FINAL

ENVIRONMENTAL IMPACT REPORT

BANNING COMMERCE CENTER PROJECT

DR 21-7017, ENV 21-1524

SCH NO. 2022090102

Lead Agency

City of Banning
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Banning, CA 92220

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October 2024

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Acronyms and Initialisms

AB	Assembly Bill
ALUCP	Airport Land Use Compatibility Plan
AQ	Air Quality
AQMP	Air Quality Management Plan
BIO	Biological Resources
BMP	Best Management Practices
BRTR	Biological Resources Technical Report
CALGreen	California Green Building Standards Code
CARB	California Air Resources Board
CDFG	California Fish and Game Code
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CNPS	California Native Plant Society
CO2	Carbon Dioxide
CRPR	California Rare Plant Ranks
CWA	Clean Water Act
CY	Cubic Yard
DAC	Disadvantaged Communities
DBESP	Determination of Biologically Equivalent or Superior Preservation
EIR	Environmental Impact Report
EPA	Environmental Protection Agency
g/bhp-hr	Grams per brake horsepower-hour
GHG	Greenhouse Gas
GIS	Geographic Information Systems
HMMP	Habitat Mitigation and Monitoring Plan
Hp	Horsepower
ITE	Institute of Transportation Engineers
KVA	1,000 volt-amps

LEED	Leadership in Energy and Environmental Design
LOR	Laws, Ordinances, and Rules
LOS	Level of Service
LST	Localized Significant Threshold
MBTA	Migratory Bird Treaty Act
MM	Mitigation Measure
MMRP	Mitigation Monitoring and Reporting Program
MSHCP	Multiple Species Habitat Conservation Plan
$MTCO_2e$	Metric tons of carbon dioxide equivalent
NOP	Notice of Preparation
NO_x	Nitric Oxide
NEPS	Narrow Endemic Plant Species
NPDES	National Pollutant Discharge Elimination System
NPPA	Native Plant Protection Act
NZE	Near-Zero Emission
PDF	Project Design Feature
PM	Particulate Matter
PV	Photovoltaic
RCA	Regional Conservation Authority
RIVCOM	Riverside County Model
RTP/SCS	Regional Transportation Plan/Sustainable Communities Strategy
RWQCB	Regional Water Quality Control Board
SB	Senate Bill
SC	Standard Condition
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SLA	Special Linkage Area
SSC	Species of Special Concern
TCR	Tribal Cultural Resources
TDM	Transportation Demand Management

TRU	Transport Refrigeration Units
USFWS	United States Fish and Wildlife Service
VMT	Vehicle Miles Traveled
VOC	Volatile Organic Compounds
WAIRE	Warehouse Actions and Investments to Reduce Emissions
ZE	Zero Emission
ZEV	Zero-Emission Vehicles

Section 1.0 Introduction

1.1 INTRODUCTION

The Final Environmental Impact Report (Final EIR) for the Banning Commerce Center Project has been prepared in accordance with the California Environmental Quality Act (CEQA), and CEQA Guidelines. CEQA Guidelines Section 15132 indicates that the contents of a Final EIR shall consist of:

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or, as a minimum, a table showing where each of the subjects is discussed. When the Lead Agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

The Final EIR includes all of these required components.

In accordance with § 15088 of the State CEQA Guidelines, the City of Banning, as the lead agency for the proposed Project, evaluated comments received on the Draft EIR (State Clearinghouse No. 2022090102) and has prepared responses to the comments received. The preceding Table of Contents and Section 1.0 provides of a list of all persons, organizations, and public agencies commenting on the Draft EIR. Section 2.0 includes the Responses to Comments received on the Draft EIR. It should be noted that responses to comments also result in various editorial clarifications and corrections to the original Draft EIR text. Added or modified text is shown in Section 3.0, Errata, by underlining (<u>example</u>) while deleted text is shown by striking (~~example~~). The additional information, corrections, and clarifications are not considered to substantively affect the conclusions within the EIR. This Response to Comments document is part of the Final EIR, which includes the EIR pursuant to § 15132 of the State CEQA Guidelines.

After review and discussion by City staff and the City Planning Commission, responses to comments will be sent to commenting agencies and individuals. This satisfies the requirement of Section 21092.5 of CEQA to send responses to the public agency comments received on the Draft EIR at least 10 days prior

to Project approval. This document includes responses to all written and verbal comments received on the Draft EIR.

1.2 ORGANIZATION OF EIR

This Final EIR provides the requisite information required under CEQA and is organized as follows:

Section 1.0 Introduction. This section provides an introduction to the Final EIR, including the requirements under CEQA, the organization of the document, as well as brief summary of the CEQA process activities to date.

Section 2.0 Comments and Responses. This section provides a list of public agencies, organizations, and individuals commenting on the Draft EIR, provides a copy of each written comment received, and any response required under CEQA.

Section 3.0 Errata to the Draft EIR. This section details changes to the Draft EIR.

Appendix. This section provides additional content where needed and cross-referenced from the body of the Final EIR.

1.3 CEQA PROCESS HISTORY

The City has complied with relevant Public Resources Code provisions and CEQA Guidelines regarding the preparation and processing of the Project EIR. A brief summary of the Project's CEQA process is as follows:

- A Notice of Preparation (NOP) informing interested parties and agencies of the Project was distributed on August 29, 2022. The NOP was recirculated on September 2, 2022 with the 30-day review period ending on October 3, 2022.
- Written and verbal comments were given at a public scoping meeting held for the Project on September 20, 2022.
- Following a Notice of Completion (NOC), the DEIR and Notice of Availability was distributed for public review and comment for a 45-day period, beginning June 17, 2024. There was an error with the CEQAnet upload and the public review period was extended to August 19, 2024 and the public review period lasted a total of 63 days.

1.4 CHANGES TO THE DRAFT EIR

Section 3.0, Errata to the Draft EIR details the changes to the Draft EIR. Most of the changes to the Draft EIR represent clarifications to the existing content. Added or modified text is shown in Section 3.0, Errata, by double underlining (<u>example</u>) while deleted text is shown by striking (~~example~~).

Section 2.0 Comments and Responses to Draft EIR

2.1 INTRODUCTION TO COMMENTS AND RESPONSES

Table 2.0-1 below provides a list of those parties that provided written comments on the Draft EIR during the public review period. In addition, one comment letter was received after the close of the public review period. Each comment document has been assigned a letter as indicated in the table.

A copy of the written comments are provided in this section, and have been annotated with the assigned letter along with a number for each comment. Each comment document is followed by a written response which corresponds to the comments provided.

Please note that the appendices to the Final EIR support the responses to comments received. Appendix A includes all of the comment letters as they were received and have had an optical character recognition process to allow searchability on computer based PDF readers.

Table 2.0-1: Comments from Public Agencies, Organizations and Individuals

Letter	Date Received	Organization/Name
State/Regional Agencies		
S1	08-02-2024	California Department of Fish and Wildlife
S2	08-01-2024	South Coast Air Quality Management District
Tribal Governments		
T1	07-24-2024	Morongo Band of Mission Indians
Local Agencies/Governments		
L1	07-29-2024	Riverside County Flood Control and Water Conservation District
Organizations		
O1	07-19-2024	Advocates for the Environment
O2	08-02-2024	California Native Plant Society
O3	08-01-2024	Center for Biological Diversity
O4	07-05-2024	Coalition for Californians Allied for a Responsible Economy
O5	07-31-2024	Golden State Environmental Justice Alliance
O6	08-02-2024	Oswit Land Trust
O7	07-03-2024	SC Wildlands
O8	08-02-2024	SC Wildlands
O9	08-01-2024	Stand Up for Mother Earth

Comment Letter S1 – California Department of Fish and Wildlife

Comment Letter S1

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 2, 2024

Emery Papp
Senior Planner
99 E. Ramsey Street
Banning, CA 92220
epapp@banningca.gov

Subject: Draft Environmental Impact Report, Banning Commerce Center Project, State Clearinghouse No. 2022090102, City of Banning, Riverside County

Dear Emery Papp:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Banning (City) for the Banning Commerce Center Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines[1].

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. 1

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources. 2

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). 3

1 CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Likewise, to the extent implementation of the Project as proposed may result in "take", as defined by State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code. cont'd 3

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, et seq., of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. CDFW is providing the following comments as they relate to the Project's consistency with the MSHCP and CEQA. 4

PROJECT DESCRIPTION AND SUMMARY

Description: The City of Banning (City; Lead Agency) are proposing the Banning Commerce Center Project (Project).

The Project proposes the development of approximately 1,320,284 square feet of warehouse spaces, including office space, within one concrete tilt-up building. The Project also proposes associated facilities and improvements of the Project site including loading dock doors, onsite landscaping, trailer parking stalls, passenger vehicle parking stalls, drive aisles, landscaping, stormwater detention, and related onsite and offsite improvements. 5

Location: The Project site is located north of I-10 freeway, east of north Hathaway Street, and bisected by Wilson Street, in the City of Banning, County of Riverside, State of California, in Township 3 South, Range 1 East, of the U.S. Geological Survey 7.5-minute series Cabazon, California Quadrangle, San Bernardino Baseline and Meridian; Assessor's Parcel Numbers 532-030-008, 532-030-009, 532-080-008, 532-080-010, 532-090-026, 532-090-028, 532-090-030, and 532-110-015.

COMMENTS AND RECOMMENDATIONS

Based on the documents for review, CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also included to improve the environmental document. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). 6

Western Riverside County Multiple Species Habitat Conservation Plan

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP.

To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; and demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2 of the MSHCP); 2) the Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP); 3) the policies set forth in Additional Survey Needs and Procedures Section 6.3.2; and 4) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP. 7

Specific Comments

Comment #1: Burrowing Owl

Issue: The Project may have a significant impact on burrowing owl (*Athene cunicularia),* a California Species of Special Concern (SSC).

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owl, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may impact breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and statewide declines of burrowing owl. 8

Why impacts would occur: The DEIR identifies that burrowing owl have the potential to occur within the Project site; however, MM BIO-1 provides no buffer or avoidance and minimization measures if burrowing owls are found during the pre-activity surveys. MM BIO-1 would require a pre-activity field survey and findings report to be completed, regardless of what time of year construction begins. However, there was no detail provided for a no-work buffer or any additional avoidance or minimization measures to be implemented if burrowing owl are found during the pre-activity surveys. 9

Evidence impact would be significant: Burrowing owl is an SSC, which is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as Endangered Species Act (ESA)-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or,
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022b). CEQA provides protection not only for ESA and CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). In addition, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.

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In California, burrowing owls are in decline primarily because of habitat loss, as well as disease, predation, and drought. Burrowing owls require specific soil and microhabitat conditions, occur in few locations within a broad habitat category of grassland and some forms of agricultural land, require a relatively large home range to support their life history requirements, occur in relatively low numbers, and are semi-colonial.

The Project's impact on burrowing owl has yet to be mitigated below a significant level. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To avoid take of active burrowing owl burrows (nests), CDFW requests the City include the following mitigation measures in the DEIR as shown below

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(edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

MM BIO-1: In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California Fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey **presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist** ~~for burrowing owls is required~~ prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. **In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW.**

If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately **stop work** and inform the City of Banning and the Wildlife Agencies **(California Department of Fish and Wildlife [CDFW] and US Fish and Wildlife Service [USFWS]). In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken** including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. **CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.**

The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied

cont'd
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burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.

A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping.

If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl has not colonized the site since it was last disturbed. If burrowing owl is found, the same coordination described above will be necessary.

cont'd 11

Comment #2: Nesting Birds

Issue: The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 3513 and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

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Why impacts would occur: Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy

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equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feathers and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence in the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 20172). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey *regardless* of time of year to ensure compliance with all applicable laws pertaining to nesting birds and to avoid take of nests.

