFW-approved burrowing owl conservation bank. A record of the compensatory mitigation provided by the project applicant shall be submitted to the City of Oakley Planning Division prior to initiation of ground disturbing activities.</i></p> <p>Entire Project Site and Off-Site Improvement Areas</p> <p>4.2-1(d) Avoidance, Minimization, and Construction Monitoring</p> <p><i>If burrowing owls are found during the breeding season (February 1 to August 31), the project proponent shall avoid all nest sites that could be disturbed by project construction during the</i></p>	<p>City of Oakley Planning Division</p> <p>CDFW</p>	<p>If burrowing owls are found during the breeding season (February 1 to August 31)</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1 to January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a buffer zone (described below).</i></p> <p><i>During the breeding season, buffer zones of at least 250 feet in which no construction activities can occur will be established around each occupied burrow (nest site). Buffer zones of 160 feet will be established around each burrow being used during the nonbreeding season. The buffers will be delineated by highly visible, temporary construction fencing.</i></p> <p><i>If occupied burrows for burrowing owls are not avoided, passive relocation shall be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for 1 week to confirm that the</i></p>			



MITIGATION MONITORING AND REPORTING PROGRAM Oakley Logistics Center Project					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<i>owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.</i>			
4.2-2	Have a substantial adverse effect, either directly or through habitat modifications, on Swainson's hawk.	<p>Areas of the Project Site Within the ECCC HCP/NCCP Permit Area and Off-Site Improvement Areas</p> <p>4.2-2(a) <i>Implement Mitigation Measure 4.2-1(a).</i></p> <p>4.2-2(b) <i>Preconstruction Survey</i></p> <p><i>Prior to any ground disturbance related to covered activities that occurs during the nesting season (March 15 to September 15), a qualified biologist will conduct a preconstruction survey no more than 1 month prior to construction to establish whether Swainson's hawk nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy will be determined by observation from public roads or by observations of Swainson's hawk activity (e.g., foraging) near the project site. If nests are occupied, minimization measures and construction monitoring are required (see below).</i></p>	<p>See Mitigation Measure 4.2-1(a)</p> <p>City of Oakley Planning Division</p> <p>CDFW</p> <p>USFWS</p>	<p>See Mitigation Measure 4.2-1(a)</p> <p>Prior to any ground disturbance related to covered activities during nesting season (March 15 to September 15) within the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
 Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>Avoidance, Minimization, and Construction Monitoring</i></p> <p><i>During the nesting season (March 15 to September 15), covered activities within 1,000 feet of occupied nests or nests under construction will be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the Implementing Entity will coordinate with CDFW/USFWS to determine the appropriate buffer size. If young fledge prior to September 15, covered activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project applicant can apply to the Implementing Entity for a waiver of this avoidance measure. Any waiver must also be approved by USFWS and CDFW. While the nest is occupied, activities outside the buffer can take place.</i></p> <p><i>All active nest trees will be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities will be mitigated by the project proponent according to the requirements of Mitigation Measure 4.2-2(c).</i></p>			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p>4.2-2(c) <i>Should the proposed project result in the loss of non-riparian Swainson’s hawk nest trees, the project applicant shall implement the following measures:</i></p> <ul style="list-style-type: none"> • <i>If determined to be feasible by the City of Oakley Planning Division, the project applicant shall provide for the planting of 15 saplings for every nest tree removed, with the objective of having at least five mature trees established for every tree lost, according to the requirements listed further below; and either of the following:</i> <ol style="list-style-type: none"> 1. <i>Pay the Implementing Entity an additional fee to purchase, plant, maintain, and monitor 15 saplings on the ECCC HCP/NCCP Preserve System for every tree lost according to the requirements listed below; OR</i> 2. <i>The project proponent will plant, maintain, and monitor 15 saplings for every tree lost at a site to be approved by the Implementing Entity (e.g., within an ECCC HCP/NCCP Preserve or existing open space linked to ECCC HCP/NCCP preserves),</i> 	<p>City of Oakley Planning Division</p> <p>Contra Costa County Conservancy</p>	<p>Prior to issuance of tree removal permits for trees within the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p align="center"><i>according to the requirements listed below.