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Secretary for
Environmental Protection



Department of Toxic Substances Control

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SENT VIA ELECTRONIC MAIL

Governor's Office of Planning & Research

August 22, 2022

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Ms. Cassandra van der Zweep
City of San Jose
Department of Planning, Building, and Code Enforcement
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STATE CLEARINGHOUSE

DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE QUME AND COMMERCE
PROJECT – DATED JULY 2022 (STATE CLEARINGHOUSE NUMBER: 2022010603)

Dear Ms. van der Zweep:

The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Report (EIR) for the Qume and Commerce Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, and/or importation of backfill soil.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the EIR:

1. The EIR acknowledges that historic site activities have resulted in the release of hazardous wastes/substances on the project site. Historic site uses detailed in the EIR included agriculture, office buildings, research and development, manufacturing/assembling, and other commercial purposes. The Project site is currently developed with an industrial/business park complex containing three buildings that total approximately 425,433 square feet and is used by a medical device company. Adjacent uses are generally comprised of commercial and industrial properties.

According to the EIR, a Phase I Environmental Site Assessment, a Soil and Soil Vapor Investigation, Agricultural Chemical Sampling Report were prepared by Ardent Environmental Group, Inc. to address potential impacts concerning hazards and hazardous materials associated with implementation of the Project.

DTSC recognizes the rationale for these activities given the historic and current uses of the Project site and adjacent properties. However, the EIR does not identify an appropriate agency that has provided regulatory oversight and concurrence that the proposed project is protective of human health and the environment.

A regulatory agency such as DTSC or Regional Water Quality Control Board (RWQCB), or a qualified local agency that meets the requirements of [Assembly Bill 304 \(AB304\)](#) should provide regulatory concurrence that the site is safe for construction and the proposed use. The City of San José Environmental Services Department does not currently meet the requirements of a local agency that meets the criteria of AB304.

Table ES-1: Summary of Significant Impacts and Mitigation Measures states construction activities associated with the proposed Project would disturb potentially volatile organic compound (VOC) contaminated soils beneath building slabs within proposed parcels 244-15-026 and 244-15-003, which could result in impacts to construction workers and future site occupants from exposure to soil and/or soil vapor that is in exceedance of the Commercial/Industrial Environmental Screening Levels for VOCs. The first mitigation measure includes preparation of a Construction Health and Safety Plan (Plan) that shall be prepared by a qualified environmental professional and submitted to the City of San José Environmental Services Department. This Plan should be submitted to DTSC or other qualified regulatory agency for review and approval. Appropriate regulatory oversight is necessary to ensure the health of construction workers and the surrounding community is protected during construction activities.

The second mitigation measure addressing VOC contaminated soil is for the applicant to conduct additional soil gas testing in the areas where VOC exceedances were detected to determine soil gas concentrations and to submit the data to the City of San José Environmental Services Department for review. The EIR states that if the results from soil gas testing indicate that concentrations of VOCs are above applicable regulatory environmental screening levels for an industrial use, that the applicant shall obtain regulatory oversight from the RWQCB, DTSC, or the Santa Clara County Department of Environmental Health (SCCDEH). DTSC, RWQCB, or a qualified local agency should provide regulatory oversight of soil gas sampling activities, including planning, from the onset. Appropriate regulatory oversight is necessary to ensure the nature and extent of contamination is determined and evaluated using current industry standards.

The EIR should identify the mechanism(s) to initiate any required investigation and/or remediation and the qualified government agency that will be responsible for providing appropriate regulatory oversight.

For DTSC or RWQCB oversight, the [Request for Lead Agency Oversight Application](#) should be completed and submitted.

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC recommends collecting soil samples for lead analysis under guidance from an approved oversight agency prior to performing any intrusive activities for the project described in the EIR.
3. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to [DTSC's 2001 Information Advisory Clean Imported Fill Material](#).

DTSC appreciates the opportunity to comment on the EIR. Should you choose DTSC to provide oversight for any environmental investigations, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,



Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

Ms. Cassandra van der Zweep
August 22, 2022
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cc: (via email)

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