The time required for birds to build a nest and incubate eggs varies considerably; therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in Take of nesting birds. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

cont'd 13

Evidence impacts would be significant: It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise

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[2] Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

provided by Fish and Game Code or any regulation adopted pursuant thereto. These regulations apply anytime nests or eggs exist on the Project site.

cont'd 14

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To address the above issues and help the Project applicant avoid unlawfully taking nesting birds, CDFW requests the City include the following mitigation measures in the Final EIR as shown below (edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

> **MM BIO-2:** Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the **Migratory Bird Treaty Act and California Fish and Game (**CDFG**)** Code Section 3503**, 3503.5, and 3513. Site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season.** ~~Construction outside of the nesting season (between September 1st and January 31st) does not require pre-removal nesting bird surveys. If construction is proposed between February 1st and August 31st, a qualified biologist will conduct a preconstruction nesting bird and raptor survey(s) no more than three days prior to initiation of grading to document the presence or absence of nesting birds within or directly adjacent to the Project site.~~ **Regardless of the time of year, a qualified biologist shall conduct a nesting bird survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading**. The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. **The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following:**
>
> 1. **Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**

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2. **Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.**

~~If active nests are documented, species-specific measures will be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest will be postponed until the young birds have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, will be submitted to the City of Banning for review and approval prior to initiation of grading in the nest-setback zone~~. **If no nesting birds are observed during the survey, site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Banning, based on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer.** The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. **The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require**

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implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFW Code. ~~Any nest permanently vacated for the season would not warrant protection pursuant to the CDFG Code.~~

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Comment #3: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or deposit debris, waste, or other materials that could pass into any river, stream, or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. CDFW requests the following details be added to MM BIO-3 to further aid the Project Proponent in submission of a complete Streambed Alteration Agreement application.

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Recommended potentially feasible mitigation measure(s):

Mitigation Measure #1: To reduce impacts to aquatic and riparian resources to a level less than significant, CDFW recommends that the City include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may be affected by the proposed Project.

CDFW recommends the inclusion of the following measure in the Final EIR as shown below (edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

MM BIO-3: Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certification and a CDFW Section 1602 Streambed Alteration Agreement. **The Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

The notification to CDFW should provide the following information:

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1. **A stream delineation including the bed, bank, and channel;**

2. **Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);**

3. **A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and**

4. **A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.**

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Currently, the impacted drainages and overall watershed are not within an area served by an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, **at minimum** 1.62-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the Whitewater Watershed, it is assumed **at minimum** 1.62- acres of on-site creation is required as outlined below. If it is determined that on-site mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The offsite location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or offsite, the mitigation site will require long-term maintenance and management by a qualified conservancy and payment of a nonwasting endowment to fund the long-term maintenance.

To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to **a minimum of** 0.54-acre of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP.

- Permanent Impacts to **a minimum of** 0.54-acres of jurisdictional features will be mitigated at a minimum of a 3:1 ratio (1.62 acres) through the creation of in-kind habitat on-site along the

eastern and northern most Project boundary. If it is determined that on-site mitigation or off-site is not feasible, additional alternatives could include payment into an acceptable and approved mitigation bank should one become available at the time of impacts and permitting.

- A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed, and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies.

- A DBESP will be also prepared, reviewed, and approved by the City of Banning and MSHCP wildlife agencies **prior to the adoption of the final EIR**.

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Comment #4: Western Riverside County MSHCP Special Linkage Area

The Project may have a significant impact on the Western Riverside County MSHCP Special Linkage Area as defined in Section 3 of the planning document. Project construction and activities may interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites. The DEIR identifies that the Project is within a Special Linkage Area as shown in Volume 1 of the MSHCP, and tribal coordination regarding American Indian Lands will be necessary in this area. However, the DEIR does not have a specific mitigation measure that recognizes how the MSHCP Special Linkage Area process will work to ensure that MSHCP implementation occurs.

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Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To comply with the Western Riverside County MSHCP, CDFW requests the City include the following mitigation measures in the DEIR as shown below (edits are in strikethrough and bold) and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

MM BIO-XX: Prior to the adoption of the Final EIR, the City shall coordinate with and obtain concurrence from local Tribes and the Western Riverside County Regional Conservation Authority (RCA) that the project will not adversely affect the Special Linkage Area, nor interfere

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substantially with the movement of any fish or wildlife species or with established wildlife corridors. cont'd 19

Comment #5: Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2)

The procedures described in the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP Plan (MSHCP Section 6.1.2) are to ensure that the biological functions and values of these areas are maintained throughout the MSHCP Plan Area (including all areas of the Plan located outside the Criteria Area). Additionally, this process helps identify areas to consider for priority acquisition, as well as those functions that may affect downstream values related to Conservation of Covered Species within the MSHCP Conservation Area. The assessment of riparian/riverine and vernal pool resources may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines. However, the MSHCP identifies that the U.S. Fish and Wildlife Service and CDFW shall be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). As required by the MSHCP Plan, its Implementation Agreement, and the City's associated take permits from USFWS and CDFW, completion of the DBESP process prior to adoption of the environmental document helps to ensure that the Project will be consistent with the MSHCP Plan, and provides public disclosure and transparency during the CEQA process by identifying the Project impacts and mitigation for wetland habitats and species, a requirement of CEQA Guidelines, §§ 15071, subds.(a)-(e). 20

The MSHCP identifies that assessment of these areas include identification and mapping of riparian/riverine areas and vernal pools. The assessment shall consider species composition, topography/ hydrology, and soil analysis, where appropriate. The documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species identified in Section 6.1.2 of the MSHCP. Factors to be considered include hydrologic regime, flood storage and flood-flow modification, nutrient retention and transformation, sediment trapping and transport, toxicant trapping, public use, wildlife habitat, and aquatic habitat.

The MSHCP identifies that for mapped riparian/riverine and vernal pool resources that are not included in the MSHCP conservation area, applicable mitigation under CEQA shall be imposed by the Permittee (in this case the Lead Agency). Furthermore, the MSHCP identifies that to ensure the standards in Section 6.1.2 are met, the Permittee shall ensure that, through the CEQA process, project applicants develop project alternatives demonstrating efforts that first avoid, and then minimize direct and indirect effects to the wetlands mapped pursuant to Section 6.1.2. If an avoidance alternative is not feasible, a practicable alternative that minimizes direct and indirect effects to

riparian/riverine areas and vernal pools and associated functions and values to the greatest extent possible shall be selected. Those impacts that are unavoidable shall be mitigated such that the lost functions and values as they relate to Covered Species are replaced as through the Determination of Biologically Equivalent or Superior Preservation (DBESP) process.

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The City is required to ensure the Applicant completes the DBESP process prior to completion of the EIR to demonstrate implementation of MSHCP requirements in the CEQA documentation. The Wildlife Agencies appreciate the analysis of impacts provided within the EIR and its General Biological Resource Assessment. However, the MSHCP implementation process is not complete, because a DBESP has not been prepared and submitted to the Wildlife Agencies for review and response to determine if the mitigation proposed for the impacts to riparian/riverine resources is biologically equivalent or superior preservation to avoidance. It is not appropriate for the City to adopt the EIR until the DBESP is complete because the City is required to notify the Wildlife Agencies in advance of approval of public and private projects for identified MSHCP activities, such as completion of the DBESP for the riparian/riverine policy (Section 6.11 of the MSHCP).

The Wildlife Agencies request that the City of Banning complete the DBESP process, and once the DBESP is complete, then update the EIR with the riparian/riverine mitigation measures identified in the DBESP. This process would demonstrate the Project's consistency with and the City's implementation of the MSHCP.

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Comment #6: Narrow Endemic Plants

Issue: The Project may impact narrow endemic plant species outlined in MSHCP Section 6.1.3.

Specific Impacts: Portions of the Project site fall within the MSHCP Section 6.1.3 survey area and have the potential to support the following narrow endemic plant species: Marvin's onion (*Allium marvinii*) and many-stemmed dudleya (*Dudleya multicaulis*).

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Why impact would occur: As noted in the DEIR, the Project site occurs within survey areas for narrow endemic plant species, MSHCP Section 6.1.3, including Marvin's onion (*Allium marvinii,* RPR 1B.2), and many-stemmed dudleya (*Dudleya multicaulis,* RPR 1B.2), which have the potential to occur onsite. While the DEIR indicates that focused surveys were conducted for narrow endemic plant species in November 2021, the results and details of the surveys were not discussed in detail.

Based on rainfall in a given year, surveys for Marvin's onion and many-stemmed dudleya should be typically done at peak blooming, which can be from March through the end of July. The DEIR should include surveys for these species done within the appropriate time of year. Absent further survey details and because survey were

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conducted outside of the blooming period for these species, CDFW cannot confirm whether presence or absence for narrow endemic plant species was properly assessed. cont'd 23

Evidence impact would be significant: Narrow endemic plant species are highly restricted by their habitat affinities, edaphic requirements, or other ecological factors, and for which specific conservation measures have been identified in the MSHCP if the species are present. Special surveys are required to ensure conservation of the species if present on the Project site. The MSHCP specifies that survey results shall be documented in mapped and text form and shall be presented for review by the City. Therefore, CDFW recommends that the City evaluate whether focused surveys for narrow endemic plants followed CDFW guidelines below in MM BIO-XX and include such information in detail in the Final EIR. If not, CDFW recommends the City adopt MM BIO-XX in the Final EIR to ensure avoidance, minimization, and mitigation strategies are implemented for the species and to demonstrate consistency with MSHCP requirements. 24

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To avoid take of narrow endemic plant species, CDFW requests the City include the following mitigation measure in the Final EIR as shown below (edits are in ~~strikethrough~~ and **bold**) and also included in Attachment 1 "Mitigation Monitoring and Reporting Program."

MM BIO-XX: Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate 25

the loss of the plant(s) through land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. cont'd 25

Comment #7: Impacts to Species of Special Concern

Issue: The Project identified the special-status plant species chaparral sand-verbena (*Abronia villosa* var. *aurita*), and no special-status wildlife species onsite during the various biological surveys. However, several special-status plant species and special-status wildlife species were described as having high to moderate potential to occur within the Project site.

CDFW is concerned that the proposed mitigation may not provide enough specificity to sufficiently avoid or minimize impacts to species protected as California Species of Special Concern (SSC).

Specific Impact: Based on the information presented in the DEIR and supporting Appendix B, as well as data from the California Natural Diversity Database, the Project site has the potential to support Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), San Diego desert woodrat (*Neotoma lepida intermedia*), and California legless lizard (*Anniella stebbinsi*) within the Project site. 26

The DEIR does include avoidance or mitigation measures to prevent direct impacts to sensitive plant species; however, it does not include measures to prevent direct or indirect impacts to wildlife species from occurring during ground disturbance and vegetation clearing activities. Direct impacts to SSCs could result from Project construction and activities (e.g., equipment staging, mobilization, and grading); ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Indirect impacts could result from temporary or permanent loss of suitable habitat.

Why Impacts Would Occur: Biological construction monitoring alone may be ineffective for detecting SSCs. This may result in trampling or crushing of these sensitive species. Demolition and paving after false-negative conclusions may trap wildlife hiding under refugia and burrows. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat. 27

Evidence Impacts Would Be Significant: CEQA provides protection not only for state and federally listed species, but also for California Species of Special Concern, which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of SSC could require a mandatory finding of significance by the City (CEQA Guidelines, § 15065). 28

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1 and 2: To address the above issues and help the Project applicant avoid unlawful take of SSCs, CDFW requests the City include the following mitigation measures in the Final EIR, shown below and also included in Attachment 1 "Mitigation Monitoring and Reporting Program." 29

MM BIO-XX: No more than one month from the initiation of any Project-related ground-disturbing activities, the qualified biologist should conduct pre-construction surveys for sensitive species known to occur, or with the potential to occur onsite. Project related activities include construction, equipment and vehicle access, parking, and staging. The surveys should include mapping of current locations of special-status wildlife species for avoidance and relocation efforts and to assist construction monitoring efforts. The survey should be conducted so that 100 percent coverage of the Project site and surrounding areas is achieved. In addition, resumes/and or statements of qualifications shall be provided to the City by the applicant identifying one or more qualified Biological Monitors that will be assigned to the Project to monitor construction activities. Monitors shall be responsible for ensuring that impacts to special-status species, native vegetation, wildlife habitat, jurisdictional waters, and sensitive or unique biological resources are avoided to the extent possible. 30

MM BIO-XX: Daily biological monitoring should be conducted during any activities involving vegetation clearing or modification of natural habitat. Surveys for Species of Special Concern should be conducted prior to the initiation of each day of vegetation removal activities in suitable habitat. Where applicable, a qualified biologist may guide, handle, or capture an individual non-CESA or non-ESA listed wildlife species to move it to a nearby sage location within nearby refugium or it shall be allowed to leave the project site of its own volition. Special status wildlife should be captured only by a qualified biologist with proper handling permits. Only a USFWS approved biologist should be authorized to capture and relocate ESA-listed species.