</i></p> <p><i>The following requirements shall be met for all planting options:</i></p> <ul style="list-style-type: none"> • <i>Tree survival shall be monitored at least annually for five years, then every other year until year 12. All trees lost during the first five years will be replaced. Success will be reached at the end of 12 years if at least five trees per tree lost survive without supplemental irrigation or protection from herbivory. Trees must also survive for at least three years without irrigation.</i> • <i>Irrigation and fencing to protect from deer and other herbivores may be needed for the first several years to ensure maximum tree survival.</i> • <i>Native trees suitable for this site should be planted. When site conditions permit, a variety of native trees will be planted for each tree lost to provide trees with different growth rates, maturation, and life span, and to provide a variety of tree canopy structures for Swainson's hawk. This variety will help to ensure that nest trees will be available in the short term (five-10 years for cottonwoods and willows) and in the long term (e.g., Valley oak, sycamore). This will also</i> 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>minimize the temporal loss of nest trees.</i></p> <ul style="list-style-type: none"> • <i>Riparian woodland restoration conducted as a result of covered activities (i.e., loss of riparian woodland) can be used to offset the nest tree planting requirement above, if the nest trees are riparian species.</i> • <i>Whenever feasible and when site conditions permit, trees should be planted in clumps together or with existing trees to provide larger areas of suitable nesting habitat and to create a natural buffer between nest trees and adjacent development (if plantings occur on the development site).</i> • <i>Whenever feasible, plantings on the site should occur closest to suitable foraging habitat outside the urban development area.</i> • <i>Trees planted in the HCP/NCCP preserves or other approved offsite location will occur within the known range of Swainson's hawk in the inventory area and as close as possible to high-quality foraging habitat.</i> <p><i>Prior to issuance of tree removal permits for the project site, the City of Oakley Planning Division shall be notified whether the proposed project would include removal of nesting trees. Should such removal be required for</i></p>			



MITIGATION MONITORING AND REPORTING PROGRAM Oakley Logistics Center Project					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>implementation of the proposed project, the Contra Costa County Conservancy shall be notified and the foregoing measures shall be implemented as applicable, through the tree removal permit granted by the City of Oakley.</i></p> <p>Areas of the Project Site Outside the ECCC HCP/NCCP Permit Area</p> <p>4.2-2(d) <i>Prior to initiation of ground disturbing activity for the project, the project applicant shall mitigate for the loss of suitable Swainson's hawk foraging habitat by implementing the following measure:</i></p> <ul style="list-style-type: none"> • <i>One acre of suitable foraging habitat shall be protected for each acre of suitable foraging habitat developed outside of the ECCC HCP/NCCP Permit Area. Protection shall be via purchase of mitigation bank credits or other land protection mechanism acceptable to CDFW.</i> <p><i>Proof of purchase of mitigation credits as required per the above mitigation options, shall be provided to the Oakley Planning Division for review and approval prior to initiation of ground disturbance for any portion of the project site.</i></p> <p>4.2-2(e) <i>The project applicant shall implement the following avoidance measures for potential effects on Swainson's hawk nests during construction:</i></p>	<p>City of Oakley Planning Division</p> <p>CDFW</p>	<p>Prior to initiation of ground disturbing activity outside the ECCC HCP/NCCP Permit Area</p>	