If any special-status or listed species are/have been observed on or in proximity to the Project site, Permittee shall submit California Natural Diversity Data Base (CNDDB) forms and maps to the CNDDB within five working days of the sightings. 31

Additional Recommendations

Mitigation and Monitoring Reporting Plan

CDFW recommends updating the DEIR's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location); and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation, monitoring, and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1). 32

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. 33

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.) 34

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR for the Banning Commerce 35

Center Project, State Clearinghouse No. 2022090102, to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that the City of Banning addresses CDFW's comments and concerns prior to adoption of the DEIR for the Project.

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Questions regarding this letter or further coordination should be directed to Breanna Machuca, Senior Environmental Scientist Specialist, at breanna.machuca@wildlife.ca.gov.

Sincerely,

DocuSigned by:
kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

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REFERENCES

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State of California – Natural Resources Agency
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Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

Attachment 1: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project's final on and/or offsite mitigation plans.

Biological Resources (BIO)			
Mitigation Measure (MM)		**Timing**	**Responsible Party**
Burrowing Owl	**MM BIO-1:** In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California Fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist-prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW. If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately stop work and inform the City of Banning and the Wildlife Agencies (California Department of Fish and Wildlife; CDFW and US Fish and Wildlife Service; USFWS). In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan. The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If		

	no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan. A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping. If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl has not colonized the site since it was last disturbed. If		

	burrowing owl is found, the same coordination described above will be necessary.		
Nesting Birds	**MM BIO-2:** Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the Migratory Bird Treaty Act and California Fish and Game (CDFG) Code Sections CDFG Code Section 3503, 3503.5, and 3513, site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season. Regardless of the time of year, a qualified biologist shall conduct a nesting bird survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading. The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following: **1.** Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures. **2.** Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If no nesting birds are observed during the survey, site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Banning, based on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall		

	be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFW Code.		
Lake and Streambed Alteration Program	**MM BIO-3**: Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certification and a CDFW Section 1602 Streambed Alteration Agreement. The Applicant shall notify the California	Prior to commencing ground- or vegetation	Project Proponent

	Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project. The notification to CDFW should provide the following information: **5.** A stream delineation including the bed, bank, and channel; **6.** Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009); **7.** A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and **8.** A hydrological evaluation of the 100-year storm event to provide information on how water and	disturbing activities	

	sediment is conveyed through the Project site. Currently, the impacted drainages and overall watershed are not within an area served by an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, at minimum 1.62-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the Whitewater Watershed, it is assumed at minimum 1.62- acres of on-site creation is required as outlined below. If it is determined that on-site mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The offsite location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or offsite, the mitigation site will require long-term maintenance and management by a qualified conservancy and payment of a nonwasting endowment to fund the long-term maintenance. To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to a minimum of 0.54-acre of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP. • Permanent Impacts to a minimum of 0.54-acres of jurisdictional features will be mitigated at a minimum of a 3:1 ratio (1.62 acres) through the		

	creation of in-kind habitat on-site along the eastern and northern most Project boundary. If it is determined that on-site mitigation or off-site is not feasible, additional alternatives could include payment into an acceptable and approved mitigation bank should one become available at the time of impacts and permitting. • A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed, and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies. • A DBESP will be also prepared, reviewed, and approved by the City of Banning and MSHCP wildlife agencies prior to the adoption of the final EIR.		
Special Linkage Area	**MM-BIO XX:** Prior to the adoption of the Final EIR, the City shall coordinate with and obtain concurrence from local Tribes and the Western Riverside County Regional Conservation Authority (RCA) that the project will not adversely affect the Special Linkage Area, nor interfere	Prior to commencing ground- or vegetation	City of Banning

	substantially with the movement of any fish or wildlife species or with established wildlife corridors.	disturbing activities	
Narrow Endemic Plants	**MM-BIO XX:** Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and in a manner that maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status. If any special-status plants are identified, the City shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the City shall mitigate the loss of the plant(s) through land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

Species of Special Concern	**MM-BIO XX:** No more than one month from the initiation of any Project-related ground-disturbing activities, the qualified biologist should conduct pre-construction surveys for sensitive species known to occur, or with the potential to occur onsite. Project related activities include construction, equipment and vehicle access, parking, and staging. The surveys should include mapping of current locations of special-status wildlife species for avoidance and relocation efforts and to assist construction monitoring efforts. The survey should be conducted so that 100 percent coverage of the Project site and surrounding areas is achieved. In addition, resumes/and or statements of qualifications shall be provided to the City by the applicant identifying one or more qualified Biological Monitors that will be assigned to the Project to monitor construction activities. Monitors shall be responsible for ensuring that impacts to special-status species, native vegetation, wildlife habitat, jurisdictional waters, and sensitive or unique biological resources are avoided to the extent possible. **MM-BIO XX:** Daily biological monitoring should be conducted during any activities involving vegetation clearing or modification of natural habitat. Surveys for Species of Special Concern should be conducted prior to the initiation of each day of vegetation removal activities in suitable habitat. Where applicable, a qualified biologist may guide, handle, or capture an individual non-CESA, or non-ESA listed wildlife species to move it to a nearby sage location within nearby refugium or it shall be allowed to leave the project site of its own volition. Special status wildlife should be captured only by a qualified biologist with proper handling permits. Only a USFWS approved biologist	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

	should be authorized to capture and relocate ESA-listed species. If any special-status or listed species are/have been observed on or in proximity to the Project site, Permittee shall submit California Natural Diversity Data Base (CNDDB) forms and maps to the CNDDB within five working days of the sightings.		

Responses to Comment Letter S1 – California Department of Fish and Wildlife

S1.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.2 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.3 The commenter, as the Responsible Agency under CEQA (Public Resources Code Section 21069 and CEQA Guidelines Section 15381), recommends that the Project applicant obtain appropriate authorization under the Fish and Game Code. As stated on Draft EIR page 4.3-16 and within MM BIO-3, the Project applicant would be required to obtain a Streambed Alteration Agreement (California Fish and Game Code Section 1602) from the CDFW to address potential impacts to resources within CDFW jurisdictional limits. Additionally, Draft EIR Section 4.3: Biological Resources evaluates the potential of the Project to affect species protected under the CESA or CESA-listed rare plant species pursuant to the NPPA (California Fish and Game Code Sections 2050 et seq. and 1900, respectively). Based on the technical biological studies provided as Draft EIR Appendix C, the Draft EIR infers that the Project would not result in the "take," as defined by State law, of any species protected under the CESA or NPPA, as no such species were identified within the Project site during the 2023 survey effort (refer to Draft EIR pages 4.3-12 through 4.3-15). Therefore, no revisions to the Draft EIR are required.

S1.4 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.5 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.6 Refer to **Responses S1.7** through **S1.32**.

S1.7 The Project's compliance with approved habitat plans, including the Western Riverside County MSHCP, is addressed within Draft EIR pages 4.3-12 through 4.3-23. The discussion contained therein, based on the technical biological studies included as Draft EIR Appendix C, demonstrates consistency with the MSHCP. Additionally, it is important to note that the Project would be required to pay the MSHCP Local Mitigation Development Fee as required by SC BIO-1, which would be implemented as a condition of approval to the Project. The BRTR prepared for the Project, and available as **Appendix B** to the Final EIR, demonstrate compliance with the four items raised by the commenter.

S1.8 Focused MSHCP protocol burrowing owl surveys were conducted throughout the Project Site during the spring of 2023 as potential habitat exists within the Project site. Burrowing owls were not detected within or adjacent to the property. Additionally, pursuant to MM BIO-1, 30-day preconstruction surveys would be conducted prior to the commencement of grading and/or other ground disturbing activities to ensure no burrowing owls are present on site.

S1.9 Based on the presence of potential burrowing owl habitat onsite, focused MSHCP protocol burrowing owl surveys were conducted throughout the property during the spring of 2023 and the species was not detected within or adjacent to the property. MSHCP 30-day preconstruction surveys will be conducted prior to the initiation of construction to ensure the species is not directly or indirectly impacted. As stated in the BRTR "*If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately inform the City of Banning and the Wildlife Agencies and will need to coordinate further with City and the Wildlife Agencies, including the possibility of preparing a Burrowing Owl Protection and Relocation Plan, prior to initiating ground disturbance.*" If the species is detected onsite during the preconstruction surveys, the Burrowing Owl Protection and Relocation Plan would include and be required to address avoidance and buffer areas, as shown in **Response S1.11**, MM BIO-1 has been generally updated according to the commenter's recommendations. The updated BRTR has been attached to this Final EIR as **Appendix B**.

S1.10 Compliance with burrowing owl species objectives identified in the MSHCP mitigate impacts respective of CEQA to a level of less than significant. As previously stated, and as required for compliance with the MSHCP and City of Banning implementation agreement, focused MSHCP protocol burrowing owl surveys were conducted throughout the Project Site during the spring of 2023 and the species was not detected within or adjacent to the property. Therefore, an MSHCP 30-day preconstruction surveys will be conducted prior to the initiation of construction to ensure the species is not directly or indirectly impacted.

S1.11 The commenter provides suggested revisions to MM BIO-1 to further avoid take of active burrowing owl burrows, if detected on the Project site during the preconstruction survey. Revisions to MM BIO-1 have been made in accordance with the suggested revisions from the commenter as show below, **Section 3.0: Errata** of this Final EIR, and within the BRTR prepared for the Project. The updated BRTR has been attached to this Final EIR as **Appendix B**.

> **MM BIO-1:** In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist ~~for burrowing owls is required~~ prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW.
>
> If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls have colonized the project

site prior to the initiation of ground-disturbing activities, the project proponent will immediately stop work and inform the City of Banning and the Wildlife Agencies (California Department of Fish and Wildlife [CDFW] and US Fish and Wildlife Service [USFWS]). In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.

The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.

A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and

mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping.

If ground-disturbing activities occur, but the site is left undisturbed for more than 30 days, a pre-construction survey will again be necessary to ensure that burrowing owl has not colonized the site since it was last disturbed. If burrowing owl is found, the same coordination described above will be necessary.

S1.12 The Project includes a preconstruction nesting bird survey requirement (MM BIO-2) to ensure compliance with the MBTA and CDFG Code Sections 3503, 3503.5, and 3513. Refer to Draft EIR Tables 4.10-7 and 4.10-8, noise thresholds for construction and operations would not be exceeded. While noise levels are calculated for roadway segments and off-site receptors, upon site grading and Project implementation, the Project site would be void of any suitable habitat prior to permanent stabilization. Suitable habitat would remain in offsite locations.

S1.13 Refer to **Response S1.15**. The Project includes a preconstruction nesting bird survey requirement to ensure compliance with the MBTA and CDFG Code Sections 3503, 3503.5, and 3513. The preconstruction nesting bird survey window measure has been expanded to apply to any time of year. Additionally, as demonstrated in the Draft EIR, noise impacts as a result of Project implementation would be less than significant. Further, landscaping would be provided throughout the Project site, in accordance with the City of Banning Municipal Code and would include various trees and shrub species. The landscaping plan has been updated to reflect the site plan linework and is available as **Appendix D**.

S1.14 Refer to **Responses S1.12** and **S1.13**.

S1.15 The commenter provides suggested revisions to MM BIO-2. Revisions to MM BIO-2 have been made in accordance with the suggested revisions from the commenter as shown below, in **Section 3.0, Errata** of this Final EIR, and within the Biological Resources Technical Report prepared for the Project. The updated BRTR has been attached to this Final EIR as **Appendix B**.

> **MM BIO-2: Nesting Bird Preconstruction Surveys.** Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the Migratory Bird Treaty Act and California Fish and Game (CDFG) Code Section 3503, 3503.5, and 3513. Site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season. ~~Construction outside the nesting season (between September 1st and January 31st) does not require pre-removal nesting bird surveys. If construction is proposed between February 1st and August 31st, a qualified biologist will conduct a preconstruction nesting bird and raptor survey(s) no more than three days prior to initiation of grading to document the presence or absence of nesting birds within or directly adjacent to the Project site.~~ Regardless of the time of year, a qualified biologist shall conduct a nesting bird

survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading.