		<p>4.2-2(e) <i>The project applicant shall implement the following avoidance measures for potential effects on Swainson's hawk nests during construction:</i></p>	<p>City of Oakley Planning Division</p>	<p>Prior to ground disturbing activities during the nesting season (March 15</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • <i>Prior to ground disturbing activities during the nesting season (March 15 through September 15), a qualified biologist shall conduct a pre-construction survey no more than one month prior to construction to establish whether occupied Swainson's hawk nests occur on or within 1,000 feet of the area of proposed construction. The results of the survey shall be submitted to the City of Oakley Planning Division. If occupied nests are not found, then further mitigation is not required.</i> • <i>If occupied nests are found, project construction activity shall not occur within a 1,000-foot buffer zone distance from the nest unless a lesser buffer zone is approved by the City in consultation with CDFW. During the nesting season, construction activities shall be avoided within the established buffer zone to prevent nest abandonment. Construction monitoring shall be required to ensure that the established buffer zone is adhered to. If young fledge prior to September 15, construction activities can proceed normally without a buffer zone. If an active nest site is present but shielded from view and noise by other development or other features, the City may waive this avoidance</i> 	CDFW	to September 15) outside the ECCC HCP/NCCP Permit Area	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>measure (establishment of a buffer zone) if approved by the CDFW.</i></p> <ul style="list-style-type: none"> <i>All nest trees shall be preserved on site, if feasible. Nest trees that cannot be preserved may only be removed outside of the nesting season (i.e. nest trees may only be removed September 16 through March 14), and subject to the requirements of Mitigation Measure 4.2-2(b).</i> 			
4.2-3	Have a substantial adverse effect, either directly or through habitat modifications, on Golden Eagle.	<p>Areas of the Project Site Within the ECCC HCP/NCCP Permit Area and Off-Site Improvement Areas</p> <p>4.2-3(a) <i>Implement Mitigation Measure 4.2-1(a).</i></p> <p>4.2-3(b) <i>Preconstruction Survey</i></p> <p><i>Prior to implementation of covered activities, a qualified biologist shall conduct a preconstruction survey to establish whether nests of golden eagles are occupied (see Section 6.3.1, Planning Surveys of the ECCC HCP/NCCP). If nests are occupied, the following minimization requirements and construction monitoring shall be required.</i></p> <p><i>Avoidance and Minimization</i></p> <p><i>Covered activities shall be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although</i></p>	<p>See Mitigation Measure 4.2-1(a)</p> <p>City of Oakley Planning Division</p> <p>CDFW</p> <p>USFWS</p>	<p>See Mitigation Measure 4.2-1(a)</p> <p>Prior to implementation of covered activities within the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the Implementing Entity shall coordinate with CDFW/USFWS to determine the appropriate buffer size.</i></p> <p><i>Construction Monitoring</i></p> <p><i>Construction monitoring shall focus on ensuring that covered activities do not occur within the buffer zone established around an active nest. Although no known golden eagle nest sites occur within or near the Urban Limit Line, covered activities inside and outside of the Preserve System have the potential to disturb golden eagle nest sites. Construction monitoring shall ensure that direct effects to golden eagles are minimized.</i></p>			
4.2-4	Have a substantial adverse effect, either directly or through habitat modifications, on white-tailed kite, tricolored blackbird, California black rail, saltmarsh common yellowthroat, loggerhead shrike, Suisun song sparrow, song sparrow	<p>Areas of the Project Site Within the ECCC HCP/NCCP Permit Area and Off-Site Improvement Areas</p> <p>4.2-4(a) <i>Prior to any ground disturbance related to covered activities that occur during the nesting season (March 15 to August 31), a qualified biologist shall conduct a preconstruction survey for white-tailed kite no more than one month prior to construction to establish whether white-tailed kite is nesting in trees</i></p>	<p>City of Oakley Planning Division</p> <p>CDFW</p>	Prior to any ground disturbance related to covered activities during nesting season (March 15 to August 31) within the ECCC	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
	<p>"Modesto" population, and foraging or nesting habitat for other special-status avian species.</p>	<p><i>within or visible from the site or the off-site water quality basin. In the event active nests are found, the applicant shall notify the Implementing Entity and consult with CDFW for further guidance.</i></p> <p><i>Grasslands and trees in or near the site or the off-site water quality basin could be used by other species of nesting birds protected by the Migratory Bird Treaty Act. If possible, vegetation removal will occur outside of the general bird nesting season (February 1 through August 31). Alternately, a qualified biologist will conduct a preconstruction survey no more than two weeks prior to vegetation removal. In the event active nests are found, the applicant shall notify the Implementing Entity and consult with CDFW for further guidance</i></p> <p>Areas of the Project Site Outside the ECCC HCP/NCCP Permit Area</p> <p><i>4.2-4(b) If construction activities commence anytime during the nesting/breeding season of native bird species potentially nesting on or near the project site (typically February through August in the project region), a pre-construction survey for nesting birds shall be conducted by a qualified biologist within two weeks of the commencement of construction activities. The results of the survey shall be submitted to the City of Oakley Planning Division.</i></p>	<p>City of Oakley Planning Division CDFW</p>	<p>HCP/NCCP Permit Area</p> <p>If construction activities commence during the nesting/breeding season of native bird species (typically February through August) outside the ECCC HCP/NCCP Permit Area</p>	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>If active nests are found in areas that could be directly affected or are within 500 feet of construction and would be subject to prolonged construction-related noise, an initial no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The initial sizes of the buffer zones and types of construction activities restricted within them shall be a minimum of 500 feet for raptors, and a minimum of 50 feet for other species, and in consultation with CDFW may be reduced or enlarged by taking into account factors such as the following:</i></p> <ul style="list-style-type: none"> • <i>Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;</i> • <i>Distance and amount of vegetation or other screening between the construction site and the nest; and</i> • <i>Sensitivity of individual nesting species and behaviors of the nesting birds.</i> 			
4.2-5	Have a substantial adverse effect on riparian habitat or other sensitive natural community, or State or Federally protected wetlands (including, but	<p>Areas of the Project Site Within the ECCC HCP/NCCP Permit Area</p> <p>4.2-5(a) <i>Prior to the issuance of grading or construction permits for each phase of development of the project, the applicant shall pay the applicable ECCC HCP/NCCP per-acre Wetland</i></p>	City of Oakley Planning Division	Prior to the issuance of grading or construction permits for areas	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

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		<ul style="list-style-type: none"> • All wetlands to be avoided by covered activities shall be temporarily staked in the field by a qualified biologist. • Personnel conducting ground-disturbing activities within or adjacent to wetlands will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under the ECCC HCP/NCCP. • Trash generated during project construction shall be promptly and properly removed from the site. • Construction or maintenance vehicles shall not be refueled within 200 feet of wetlands unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill. • Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) shall be used on site to reduce siltation and runoff of contaminants into the wetlands. Filter fences and mesh shall be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians. 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • <i>Fiber rolls used for erosion control shall be certified as free of noxious weed seed.</i> • <i>Seed mixtures applied for erosion control shall not contain invasive non-native species, and shall be composed of native species or sterile non-native species.