The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following:

1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.
2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.

~~If active nests are documented, species-specific measures will be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest will be postponed until the young birds have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, will be submitted to the City of Banning for review and approval prior to initiation of grading in the nest setback zone.~~ If no nesting birds are observed during the survey, site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Banning, based

on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFG Code. ~~Any nest permanently vacated for the season would not warrant protection pursuant to the CDFG Code.~~

S1.16 Refer to **Response S1.17**.

S1.17 The commenter provides suggested revisions to MM BIO-3. Revisions to MM BIO-3 have been made in accordance with the suggested revisions from the commenter as shown below, in **Section 3.0: Errata** of this Final EIR, and within the Biological Resources Technical Report prepared for the Project. The updated BRTR has been attached to this Final EIR as **Appendix B**.

MM BIO-3: USACE/CDFW/RWQCB Riverine Resources. Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certificate, and CDFW Section 1602 Streambed Alteration Agreement. ~~No impacts shall occur to onsite drainages until the appropriate permits have been obtained.~~ The Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

The notification to CDFW should provide the following information:

1. A stream delineation including the bed, bank, and channel;
2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al. 2009);
3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and
4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.

Currently, the impacted drainages and overall watershed are not within a service area of an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, ~~purchase of~~ at minimum 2.67-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the whitewater watershed, it is assumed at minimum 2.67-acres of onsite creation is required as outlined below. If it is determined that onsite mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The off-site location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or off-site, the mitigation site will require long-term maintenance and management by a qualified conservancy, including payment of a non-wasting endowment to fund the long-term maintenance.

To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to a minimum 0.54-acre of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP.

- Permanent impacts to a minimum of 0.54-acres of jurisdictional features will be mitigated at a minimum of a 5:1 ratio (2.67 acres) through the creation of in-kind habitat onsite along the eastern and northern most Project boundary. If it is determined that onsite mitigation or off-site is not feasible, additional alternatives could include, payment into an acceptable an approved mitigation bank should one become available at the time of impacts and permitting.

- A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies.
- A DBESP will be also prepared, reviewed and approved by the City of Banning and MSHCP wildlife agencies prior to the issuance of grading permits.

S1.18 Refer to **Response S1.19**.

As discussed in the updated BRTR, provided as **Appendix B** to this Final EIR, the City of Banning 2006 General Plan states: "*For special linkage areas, the MSHCP requires local jurisdictions to assure preservation of a wildlife movement corridor in compliance with guidelines set forth in the South Coast Wildlands' Missing Linkages project. However, the South Coast Wildlands' document makes no reference to the San Gorgonio River linkage. In the absence of other guidance in the MSHCP, the City will apply standards set forth in the CEQA Guidelines for projects within the Special Linkage area. The CEQA Guidelines' threshold of significance for such areas is as follows: "Would the project interfere substantially with the movement of any native resident or migratory species of fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*" As discussed on Draft EIR pages 4.3-21 through 4.3-23, following implementation of the MSHCP Urban/Wildlands Interface guidelines and BMPs, the proposed action would be consistent with MSHCP goals and objectives for The Pass - Special Linkage Area and ensure the proposed action would not result in indirect impacts to the wildlife movement corridor within and adjacent to the San Gorgonio River. Any proposed development within the Project Site will be required to comply with all MSHCP urban/wildlands interface guidelines presented in MSHCP Section 6.1.4 and the fuels management guidelines presented in MSCHP Section 6.4. The BRTR did not identify the Project site with potential habitat for migratory fish, nor as a nursery site. As demonstrated in the Draft EIR, pages 4.3-20 through 4.3-21, the Project would not have a significant effect on the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites. Refer to **Response S1.19**.

S1.19 As discussed in the updated BRTR, provided as **Appendix B** to this Final EIR, the MSHCP states: "*Special Linkage Area: This Special Linkage Area will contribute to assembly of a portion of the San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage. Tribal coordination regarding American Indian Lands will be necessary in this area. The San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage includes locations within and outside the MSHCP Plan Area. Features of the entire linkage area are described in Missing Linkages: Restoring Connectivity to the California Landscape (Penrod, K., November 2, 2000). A copy of this report is attached as Exhibit 24 to Comment Letter D in Volume V of the MSHCP. Local Permittees will apply the*

following rebuttable presumption of significance, taken from Appendix G to the 1998 State CEQA Guidelines, in CEQA review of proposed public and private projects within this Special Linkage Area and apply mitigation measures as appropriate: "Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?" Draft and Final CEQA documentation prepared by Local Permittees for projects within this Special Linkage Area will be forwarded to the RCA for informational purposes to provide for MSHCP coordination regarding this area."

The BRTR includes an analysis of compliance with Special Linkages objectives identified in the MSHCP was conducted; refer to BRTR pages 49 through 76. Regional wildlife movement in proximity to the Project site is concentrated within and immediately adjacent to the San Gorgonio River which extends south and under I-10 to the confluence with Smith Creek. Refer to BRTR Figure 14: Wildlife Movement Corridor Map for a visualization of the distance between the Project site and the San Gorgonio River. The Project site is not located within or immediately adjacent to the San Gorgonio River. A two-kilometer minimum corridor width along the San Gorgonio River is proposed south of I-10 by the South Coast Wildlands' Missing Linkages project; refer to BRTR, provided as **Appendix B** to this Final EIR. The Project Site is located north of I-10 where a minimum of a 0.64-mile (approximately 3,380-feet) corridor width would remain within the Special Linkage Area extending northeast of the property. The MSHCP guidelines only require Tribal and RCA coordination, not approval or concurrence, as such, the proposed mitigation measure from the commenter need not be applied.

S1.20 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.21 A DBESP has been prepared for the Project and its findings incorporated into the Draft EIR. This DBESP has been provided to the City for review and approval. As the Project is not located within an MSHCP Criteria Cell or Area, a HANS or JPR process would not be required. As such, the DBESP need not be submitted to the resource agencies for review and approval prior to the approval and certification of the Final EIR. The DBESP need only be reviewed and approved by the City. Nonetheless, pursuant to MM BIO-3, the DBESP would be submitted to the wildlife agencies prior to the issuance of grading permits.

S1.22 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.23 The Project Site lies partially within a predetermined Survey Area for two MSHCP narrow endemic sensitive plant species which includes: Yucaipa (Marvin's) onion (*Allium marvinii*) [CRPR 1B.2]; and many-stemmed dudleya (*Dudleya multicaulis*) [CRPR 1B.2]. According to the MSHCP guidelines, focused surveys are required during the appropriate flowering season to identify and document the presence/absence of target sensitive plant species if suitable habitat is present and if the property is located within a predetermined Survey Area. Although the Yucaipa (Marvin's) onion and many-stemmed dudleya are not expected to occur onsite based on a lack of clay

substrates, focused spring surveys for both MSHCP NEPS were conducted during the spring of 2023 to determine presence/absence. Focused surveys were coordinated throughout the spring and blooming periods, site-specific habitat conditions, and vegetation associations of the target species. Accordingly, eight surveys were conducted onsite, including March 8th, 9th, and 20th; April 12th and 19th; and, May 3rd, 30th, and 31st, 2023 as referenced in the report titled "Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Narrow Endemic Sensitive Plant Surveys for the 131.28-Acre Project Site, City of Banning, Western Riverside County, California"; refer Draft EIR Appendix C1 for more details. The Yucaipa (Marvin's) onion and many-stemmed dudleya were not detected onsite during the focused survey efforts.

S1.24 Refer to **Response S1.23**. The commenter's recommended mitigation measure has not been incorporated into the Final EIR.

S1.25 Refer to **Response S1.23**. The commenter's recommended mitigation measure has not been incorporated into the Final EIR.

S1.26 As discussed on Draft EIR page 4.3-12, no sensitive plants, including chaparral sand-verbena, were documented onsite during focused spring surveys for sensitive plants, which were conducted in the spring of 2023.

As stated in the BRTR, the Project site provides suitable habitat for several sensitive wildlife species including those listed as CDFW SSC including: Bell's sage sparrow, Southern California rufous-crowned sparrow, white-tailed kite, loggerhead shrike, Stephens' kangaroo rat, orange-throated whiptail, coastal western whiptail, northern harrier (foraging), San Diego banded gecko, coast horned lizard, grasshopper sparrow, golden eagle (foraging), ferruginous hawk (foraging), California horned lark, prairie falcon (foraging), coastal California gnatcatcher, northwestern San Diego pocket mouse, Dulzura kangaroo rat, and San Diego black-tailed jackrabbit. All of these species are MSHCP covered and mitigation for potential impacts includes payment of the MSHCP Local Mitigation Development Fee.

Compliance with the MSHCP with respect to the Los Angeles pocket mouse species would mitigate impacts respective of CEQA to a level of less than significant. Suitable habitat for the Los Angeles pocket mouse, an MSHCP Planning Species was documented onsite. However, the Project Site is not located within an MSHCP mammal species survey area. Therefore, based on MSHCP compliance guidelines, no surveys are required.

Further, Cadre Environmental conducted focused spring surveys for sensitive plants during the spring of 2023 to determine presence/absence; refer Draft EIR Appendix C1 for more details. As discussed in the updated BRTR, provided as **Appendix B** to this Final EIR, no San Diego desert woodrat nests were documented onsite during focused surveys, conducted during the 2023 survey effort. Additionally, no suitable habitat for the California legless lizard was documented onsite during the 2023 survey effort. Mesic conditions are not present onsite.

S1.27 This comment is informational in nature and has been noted for the record. It is important to note that the Project would be required to pay the MSHCP Local Mitigation Development Fee as required by SC BIO-1, which would be implemented as a condition of approval to the Project.

S1.28 Refer to **Response S1.27**. Compliance with covered floral and faunal species objectives, identified in the MSHCP, mitigate impacts respective of CEQA to a level of less than significant.

S1.29 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.30 Refer to **Response S1.28**. The commenter's recommended mitigation measure has not been incorporated into the Final EIR.

S1.31 Refer to **Response S1.28**. The commenter's recommended mitigation measure has not been incorporated into the Final EIR.

S1.32 The Project has prepared an MMRP, which is available for review at the City of Banning Planning Department, at 99 E Ramsey Street, Banning, CA 92220.

S1.33 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

S1.34 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. It is important to note that the Project would be required to pay the MSHCP Local Mitigation Development Fee as required by SC BIO-1, which would be implemented as a condition of approval to the Project. This comment is noted for the record and no further response is needed.

S1.35 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

Comment Letter S2 – South Coast Air Quality Management District

Comment Letter S2

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
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SENT VIA E-MAIL:
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Emery Papp, Senior Planner
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August 1, 2024

Draft Environmental Impact Report (EIR) for the Proposed Banning Commerce Center Project (Proposed Project) (SCH No.: 2022090102)

South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the above-mentioned document. The City of Banning is the California Environmental Quality Act (CEQA) Lead Agency for the Proposed Project. To provide context, South Coast AQMD staff (Staff) has provided a brief summary of the project information and prepared the following comments organized by topic of concern. 1

South Coast AQMD Staff's Summary of Project Information in the Draft EIR

Based on the Draft EIR, the Proposed Project will develop an approximately 1,320,284 square feet (sq. ft) industrial building on a 131.28-acre site.[1] The Proposed Project will consist of approximately 640,200 sq. ft of warehousing and approximately 640,200 sq. ft of high-cube fulfillment uses.[2] The Proposed Project will provide an unspecified number of dock doors on the northwest and southeast faces of the building,[3] and is expected to generate 524 daily truck trips.[4] The Proposed Project site is currently vacant, with mostly undeveloped land, and is located north of Interstate I-10, west of vacant land and the California Highway Patrol Banning West Weigh Station, and south and east of vacant lands.[5] Based on aerial photographs, Staff found that the nearest sensitive receptors (e.g., residential) are approximately 400 feet west of the Proposed Project site. Construction is anticipated to occur over 18 months, beginning in Spring 2024 and ending in Winter 2025.[6] 2

South Coast AQMD Staff's Comments on the Draft EIR

Warehouse Cold Storage Land Use and Associated Emissions from Transport Refrigeration Units (TRU)

The project description in the Draft EIR does not specify whether the Proposed Project intends to include cold storage usage; it only mentions that approximately 640,200 sq. ft would be for 3

[1] Draft EIR. p. 3-6.
[2] *Ibid.*
[3] *Ibid.* p. 3-7.
[4] *Ibid.* p. 4.7-19.
[5] *Ibid.* p. 3-1.
[6] *Ibid.* p. 3-9.

-1-

warehousing and approximately 640,200 sq. ft for high-cube fulfillment uses.[7] However, the Draft EIR discusses the trip generation[8] based on the following Institute of Transportation Engineers (ITE) land use categories, which include cold storage:

- ITE Land Use 150 - Warehousing: 396 daily truck trips.
- ITE Land Use 155 - High-Cube Cold Fulfillment Center: 128 daily truck trips.

cont'd 3

The inconsistency that occurs between the Proposed Project's description and trip generation analysis may also result in the underestimation of total emissions from the Proposed Project's analysis in the California Emissions Estimator Model (CalEEMod) run (the Lead Agency utilized CalEEMod for quantifying the operational emissions). Based on the CalEEMod output files, 524 daily truck trips are entered under the "unrefrigerated warehouse-no rail" land use type. Cold storage warehouses utilize more trucks and trailers equipped with TRUs than warehouses without cold storage. The small diesel engines that are commonly used to provide power to TRUs generate large quantities of diesel exhaust emissions while operating. 4

As a result, Staff recommends the Lead Agency revise the project description in the Final EIR to clarify and explicitly state whether cold storage facilities are part of the Proposed Project and, if applicable, provide an estimate of the number of TRU trucks and trailers associated with the operation of this warehouse(s). If there are potential uses for TRUs, the Lead Agency is recommended to revise the calculations in the Final EIR to quantify the emissions from the TRUs in addition to the operational truck emissions and the health risk assessment (HRA) modeling. 5

Inconsistency in Land Use Type and Truck Trips Generation Associated with the Operation

a. Land Use Type

In Appendix K1 – Traffic Impact Analysis, the trip generation is calculated in accordance with the land use categories ITE 150 – Warehousing and ITE 157 – High-Cube Cold Storage Warehouse.[9] However, different land use categories were relied upon to calculate the trip generation in the Draft EIR. Table A shows the discrepancies between Draft EIR and Appendix K1. 6

Table A – Land Use Type Associated with Truck Trips Generation

	Draft EIR[10]	Appendix K1
Land Use Type	ITE 150 ITE 155	ITE 150 ITE 157

In addition, the Draft EIR's project description states that the analysis was based on an even split of dedicating 640,200 sq. ft for warehousing uses, and approximately 640,200 sq. ft for high-cube fulfillment uses.[11]. However, Appendix K1 presents different percentages in terms of warehouse size (e.g., 75% and 25%, respectively). For context, Figure 1 is a screenshot that captures the analysis in Appendix K1. 7

[7] *Ibid*. Page 3-6.
[8] *Ibid*. Page 4.7-19.
[9] Appendix K1 – Traffic Impact Analysis. Tables 1 and 2. Pages 1.1-18 and 1.1-19.
[10] *Ibid*. Page 4.7-19.
[11] *Ibid*. Page 3-6.

Figure 1: Screenshot Capture from Appendix K1

TABLE 2: PROJECT TRIP GENERATION SUMMARY (ACTUAL VEHICLES)

Land Use	Quantity	Units[1]	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Daily
Actual Vehicles:									
Warehousing (75%)	990.000	TSF							
Passenger Cars:			119	30	149	34	114	149	1,100
2-axle Trucks:			2	1	3	3	2	5	100
3-axle Trucks:			2	2	4	3	3	6	124
4+-axle Trucks:			7	5	12	10	9	19	372
Total Truck Trips (Actual Vehicles):			11	8	19	16	14	30	596
Total Trips (Actual Vehicles)[2]			130	38	168	50	128	179	1,696
High-Cube Cold Storage (25%)	330.000	TSF							
Passenger Cars:			25	1	26	6	23	29	452
2-axle Trucks:			1	2	3	2	2	4	86
3-axle Trucks:			0	1	1	1	0	1	28
4+-axle Trucks:			2	4	6	3	3	6	134
Total Truck Trips (Actual Vehicles):			3	7	10	6	5	11	248
Total Trips (Actual Vehicles)[2]			28	8	36	12	28	40	700
Passenger Cars			144	31	175	40	137	178	1,552
Trucks			14	15	29	22	19	41	844
Total Trips (Actual Vehicles)[2]			**158**	**46**	**204**	**62**	**156**	**219**	**2,396**

[1] TSF = thousand square feet
[2] Total Trips = Passenger Cars + Truck Trips.

cont'd 7

The discrepancy in the assumptions of warehouse size could possibly affect the operational emissions analysis as the trip rates and trip generations are associated with the size. Moreover, this discrepancy could, in turn, result in different daily truck trips, affecting operational emissions and HRA results. 8

b. Truck Trip Generation

Staff found that the Proposed Project trip generation values presented in Appendix K1 are entirely different from the daily truck trips presented in the Draft EIR and CalEEMod output files. For context, Table B shows the differences between the number of truck trips reported in the Draft EIR, CalEEMod output files, and Appendix K1. 9

Table B – Discrepancies in Number of Truck Trips Reported in the Proposed Project's CEQA Documents

Land use	Draft EIR[12]	CalEEMod[13]	Appendix K1[14]
Unrefrigerated Warehouse	396	524	596
Cold Storage	128	--	248

Due to the substantial inconsistencies in these files, the Lead Agency is recommended to make the following revisions in the analysis: 1) identify and apply the correct land use type in the truck trip generation calculations; 2) ensure the project description matches the assumptions used in the 10

[12] *Ibid*. p. 4.7-19.
[13] Appendix B1 – Air Quality Assessment. CalEEMod Output File. pp. 72/85 and 73/85.
[14] Appendix K1 – Traffic Impact Analysis. Table 2. p. 1.1-19.

analysis (e.g., land use type size); 3) clarify the number of trucks and TRUs trucks (for cold storage); 4) re-evaluate the operational emissions associated with those trucks in the air quality and HRA analysis, and update all the corresponding appendices, and include the updated information in the Final EIR. cont'd 10

Cumulative Impacts during Operation

CEQA Guidelines Section 15355 defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts, and the individual effects may be changes resulting from a single project or a number of separate projects. In addition, CEQA Guidelines Section 15130 requires an EIR to include a discussion that examines whether a project's incremental impacts are cumulatively considerable. The Draft EIR for the Proposed Project does not appear to analyze the potential cumulative impacts from another warehouse project that is located within the vicinity of the Proposed Project and is currently undergoing CEQA review by the Lead Agency.[15] 11

Specifically, according to the City of Banning's website, this other project plans to develop a similar-sized warehouse, approximately 1,420,722 sq. ft,[16] that would generate 313 additional daily truck trips.[17] If both projects are approved by the Lead Agency, the total potential cumulative effects from the additional daily diesel truck trips that would be generated from both projects would be 837 (e.g., 524 and 313 daily truck trips associated with the Proposed Project and the other project, respectively). Moreover, these additional 837 trucks would pass by sensitive receptors (e.g., residents west of Hathaway Street) daily. It is also noteworthy that Union Pacific Railroad (UPRR) and Banning Municipal Airport, each with substantial existing vehicle and truck traffic, are located south of the Proposed Project. In light of all of these combined factors, the area would be exposed to increased concentrations of air toxics, particularly diesel particulate matter (DPM), within the City of Banning. 12

Therefore, South Coast AQMD staff recommends that, at minimum, the Lead Agency include a qualitative analysis that considers the potential cumulative impacts of air toxics by listing all surrounding past, present, and probable future projects within the vicinity of the Proposed Project. In light of the large increase in daily truck trips, the Lead Agency may also perform a more detailed and robust quantitative analysis of cumulative air toxic and potential health risk implications to be included in the Final EIR.

Potential Operational Emissions from Railroad and Airport

It is unclear if the Proposed Project plans to utilize the UPRR and/or the Banning Municipal Airport for goods movement as part of its operation. In the event the UPRR and/or Banning Municipal Airport transportation services are utilized during the Proposed Project's operation phase, it is possible that the operational emissions in the Draft EIR are underestimated. Thus, the Lead Agency is recommended to revise the operational emissions and include those coming from 13

[15] City of Banning, First Hathaway Logistics Project, SCH No. 2022040441. Available at https://engagebanning.civilspace.io/en/projects/first-hathaway-logistics.
[16] City of Banning, First Hathaway Logistics Project, SCH No. 2022040441. Draft EIR. Page 3.2-1. Available at https://www.banningca.gov/DocumentCenter/View/14407/First-Hathaway-Logistics-Project-Draft-EIR.
[17] City of Banning, First Hathaway Logistics Project, SCH No. 2022040441. Draft EIR. Page 4.2-32. Available at https://www.banningca.gov/DocumentCenter/View/14407/First-Hathaway-Logistics-Project-Draft-EIR.

UPRR and/or Banning Municipal Airport. If UPRR and Banning Municipal Airport are not part of the Proposed Project's operation, Staff recommends the Lead Agency clarify this in the Final EIR. cont'd 13

Additional Recommended Air Quality and Greenhouse Gases Mitigation Measures and Project Design Considerations

CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize or eliminate any significant adverse air quality impacts. To further reduce the Proposed Project's air quality impacts, South Coast AQMD recommends incorporating the following mitigation measures and project design considerations into the Final EIR. 14

Mitigation Measures for Operational Air Quality Impacts

Mobile Sources

1. Require zero-emission (ZE) or near-zero emission (NZE) on-road haul trucks, such as heavy-duty trucks with natural gas engines that meet the CARB's adopted optional NOx emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr), if and when feasible.

   Note: Given the state's clean truck rules and regulations aiming to accelerate the utilization and market penetration of ZE and NZE trucks, such as the Advanced Clean Trucks Rule and the Heavy-duty Low NOx Omnibus Regulation, ZE and NZE trucks will become increasingly more available to use. 15

2. Require a phase-in schedule to incentivize the use of cleaner operating trucks to reduce any significant adverse air quality impacts.

   Note: South Coast AQMD staff is available to discuss the availability of current and upcoming truck technologies and incentive programs with the Lead Agency. 16

3. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the Final EIR. If higher daily truck volumes are anticipated to visit the site, the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this higher activity level. 17

4. Provide electric vehicle (EV) charging stations or, at a minimum, provide electrical infrastructure, and electrical panels should be appropriately sized. Electrical hookups should be provided for truckers to plug in any onboard auxiliary equipment.

   Other Area Sources 18

   1. Maximize the use of solar energy by installing solar energy arrays.

   2. Use light-colored paving and roofing materials.

3. Utilize only Energy Star heating, cooling, and lighting devices and appliances.

cont'd 18

Design Considerations for Reducing Air Quality and Health Risk Impacts

1. Clearly mark truck routes with trailblazer signs so that trucks will not travel next to or near sensitive land uses (e.g., residences, schools, daycare centers, etc.).
2. Design the Proposed Project such that truck entrances and exits are not facing sensitive receptors and trucks will not travel past sensitive land uses to enter or leave the Proposed Project site.
3. Design the Proposed Project such that any truck check-in point is inside the Proposed Project site to ensure no trucks are queuing outside.
4. Design the Proposed Project to ensure that truck traffic inside the Proposed Project site is as far away as feasible from sensitive receptors.
5. Restrict overnight truck parking in sensitive land uses by providing overnight truck parking inside the Proposed Project site.