</i> • <i>Herbicides shall not be applied within or adjacent to on-site wetlands unless needed to control serious invasive plants. In this case, herbicides that have been approved for use by EPA in or adjacent to aquatic habitats may be used as long as label instructions are followed and applications avoid or minimize impacts on covered species and their habitats. Appropriate herbicides may be applied to the ruderal grassland within the buffer area during the dry season to control nonnative invasive species such as yellow star-thistle. Herbicide drift shall be minimized by applying the herbicide as close to the target area as possible.</i> <p>Areas of the Project Site Outside the ECCC HCP/NCCP Permit Area</p> <p><i>4.2-5(d) To the extent feasible, the project shall be designed to avoid and minimize adverse effects to waters of the U.S. or jurisdictional waters of the State of California within the</i></p>	City of Oakley Planning Division	Prior to approval of Improvement Plans for areas outside the ECCC	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>per activity and then by temporary and permanent. Information regarding project-specific drainage and hydrology changes resulting from project implementation shall be provided as well as a description of storm water treatment methods. Minimization and avoidance measures shall be proposed as appropriate and may include:</i></p> <ul style="list-style-type: none"> • <i>Preconstruction surveys and reporting;</i> • <i>Protective fencing around avoided biological resources;</i> • <i>Worker environmental awareness training;</i> • <i>Installation and maintenance of silt curtains and/or turbidity barriers;</i> • <i>Water quality monitoring with the authority to stop work should water quality degradation occur; and/or</i> • <i>Installation of other project-specific water quality best management practices.</i> <p><i>In addition, mitigation may include restoration or enhancement of resources on- or off-site, purchase habitat credits from an agency-approved mitigation/conservation bank off-site, such as the Cosumnes Floodplain Mitigation Bank, working with a local land trust to preserve land, or any other method acceptable to CDFW. A written record of the Section 1600 Lake or Streambed Alteration Agreement,</i></p>			



MITIGATION MONITORING AND REPORTING PROGRAM Oakley Logistics Center Project					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
4.2-6	Have a substantial adverse effect, either directly or through habitat modifications, on special-status fish species.	Entire Project Site 4.2-6 Implement Mitigation Measures 4.2-5(e) through 4.2-5(g).	See Mitigation Measures 4.2-5(e) through 4.2-5(g)	See Mitigation Measures 4.2-5(e) through 4.2-5(g)	
4.2-8	Conflict with any local policies or ordinances protecting biological resources, such as the City of Oakley's Heritage and Protected Tree standards.	Entire Project Site and Off-Site Improvement Areas 4.2-8 Prior to project-related tree removal, the project applicant shall be required to comply with the standards included in Section 9.1.1112 of the City's Municipal Code by implementing one of the options provided in Section 9.1.1112(g)(11)(a), to the satisfaction of the Director of the Community Development Department or the Planning Commission, as applicable.	City of Oakley Community Development Department City of Oakley Planning Commission	Prior to project-related tree removal	
Chapter 4.3 – Hydrology and Water Quality					
4.3-1	Violate any federal, State, or County potable water quality standards, create or contribute runoff water which would include substantial additional sources of polluted water, or otherwise substantially degrade surface or ground water quality during construction.	4.3-1 Prior to any grading activities, the applicant shall provide a Stormwater Pollution Prevention Plan (SWPPP) for the entire project site which shall include construction and post construction BMPs (including both physical and programs BMPs) to the satisfaction of the City Engineer. The SWPPP shall include the following: <ul style="list-style-type: none"> • Utilize on-site sediment control BMPs to retain sediment on the project site, such as: straw wattle; silt fences, storm drain inlet protection, erosion control blankets, and concrete washouts; 	City Engineer	Prior to any grading activities	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<ul style="list-style-type: none"> • Stabilized construction entrances and/or Wheel washing racks; • Cover soil, equipment and supplies that could contribute pollution prior to rainfall events or monitoring runoff; • Perform monitoring of discharges to the stormwater system; and • Provide permanent cover to stabilize the disturbed surfaces after construction has been completed, as the project is a phased development. 			
4.3-4	Substantially alter the existing drainage pattern of the site or area, or increase the rate or amount of surface runoff.	<p>4.3-4 As part of the Improvement Plan submittal process, the preliminary Stormwater Control Plan provided during environmental review shall be submitted in final format for the review and approval of the City Engineer or Public Works and Engineering Department. The final Stormwater Control Plan will be reviewed in concert with the Improvement Plans to confirm conformity between the two. The report shall be prepared by a Registered Civil Engineer and shall, at a minimum, include: A written text addressing existing conditions, the effects of the proposed improvements, all appropriate calculations, watershed maps, changes in flows and patterns, and proposed on- and off-site improvements to accommodate flows from this project. The report shall identify water quality protection features and methods to be used during construction, as well as long-term post-construction water quality measures. The final Stormwater Control Plan shall be prepared in conformance with the requirements of the C.3 Guidebook that are in</p>	City Engineer City of Oakley Public Works and Engineering Department	Prior to approval of Improvement Plans	



MITIGATION MONITORING AND REPORTING PROGRAM Oakley Logistics Center Project					
Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<i>effect at the time of Improvement Plan submittal.</i>			
4.3-5	Substantially alter the existing drainage pattern of the site or area in such a manner as to impede or redirect flood flows.	4.3-5 <i>As part of the Improvement Plan submittal process, the project applicant shall obtain a Conditional Letter of Map Revision Based on Fill from FEMA for the placement of a development within the FEMA-identified Flood Hazard Zone AE. A copy of the Conditional Letter of Map Revision Based on Fill from FEMA shall be submitted to the Public Works and Engineering Department prior to issuance of certificates of occupancy.</i>	City of Oakley Public Works and Engineering Department	Prior to approval of Improvement Plans	
Chapter 4.4 – Transportation and Circulation					
4.4-2	Impacts to study intersections under Baseline Plus Project conditions.	4.4-2 <i><u>Oakley Road/Live Oak Avenue</u> – Prior to issuance of the first building permit, the project applicant shall pay a fair-share contribution to the City of Oakley to fund widening of the westbound Oakley Road approach to the Oakley Road/Live Oak Avenue intersection to allow for a separate right turn lane, to the satisfaction of the City Engineer. The improvement is included in the City's 2017 Traffic Impact Fee Update (Item #38).</i>	City Engineer	Prior to issuance of the first building permit	
4.4-6	Impacts related to construction vehicle traffic.	4.4-6 <i>Prior to issuance of demolition or grading permits, the project applicant shall prepare and submit a Traffic Control Plan to the City for review and approval. The Traffic Control Plan shall include, but not be limited to, the following items, to the satisfaction of the City Engineer.</i> <ul style="list-style-type: none"> • <i>Truck drivers shall be notified of and required to use the most direct route between the site and SR 4, as</i> 	City Engineer	Prior to issuance of demolition or grading permits	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>determined by the City Engineering Department;</i></p> <ul style="list-style-type: none"> • <i>All site ingress and egress shall occur only at the main driveways to the project site and construction activities may require installation of temporary (or ultimate) traffic signals as determined by the City Engineer;</i> • <i>Specifically-designated travel routes for large vehicles shall be monitored and controlled by flaggers for large construction vehicle ingress and egress;</i> • <i>Warning signs indicating frequent truck entry and exit shall be posted on Wilbur Avenue;</i> • <i>Any debris and mud on nearby streets caused by trucks shall be monitored daily and may require instituting a street cleaning program;</i> • <i>Construction employee parking shall be provided on the project site to eliminate conflicts with nearby areas. Construction of the project shall be staggered so that employee parking demand is met primarily by using on-site parking; and</i> • <i>If importation and exportation of material becomes a traffic nuisance, the City Engineer shall limit the hours the activities can take place.</i> 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<i>intersection to include a four-lane cross-section, to the satisfaction of the City Engineer.</i>			
4.4-10	Impacts to freeway operations under Cumulative Plus Project conditions.	<i>4.4-10 Prior to issuance of building permits, the project applicant shall pay the applicable Regional Transportation Development Impact Mitigation (RTDIM) Fee to fund regional freeway system improvements along SR 4. Proof of payment shall be submitted to the City of Oakley Planning Division.</i>	City of Oakley Planning Division	Prior to issuance of building permits	