19

Lastly, the South Coast AQMD also suggests that the Lead Agency conduct a review of the following references and incorporate additional mitigation measures as applicable to the Proposed Project in the Final EIR:

1. State of California – Department of Justice: Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act[18]
2. South Coast AQMD 2022 Air Quality Management Plan,[19] specifically:
   a) Appendix IV-A – South Coast AQMD's Stationary and Mobile Source Control Measures
   b) Appendix IV-B – CARB's Strategy for South Coast
   c) Appendix IV-C – SCAG's Regional Transportation Strategy and Control Measure
3. United States Environmental Protection Agency (U.S. EPA): Mobile Source Pollution - Environmental Justice and Transportation.[20]

20

[18] State of California – Department of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act. Available at: https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf
[19] South Coast AQMD, 2022 Air Quality Management Plan (AQMP). Available at: http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan
[20] United States Environmental Protection Agency (U.S. EPA), Mobile Source Pollution - Environmental Justice and Transportation. Available at: https://www.epa.gov/mobile-source-pollution/environmental-justice-and-transportation

Emery Papp August 1, 2024

South Coast AQMD Air Permits and Role as a Responsible Agency

If implementation of the Proposed Project would require the use of new stationary and portable sources, including but not limited to emergency generators, fire water pumps, boilers, spray booths, etc., air permits from South Coast AQMD will be required, and the role of South Coast AQMD would change from a Commenting Agency to a Responsible Agency under CEQA. In addition, if South Coast AQMD is identified as a Responsible Agency, per CEQA Guidelines Sections15086, the Lead Agency is required to consult with South Coast AQMD. CEQA Guidelines Section 15096 sets forth specific procedures for a Responsible Agency, including making a decision on the adequacy of the CEQA document for use as part of evaluating the applications for air permits. For these reasons, the Final EIR should include a discussion about any new stationary and portable equipment requiring South Coast AQMD air permits and identify South Coast AQMD as a Responsible Agency for the Proposed Project. 21

The Final EIR should also include calculations and analyses for construction and operation emissions for the new stationary and portable sources, as this information will also be relied upon as the basis for the permit conditions and emission limits for the air permit(s). Please contact South Coast AQMD's Engineering and Permitting staff at (909) 396-3385 for questions regarding what types of equipment would require air permits. For more general information on permits, please visit South Coast AQMD's webpage at: http://www.aqmd.gov/home/permits. 22

Conclusion

As set forth in California Public Resources Code Section 21092.5(a) and CEQA Guidelines Section 15088(a-b), the Lead Agency shall evaluate comments from public agencies on the environmental issues and prepare a written response at least 10 days prior to certifying the Final EIR. As such, please provide South Coast AQMD written responses to all comments contained herein at least 10 days prior to the certification of the Final EIR. In addition, as provided by CEQA Guidelines Section 15088(c), if the Lead Agency's position is at variance with recommendations provided in this comment letter, detailed reasons supported by substantial evidence in the record to explain why specific comments and suggestions are not accepted must be provided. 23

Thank you for the opportunity to provide comments. South Coast AQMD staff is available to work with the Lead Agency to address any air quality questions that may arise from this comment letter. Please contact Danica Nguyen, Air Quality Specialist, at dnguyen1@aqmd.gov should you have any questions. 24

Sincerely,

Sam Wang

Sam Wang
Program Supervisor, CEQA IGR
Planning, Rule Development & Implementation

BR:EA:DN
RVC240618-01
Control Number

-7-

Responses to Comment Letter S2 - South Coast Air Quality Management District

S2.1 This comment includes introductory statements and therefore, no further response is warranted.

S2.2 This comment summarizes the Proposed Project. No further response is warranted.

S2.3 The commenter notes that the Draft EIR does not discuss cold storage, but also notes that the GHG methodology section discusses trip generation based on ITE Land Use Code 150 – Warehousing and Code155 - High-Cube Cold Fulfillment Center. The description of ITE Code 155 as High-Cube Cold Fulfillment Center is a typographical error. The correct description for ITE Land Use Code 155 is High-Cube Fulfillment Center Warehouse and does not include cold storage. This change has been captured in Section 3.0, Errata of the Final EIR.

S2.4 The commenter notes that the inconsistency between the Project's description and trip generation may result in an underestimation of total emissions. As shown in Table 4-2: Project Trip Generation Summary (Actual Vehicles) on page 47 of the Traffic Impact Assessment in Draft EIR Appendix K, the Project will generate 524 total truck trips. The commenter notes that the CalEEMod files show that 525 daily truck trips were modeled (includes one additional truck due to rounding) under the "unrefrigerated warehouse-no rail" land use type. This information is correct, as ITE Code 155 does not include cold storage. In addition, because the Project does not include cold storage the trucks accessing the site would not be equipped with TRUs.

S2.5 The commenter suggests that the project description be revised to clarify and explicitly state whether cold storage facilities are part of the Project. As discussed previously, the word "cold" was used in error as part of the ITE Code 155 description. As shown in Table 4-2: Project Trip Generation Summary (Actual Vehicles) on page 47 of the Traffic Impact Assessment in Draft EIR Appendix K, the Project will generate 524 total truck trips. Consistent with the Project, air quality, greenhouse gas, and the health risk assessment have been modeled without cold storage. The CalEEMod outputs show 525 daily truck trips were modeled due to rounding. However, the additional truck trip is more conservative because it increases the emissions modeled. Nonetheless, changes to this effect have been captured in Section 3.0, Errata of the Final EIR. This revision is clarifying in nature and does not change the scope of the environmental analysis and recirculation is not required.

The reference to ITE Code 155 being cold storage is an error based on the original Scoping Agreement prepared for the Project (refer to page 1.1-7 of the Scoping Agreement, appended to the Traffic Impact Assessment in Draft EIR Appendix K). The original Project was anticipated to include 990,000 square feet of warehouse (ITE Code 150) which is approximately 75 percent of the building area and 330,000 square feet of cold storage (ITE Code 157) which is approximately 25 percent of the building area. However, during the Project's design process and CEQA analysis, it was determined that this version of the Project was not feasible, and the Project was revised.

The final Project, which is described in the Project Description and analyzed in the Draft EIR includes 660,000 square feet of warehousing (ITE Code 150) which is 50 percent of the building area and 660,000 square feet of High-Cube Fulfillment Center Sort (ITE Code 155) which is

50 percent of the building area. The trip generation used in modeling air quality, greenhouse gas, and the health risk assessment can be found in Table 4-2: Project Trip Generation Summary (Actual Vehicles) on page 47 of the Traffic Impact Assessment in Draft EIR Appendix K.

S2.6 The Commenter notes that Appendix K – Traffic Impact Analysis includes trip generation rates based on different land use categories. As discussed in **Response S2.5**, the original Scoping Agreement (Appended to the Traffic Impact Assessment) included 25 percent cold storage (ITE 157). However, this version of the Project was not considered feasible, and the cold storage component was removed and replace with High-Cube Fulfillment (ITE 155). The analysis for the Traffic Impact Assessment (Draft EIR Appendix K), the Air Quality Assessment and Health Risk Assessment (Draft EIR Appendix B), and the Greenhouse Gas Emissions Assessment (Draft EIR Appendix G) all rely on the revised Project which includes 660,000 square feet of warehousing (ITE Code 150) and 660,000 square feet of High-Cube Fulfillment Center Sort (ITE Code 155).

S2.7 Refer to **Response S2.5** above. The screenshot provided by the commenter shows the trip generation from the Scoping Agreement, not the final Project. Refer to Table 4-2 on page 47 of the Traffic Impact Assessment for the final trip generation used in the Project analysis.

S2.8 The commenter suggests that a discrepancy in the assumptions of warehouse size could affect operational analysis based on trip rates and trip generation. However, as discussed in **Response S2.5**, the Project first analyzed in the Scoping Agreement was not feasible and was revised to the final version analyzed in the Traffic Impact Assessment. Refer to Table 4-2 on page 47 of the Traffic Impact Assessment for the final trip generation use in the Draft EIR analysis. The emissions modeling and HRA results are consistent with the Draft EIR project description and the Traffic Impact Assessment.

S2.9 Refer to **Responses S2.5, S2.6, S2.7,** and **S2.8** above. CalEEMod output files are consistent with the trip generation shown in Table 4-2 on page 47 of the Traffic Impact Assessment. The Project does not include cold storage.

S2.10 The Project analysis is consistent with the trip generation shown in Table 4-2 on page 47 of the Traffic Impact Assessment. Refer to **Responses S2.5, S2.6, S2.7,** and **S2.8** above. ITE Code 155 does not include cold storage and the Project does not include TRUs.

S2.11 The commenter identifies a potential cumulative project under CEQA. The commenter assumes that the First Hathaway Logistics Project is not analyzed in the Draft EIR; however, it is identified as Project B7 in Draft EIR Table 4-1: Cumulative Development Land Use Summary under the name DR 21-7015 for "design review." Information for the First Hathaway Logistics Project Draft EIR was published after the Project NOP and technical studies were completed.

S2.12 The commenter notes that the City of Banning's website identifies another similar-sized warehouse that would generate 311 additional trucks trips. The commenter also mentions that UPRR and Banning Municipal Airport are located to the south of the Project. The comment suggests a more robust cumulative analysis but does not indicate the appropriate approach or thresholds based on substantial evidence. SCAQMD has initiated a public process to develop

guidance for evaluating cumulative air quality impacts but to date there have been five working group meetings and no final methodologies or thresholds have been adopted.

However, the nature of air emissions is largely a cumulative impact and SCAQMD developed the thresholds of significance based on the level above which individual project emissions would result in a cumulatively considerable contribution to air basin's existing air quality conditions. Therefore, a project that exceeds the SCAQMD operational thresholds would also be a cumulatively considerable contribution to a significant cumulative impact and, inversely, emission volumes below the SCAQMD operational thresholds are not cumulatively considerable. The analysis follows the approach in SCAQMD's White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution.

The cumulative projects identified in the comment are also subject to CEQA and are required to mitigate potential impacts to the extent feasible. These projects (as with the proposed Project) are also required to comply with all applicable SCAQMD rules and regulations, which would minimize emissions. Draft EIR Table 4.2-9 shows that the Project would exceed the SCAQMD's operational threshold NO_X. Therefore, as discussed in Section 4.2.6 of the Draft EIR, the Project's emissions would be cumulatively considerable and therefore result in significant and unavoidable impact.

S2.13 Commenter notes that the Draft EIR does not state whether the Project plans to utilize the UPRR and/or the Banning Municipal Airport for goods movement. The commenter suggests that using these facilities could underestimate operational emissions, however the commenter does not substantiate how proximity to these facilities would increase emissions. The Project is a speculative warehouse and therefore the end users are unknown. As a result, the quantity, type, and source of goods transported to the Project is also unknown. A truck trip length of 33.2 was used based on a CARB study entitled Emissions Estimation Methodology for On-Road Diesel-Fueled Heavy-Duty Drayage Trucks at California Ports and Intermodal Rail Yards which determined the average truck distance from port terminals to local distribution facilities.

S2.14 The commenter notes that CEQA requires that all feasible mitigation measures be utilized to minimize significant adverse impacts. The commenter then lists some additional mitigation measures that they recommend. The specific measures are discussed in the responses below.

S2.15 The first measure suggests requiring zero-emission or near zero-emission on-road haul trucks. The suggested measures contained in the comment related to zero- and near-zero emission (ZE and NZE) vehicles are not feasible to implement, because the availability of vehicles equipped with such technology in the Project's opening year is speculative. Even with adoption of CARB's Advanced Clean Truck Rule, CARB acknowledges that it will take time for ZE and NZE vehicles to become commercially available and to penetrate the market. For example, CARB's Staff Report for the Proposed Amendments to the Advanced Clean Trucks Regulation and the Zero-Emission Powertrain Certification Test Procedure (March 26, 2024) explains that the regulation requires manufacturers to sell an increasing percentage of ZE trucks in California. Additionally, by 2035 ZE truck/chassis sales would need to be 55 percent of Class 2b – 3 truck sales, 75 percent of Class 4

– 8 straight truck sales, and 40 percent of truck tractor sales. Based on the regulation's phase-in, it will take time for fleets to turn over and for the ZE percentages of new truck sales to penetrate the market.

As discussed in Draft EIR pages 4.7-27 and 4.7-28, trucks accessing the Project site would be subject to the Advanced Clean Truck Regulation, CARB's Mobile Source Strategy, CARB's Sustainable Freight Action Plan, and CARB's Emissions Reduction Plan for Ports and Goods Movement. Additionally, trucks are subject to the Heavy-Duty Low NO_X Omnibus Regulation and SCAQMD's Rule 2305 – WAIRE Program. These regulations are required for all trucks and the suggested mitigation measure is already part of the existing regulatory environment and would not be considered mitigation under CEQA. For example, CARB already regulates truck emissions with the Advanced Clean Truck Regulation, the Mobile Source Strategy (including the low-NO_X engine emissions standard), the Sustainable Freight Action Plan, and the Emissions Reduction Plan for Ports and Goods Movement, among others. As these regulations are already required, they do not represent CEQA mitigation for the Project.