4.4-11	Substantially increase cumulative hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).	<i>4.4-11 Implement Mitigation Measures 4.4-7(a), 4.4-7(b), and 4.4-8(a).</i>	See Mitigation Measures 4.4-7(a), 4.4-7(b), and 4.4-8(a)	See Mitigation Measures 4.4-7(a), 4.4-7(b), and 4.4-8(a)	
Initial Study					
V-b,c.	<p>b. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5?</p> <p>c. Disturb any human remains, including those interred outside of formal cemeteries?</p>	<i>V-1. If buried archaeological, paleontological, and/or cultural resources are encountered during site grading or other site work, all such work shall be halted immediately within 100 feet of the discovery and the developer shall immediately notify the Planning Division of the discovery. In such case, the developer shall be required, at their own expense, to retain the services of a qualified archaeologist for the purpose of recording, protecting, or curating the discovery, as appropriate. The archaeologist shall be required to submit to the City of Oakley Planning Division for review and approval a report of the findings and method of curation or</i>	City of Oakley Planning Division	If buried archaeological, paleontological and/or cultural resources are encountered during site grading or other site work	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		<p><i>protection of the resources. Further grading or site work within the area of discovery would not be allowed until the preceding work has occurred.</i></p> <p><i>The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.</i></p> <p>V-2. <i>Pursuant to State Health and Safety Code §7050.5 (c) State Public Resources Code §5097.98, if human bone or bone of unknown origin is found during construction, all work shall stop within 100 feet of the find and the Contra Costa County Coroner shall be contacted immediately. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission, who shall notify the person believed to be the most likely descendant. The most likely descendant shall work with the contractor to develop a program for re-internment of the human remains and any associated artifacts. Additional work is not to take place within 100 feet of the find until the identified appropriate actions have been implemented.</i></p>	<p>Contra Costa Coroner</p> <p>NAHC</p>	<p>If human bone or bone of unknown origin is found during construction</p>	
VII-aii, aiii, c.	a. Expose people or structures to potential substantial adverse effects, including the risk of	VII-1. <i>Prior to issuance of a grading permit, the applicant/developer shall incorporate the recommendations of a design-level geotechnical report into the Improvement Plans for approval by the City Engineer. The</i>	City Engineer	Prior to issuance of a grading permit	



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
	<p>loss, injury, or death involving:</p> <p>ii. Strong seismic ground shaking?</p> <p>iii. Seismic-related ground failure, including liquefaction?</p> <p>c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</p>	<p><i>following measures include, but are not limited to, the options available to reduce site liquefaction potential and expansive soils, and/or adverse effects to structures located above potentially liquefiable soils. Once final grading plans are designed, the project's geotechnical engineers shall determine the appropriate methods of mitigating the effects of liquefaction, such as:</i></p> <ul style="list-style-type: none"> • <i>Remove and replace potentially liquefiable soils and/or expansive and corrosive soils;</i> • <i>Strengthen foundations (e.g., post-tensioned slab, reinforced mat or grid foundation, or other similar system) to resist excessive differential settlement associated with seismically-induced liquefaction;</i> • <i>Support the proposed structures on an engineered fill pad (minimum of 5 feet thick) in order to reduce differential settlement resulting from seismically-induced liquefaction and post-seismic pore pressure dissipation; and/or</i> • <i>Densify potentially liquefiable soils with an in-situ ground improvement technique such as deep dynamic compaction, vibro-compaction, vibro-replacement, compaction grouting, or other similar methods.</i> 			



**MITIGATION MONITORING AND REPORTING PROGRAM
Oakley Logistics Center Project**

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		VII-2. <i>All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by the Director of Public Works/City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations specified in the geotechnical report required by Mitigation Measure VI-1 are properly incorporated and utilized in the project design.</i>	Director of Public Works/City Engineer Chief Building Official Qualified Geotechnical Engineer	Prior to issuance of grading and building permits	
VII-f.	f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	VII-3. <i>Implement Mitigation Measures V-1 and V-2.</i>	See Mitigation Measures V-1 and V-2.	See Mitigation Measures V-1 and V-2.	