S2.16 The second measure suggests requiring a phase-in schedule to incentivize the use of cleaner trucks. However, the CARB approved the Advanced Clean Fleets (ACF) Regulation on July 3, 2024, which implements a phase-in schedule for transitioning truck fleets to ZE vehicles. The ACF Regulation requires fleet operators to replace vehicles with ZE trucks based on age or mileage milestones. As a result, the commenters suggested measure would not qualify as a mitigation under CEQA.

S2.17 The third measure suggests limiting the number of trucks allowed to access the Project to levels analyzed in the Final CEQA document. The City disagrees with the suggestion that the Final EIR should include a limit on the daily number of trucks allowed at the Project to levels that were analyzed in the EIR and would require re-evaluating impacts through CEQA should daily truck trips from the proposed Project be anticipated to exceed those levels. The analysis is based on a set of realistic, but conservative, set of assumptions regarding the magnitude of potential activities. The Project's air quality and GHG analyses are consistent with TIA which assumed 524 daily truck trips and 4,860 daily passenger vehicles trips based on ITE Code 150 Warehouse and ITE Code 155 High-Cube Fulfillment Center (Sort). Therefore, the City does not anticipate total emissions (combined passenger vehicle and truck trips) to exceed those modeled in the EIR, and future re-evaluation is not necessary.

S2.18 The fourth measure suggests providing EV charging stations and electrical hookups for truckers to plug in onboard auxiliary equipment. MM GHG-5 requires EV charging stations and electrical hookups for truckers to plug in onboard auxiliary equipment. Therefore, the Project would be consistent with this recommended measure.

The commenter lists three potential mitigation measures to reduce operational air quality impacts from other sources.

1) Maximize the use of solar energy by installing solar energy arrays.

Draft EIR MM GHG-1 requires the installation of solar photovoltaic (PV) panels. Therefore, the Project would be consistent with this recommended measure.

2) Use light-colored paving and roofing materials.

California's Title 24, Part 6 Building Energy Efficiency Standards includes cool roof requirements for new and existing buildings. These requirements are in the following sections of the 2022 Title 24, Part 6 standards:

- Section 10-113(a, b) (Mandatory Certification and Labeling of Roofing Product Reflectance and Emittance)
- Section 110.8(i) (Mandatory Insulation, Roofing Products & Radiant Barriers)
- Section 140.1 (Performance Approach: Energy Budgets (Nonresidential))
- Section 140.2 (Prescriptive Approach (Nonresidential))
- Section 140.3(a)1 (Prescriptive Requirements for Building Envelopes (Nonresidential))

Therefore, since Title 24, Part 6 Building Energy Efficiency Standards applies to the Project, the Project would be consistent with this recommended measure. Additionally, the Project's truck courts would be paved with concrete, which is light-colored. The increased stiffness of concrete makes it able to withstand heavier wheel loads without risk of rutting.

3) Utilize only Energy Star heating, cooling, and lighting devices and appliances.

2022 Title 24, Part 6 Building Energy Efficiency Standards include requirements to meet or exceed Energy Star standards. Therefore, since these standards apply to the Project, the Project would be consistent with this recommended measure.

S2.19 The commenter lists 5 design considerations to reduce air quality and health risk impacts.

1) Clearly mark truck routes with trailblazer signs.

The City adopted Resolution No. 2005-91 on September 13, 2005. The resolution identifies which streets have been designated for commercial vehicles in excess of ten thousand pounds. Access to the Project is from Hathaway Street which is designated for commercial vehicles. Although the Project does not include trailblazer signage, the roads accessible from the Project are approved for commercial vehicles, consistent with the commenters request.

2) Design truck entrances and exits so they are not facing sensitive receptors and will not drive past them to enter or exit the site.

The Project includes construction of an access road at the intersection of N. Hathaway Street and Morongo Road so that the warehouse is setback approximately 3,000 feet from the nearest sensitive receptor. Dock doors for the warehouse are oriented to the northwest and southeast, away from sensitive receptors.

3) Design the truck check-in point inside the Project to ensure no trucks are queuing outside.

The site plan includes areas for truck-check-in and queuing (see Draft EIR Figure 3-4). Consistent with commenters request, queuing will not occur outside the Project area.

4) Design the Project such that truck traffic inside the Project is as far from sensitive receptors as possible.

As described above, the Project includes an access road at the intersection of N. Hathaway Street and Morongo Road, so that warehouse is setback approximately 3,000 feet from the nearest sensitive receptor and parking located around the building. As a result, Project parking and drive aisles are located as far from sensitive receptors as possible.

5) Restrict overnight truck parking in sensitive land uses by providing overnight truck parking inside the Project site.

The Project is required to provide adequate on-site parking in accordance with the City's parking standards. Therefore, the Project would be consistent with this recommended measure.

S2.20 The commenter provides a list of documents to review and suggests adding any applicable mitigation measures. These documents have been reviewed; however, additional mitigation measures are also not feasible. The Project has incorporated mitigation measures to reduce all air quality impacts except NO_X to less than significant. NO_X and GHG impacts remain significant and unavoidable as a result of mobile source emissions, which are beyond the purview of the Project. However, State and federal regulations will continue to improve vehicle efficiency and will contribute to the phasing out of combustion engines for zero emission vehicles, resulting in a decrease in mobile emissions over time.

S2.21 The commenter states that if the Project requires the use of new stationary and portable sources, including but not limited to emergency generators, fire water pumps, etc., air permits from SCAQMD will be required, and the role of SCAQMD would change from a Commenting Agency to a Responsible Agency under CEQA. However, the Project is speculative, and no end user has been identified. Therefore, the Project has no plans at this time to install emergency generators or other permitted stationary equipment. Emissions from emergency generators were included in the GHG analysis as seen in Table 4.7-3 in order to analyze a worst-case scenario. Following construction of the Project any future tenant that requires the use of a generator or stationary equipment with an internal combustion engine would be required to obtain permits from SCAQMD prior to installation.

As previously stated, the Project is speculative and there are no known permitted stationary sources identified as part of the Project at this time. Therefore, SCAQMD would remain a Commenting Agency and is not considered a Responsible Agency.

S2.22 Construction and operation emissions are calculated in CalEEMod and the results are included in the output files in Appendix B and Appendix G of the Draft EIR.

S2.23 The comment requests that the City comply with CEQA when responding to SCAQMD's comments. As requested, the City's responses to SCAQMD's comments will be sent to the SCAQMD as part of the Final EIR distribution prior to certification of Final EIR. As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted. The comment is included here to provide a complete record of the SCAQMD's letter. The comment will become part of the administrative record and will be considered by the decision-makers.

S2.24 This comment includes conclusionary statements and, therefore, no further response is warranted.

Comment Letter T1 – Morongo Band of Mission Indians

Comment Letter T1

TRIBAL HISTORIC PRESERVATION OFFICE

VIA ELECTRONIC MAIL

MORONGO BAND OF MISSION INDIANS
A SOVEREIGN NATION

epapp@banningca.gov

Emery Papp, Senior Planner
City of Banning
Community Development Department
99 E Ramsey Street
Banning, CA 92220

July 24, 2024

Re: Notice of Availability of a Draft Environmental Impact Report for the Banning Commerce Center in the City of Banning, Riverside County, California

The Morongo Band of Mission Indians (Tribe/MBMI) Tribal Historic Preservation Office (THPO) has reviewed the Draft Environmental Impact Report (Draft EIR) that City of Banning (City) has made available for the Banning Commerce Center DR 21-7017 Project (Project). MBMI THPO has reviewed mitigation measures included in the Project Draft EIR. At this time, Tribe has no comments upon the Project. 1

As the lead agency, the City is responsible for ensuring that the Mitigation Measures agreed upon are carried out by the Project Proponent. As Tribal Monitoring is one of those Mitigation Measures, a Tribal Monitoring Services Agreement (TMSA) must be established with MBMI in advance of the beginning ground-disturbing activity at the Project site. 2

Moreover, MBMI reserves the right, under Assembly Bill (AB) 52 (California Public Resources Code § 21080.3.1), to continue Government-to-Government Consultation until the Project is complete and/or if circumstances make further communication and consultation necessary. This ensures that if cultural resources or tribal cultural resources be found at any stage of the Project, consultation mechanisms and policies will already be in place. 3

MBMI looks forward to continuing to work with the City until the above Project is completed. Please notify Tribe when the Project is scheduled to begin so that our Office can prepare appropriate Service Agreement Documents for the Project Proponent.

If you have any questions or concerns, please contact Bernadette Ann Brierty, Tribal Historic Preservation Officer (THPO): ABrierty@morongo-nsn.gov, THPO@morongo-nsn.gov or (951) 663-2842. 4

Bernadette Ann Brierty

Bernadette Ann Brierty

Tribal Historic Preservation Officer

Morongo Band of Mission Indians

CC: Morongo THPO

12700 Pumarra Road – Banning, CA 92220 – (951) 755-5259 – Fax (951) 572-6004 – THPO@morongo-nsn.gov

Responses to Comment Letter T1 – Morongo Band of Mission Indians

T1.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

T1.2 As described on Draft EIR page 4.13-11, the Morongo Band of Mission Indians provided mitigation measures related to tribal resources impacts as part of Assembly Bill 52 (California Public Resources Code Section 21080.3.1) consultation. These mitigation measures are provided within the Draft EIR as MM TCR-1 through MM TCR-8. MM TCR-1 requires that the Project enter into a Tribal Monitoring Agreement with the Morongo Band of Mission Indians prior to the issuance of grading permits. Section 21081.6 of the Public Resources Code and Section 15097 of the CEQA Guidelines require adoption of a MMRP for all projects for which an EIR. Any mitigation which is determined to be feasible and capable of avoiding or minimizing significant impacts will be included in the Project's MMRP. Additionally, the Project's MMRP identifies the party responsible for the implementation of each mitigation measure, the timing of its implementation, and the party responsible for monitoring its implementation. The MMRP will be made available at the City of Banning Planning Department, at 99 E Ramsey Street, Banning, CA 92220. Therefore, no revisions to the Draft EIR are required.

T1.3 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. Pursuant to Assembly Bill 52, the City would maintain Government-to-Government consultation until the Project is complete or if circumstances make further consultation necessary. This comment is noted for the record and no further response is needed.

T1.4 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. The City would continue to work with the Morongo Band of Mission Indians, as described within MMs TCR-1 through TCR-8. This comment is noted for the record and no further response is needed.

Comment Letter L1 – Riverside County Flood Control and Water Conservation District

Comment Letter L1

JASON E. UHLEY
General Manager-Chief Engineer

1995 MARKET STREET
RIVERSIDE, CA 92501
951.955.1200
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RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

257238

July 29, 2024

City of Banning
99 East Ramsey Street
Banning, CA 92220-0998

Attention: Emery J. Papp

Re: Banning Commerce Center Project,
APNs 532-030-008, 532-030-009,
532-080-008, 532-080-010, 532-090-026,
532-090-028, 532-090-030 and 532-110-015

The Riverside County Flood Control and Water Conservation District (District) does not normally recommend conditions for land divisions or other land use cases in incorporated cities. The District also does not plan check City land use cases or provide State Division of Real Estate letters or other flood hazard reports for such cases. District comments/recommendations for such cases are normally limited to items of specific interest to the District including District Master Drainage Plan facilities, other regional flood control and drainage facilities which could be considered a logical component or extension of a master plan system, and District Area Drainage Plan fees (development mitigation fees). In addition, information of a general nature is provided. 1

The District's review is based on the above-referenced project transmittal, received June 14, 2024. The District **has not** reviewed the proposed project in detail, and the following comments do not in any way constitute or imply District approval or endorsement of the proposed project with respect to flood hazard, public health and safety, or any other such issue:

☒ This project would not be impacted by District Master Drainage Plan facilities, nor are other facilities of regional interest proposed.

☐ This project involves District proposed Master Drainage Plan facilities, namely, _____. The District will accept ownership of such facilities on written request by the City. The Project Applicant shall enter into a cooperative agreement establishing the terms and conditions of inspection, operation, and maintenance with the District and any other maintenance partners. Facilities must be constructed to District standards, and District plan check and inspection will be required for District acceptance. Plan check, inspection, and administrative fees will be required. All regulatory permits (and all documents pertaining thereto, e.g., Habitat Mitigation and Monitoring Plans, Conservation Plans/Easements) that are to be secured by the Applicant for both facility construction and maintenance shall be submitted to the District for review. The regulatory permits' terms and conditions shall be approved by the District prior to improvement plan approval, map recordation, or finalization of the regulatory permits. There shall be no unreasonable constraint upon the District's ability to operate and maintain the flood control facility(ies) to protect public health and safety. 2

☒ If this project proposes channels, storm drains larger than 36 inches in diameter, or other facilities that could be considered regional in nature and/or a logical extension a District's facility, the District would consider accepting ownership of such facilities on written request by the City. The Project Applicant shall enter into a cooperative agreement establishing the terms and conditions of inspection, operation, and maintenance with the District and any other maintenance partners. Facilities must be constructed to District standards, and District plan check and inspection will be required for District acceptance. Plan

check, inspection, and administrative fees will be required. The regulatory permits' terms and conditions shall be approved by the District prior to improvement plan approval, map recordation, or finalization of the regulatory permits. There shall be no unreasonable constraint upon the District's ability to operate and maintain the flood control facility(ies) to protect public health and safety.

☐ An encroachment permit shall be obtained for any construction related activities occurring within District right of way or facilities, namely, _____. If a proposed storm drain connection exceeds the hydraulic performance of the existing drainage facilities, mitigation will be required. For further information, contact the District's Encroachment Permit Section at 951.955.1266.

☐ The District's previous comments are still valid.

cont'd 2

GENERAL INFORMATION

This project may require a National Pollutant Discharge Elimination System (NPDES) permit from the State Water Resources Control Board. Clearance for grading, recordation, or other final approval should not be given until the City has determined that the project has been granted a permit or is shown to be exempt.

If this project involves a Federal Emergency Management Agency (FEMA) mapped floodplain, then the City should require the applicant to provide all studies, calculations, plans, and other information required to meet FEMA requirements, and should further require that the applicant obtain a Conditional Letter of Map Revision (CLOMR) prior to grading, recordation, or other final approval of the project and a Letter of Map Revision (LOMR) prior to occupancy.

The project proponent shall bear the responsibility for complying with all applicable mitigation measures defined in the California Environmental Quality Act (CEQA) document (i.e., Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report) and/or Mitigation Monitoring and Reporting Program, if a CEQA document was prepared for the project. The project proponent shall also bear the responsibility for complying with all other federal, state, and local environmental rules and regulations that may apply.

If a natural watercourse or mapped floodplain is impacted by this project, the City should require the applicant to obtain a Section 1602 Agreement from the California Department of Fish and Wildlife and a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers, or written correspondence from these agencies indicating the project is exempt from these requirements. A Clean Water Act Section 401 Water Quality Certification may be required from the local California Regional Water Quality Control Board prior to issuance of the Corps 404 permit.

3

Very truly yours,

Amy McNeill

AMY MCNEILL
Engineering Project Manager

EM:blj

Responses to Comment Letter L1 - Riverside County Flood Control and Water Conservation District

L1.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

L1.2 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. The commenter indicates that the Project would not be impacted by the Riverside County Flood Control and Water Conservation District's (District) Master Drainage Plan facilities, nor are other facilities of regional interest provided. The District indicates that it would consider accepting the ownership of any channels or storm drains larger than 36 inches in diameter, or other facilities that could be considered regional in nature and/or a logical extension of a District's facilities. The Project does not propose any extensions of existing District facilities. The Project anticipates ownership of proposed storm drain infrastructure as it benefits only the Project. However, should the District determine that the proposed infrastructure provides regional benefits, then the potential transfer of ownership would be considered and explored. This comment is noted for the record and no further response is needed.

L1.3 The Project is consistent with the applicable regulatory requirements described in this comment, and the Draft EIR has analyzed the environmental impacts of the Project accordingly. As discussed on Draft EIR page 4.9-13, the Project would require a National Pollutant Discharge Elimination System (NPDES) permit from the State Water Resources Control Board for construction activities on site. Additionally, prior to issuance of a grading permit, the Project applicant would obtain a CWA Section 404 permit, Section 1602 Streambed Alteration Agreement from the CDFW, and a Waste Discharge Requirements permit issued by the RWQCB pursuant to the California Water Code Section 13260 as outlined in MM BIO-3. The Project would be required to comply with all applicable mitigation measures outlined within the Draft EIR, as listed in the Mitigation Monitoring and Reporting Program within this Final EIR. Therefore, the comment does not raise any new or substantive issues regarding the adequacy of the Draft EIR and no revisions to the Draft EIR are required.

Comment Letter O1 – Advocates for the Environment

Comment Letter O1

July 19, 2024

Advocates for the Environment

A non-profit public-interest law firm
and environmental advocacy organization



Emery J. Papp
Senior Planner
City of Banning
99 E. Ramsey Street
Banning, CA 92220

Via U.S. Mail and email to epapp@banningca.gov

Re: Comments on Draft Environmental Impact Report for Banning Commerce Center Project, SCH No. 2022090102

Dear Mr. Papp:

Advocates for the Environment submits the comments in this letter regarding the Draft Environmental Impact Report (**DEIR**) for the Banning Commerce Center Project (**Project**). The Project Site is located near Hathaway Street and George Street in the City of Banning (**City**). The Project proposes to develop the 130.72-acre Project Site by constructing a 1,320,000 square-foot tilt-up industrial building. We have reviewed the DEIR prepared in May 2023 and submit comments regarding the sufficiency of the DEIR's Greenhouse-Gas (**GHG**) analysis under the California Environmental Quality Act (**CEQA**). 1

The City Should Require the Project to be Net-Zero

Given the current regulatory context and technological advancements, a net-zero significance threshold is feasible and extensively supportable. GHG emissions from buildings, including indirect emissions from offsite generation of electricity, direct emissions produced onsite, and from construction with cement and steel, amounted to 21% of global GHG emissions in 2019. (IPCC Sixth Assessment Report, Climate Change 2022, WGIII, Mitigation of Climate Change, p. 9-4.) This is a considerable portion of global GHG emissions. It is much more affordable to construct new building projects to be net-zero than to obtain the same level of GHG reductions by expensively retrofitting older buildings to comply with climate change regulations. Climate damages will keep increasing until we reach net zero GHG emissions, and there is a California state policy requiring the state to be net-zero by 2045. It therefore is economically unsound to construct new buildings that are not net-zero. 2

Environmental groups have achieved tremendous outcomes by litigation under CEQA. Two of the largest mixed-use development projects in the history of California, Newhall Ranch (now FivePoint Valencia), and Centennial (part of Tejon Ranch) decided to move forward as net-zero communities after losing CEQA lawsuits to environmental groups. The ability for these large 3

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projects to become net-zero indicates that it is achievable, even for large-scale developments. The Applicant for this Project should do the same. cont'd 3

We urge the City to adopt net-zero as the GHG significance threshold for this project. This threshold is well-supported by plans for the reduction of GHG emissions in California, and particularly the CARB Climate Change Scoping Plans. The CARB 2017 Scoping Plan states that "achieving no net additional increase in GHG emissions, resulting in no contribution to GHG impacts, is an appropriate overall objective for new development." (CARB 2017 Scoping Plan, p. 101.) Additionally, the CARB 2022 Scoping Plan reaffirms the necessity of a net zero target by expressing: "it is clear that California must transition away from fossil fuels to zero-emission technologies with all possible speed … in order to meet our GHG and air quality targets." (CARB 2022 Scoping Plan, p. 184.) CARB further encourages a net-zero threshold in its strategies for local actions in Appendix D to the 2022 Scoping Plan. (CARB 2022 Scoping Plan, Appendix D p. 24-26.) 4

Moving this Project forward as a net-zero project would not only be the right thing for the City to do, but also would also help protect the City and the Applicant from CEQA GHG litigation.

GHG Mitigation is Insufficient under CEQA

The calculated project-related emissions amount to 22,969 metric tons of carbon dioxide equivalent (**MTCO2e**) per year (DEIR, p. 27). The City adopted a significance threshold based on Appendix G of the CEQA Guidelines. Based on this threshold, City concluded the Project would have significant GHG emissions. To reduce this identified significant GHG impact, the GHG Analysis offered GHG Mitigation Measures (**MM GHG**) 1-5 and air Quality Mitigation Measures (**MM AQ**) 2-6. (DEIR, p. 31—34.) 5

The proposed mitigation measures were estimated to reduce the project's emissions by fifteen percent. (DEIR, p. 28.) Even with this reduction from the mitigation measures, the project still significantly exceeds the SCAQMD's threshold of 3,000 MTCO2e/yr. Despite the availability of other GHG mitigation, the DEIR states that "No additional feasible mitigation measures are available that can reduce impacts to less than significant." (DEIR, p. 34.) But because this conclusion is false, and not supported by substantial evidence, the DEIR should have included more mitigation to reduce the Project's GHG emissions to the extent required by CEQA. 6

The EIR Identifies Unenforceable and Improperly Deferred Mitigation Measures

There is no indication that certain mitigation measures would commit the lead agency to future achievement of performance standards and guarantees, which constitutes improper deferral. The performance standards in MM GHG-2 are voluntary and indicate a lack of commitment by 7

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the City to any particular standard due to the inclusion of alternative options. Consequently, the actual emissions reductions achieved are unclear. MM GHG-2 presents two alternatives: 1) Leadership in Energy and Environmental Design (LEED); or 2) meeting or exceeding CALGreen Tier 2 standards. The measure does not specify the targeted level of LEED certification, and the vague language surrounding CALGreen standards—allowing for either meeting or exceeding CALGreen—further undermines its effectiveness. Overall, the measure fails to commit to either standard.

cont'd 7

Furthermore, all mitigation measures should be detailed in the DEIR so as not to violate CEQA's requirement for specific and enforceable mitigation measures at the time of adoption.

8

Infeasibility Finding Lacks Substantial Evidence

The conclusion that the Project will not be able to achieve any mitigation beyond which was identified in the proposed mitigation measures is not supported with substantial evidence. The DEIR should have proposed more mitigation measures to be applied to the maximum-feasible extent in order to justify the conclusion that the Project's GHG impact would be unavoidable due to lack of feasibility of further mitigation. While the proposed mitigation measures are a start, the City did not demonstrate that these actions would represent the maximum feasible mitigation to support a finding that the Project's impact would be significant and unavoidable.

There are other readily available mitigation measures, and some of the individual proposed mitigation measures could be modified to provide further mitigation. For instance, the DEIR notes that mobile emissions are not controllable, and therefore not feasible to mitigate, stating: "the City of Banning has no regulatory control over emissions control technology and therefore had limited ability to control or mitigate emissions associated with vehicle emissions associated with this project." (DEIR p. 29.) However, the City has the capacity to control the emissions directly and indirectly related to this project. For example, the City can require that vehicle fleets use alternative fuels that emit fewer GHGs and can include provisions in lease agreements to limit the use of heavy-duty diesel trucks, requiring the use of non-diesel fuels such as gasoline, ethanol, or biofuels. Another feasible mitigation measure would require the applicant to enter a contract with future tenants to use zero-emission commercial vehicles upon reasonable availability and maintain a charging system for the vehicle fleet that is powered by solar panels on the Project site. Such mitigation is feasible and necessary to mitigate to the Project's fair share extent.

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Additionally, MM GHG-5 proposes the installation of conduits for future electric vehicle (**EV**) and auxiliary power units (**APU**) trucks at a ratio of one charging station for every fifty dock high doors. (DEIR, p. 34.) However, the mitigation measure does not provide any evidence or rationale to justify why and how a ratio of one charging station for every fifty doors was deemed the maximum feasible amount. The City also did not provide evidence that it would be infeasible to immediately install truck charging stations rather than leaving it to a future date.

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Similarly, MM GHG-1 proposes that the project must install a solar photovoltaic (**PV**) system or use renewable energy from the local utility to power the warehouse's initial improvements. The final PV system size needs Southern California Edison (**SCE**) approval, and SCE's Rule 21 applies to any facility connected to their distribution system. If SCE limits off-site export, a battery energy storage system (**BESS**) can be used to manage on-site renewable generation and consumption. The building's electrical system must be sized to accommodate the PV arrays and include clear, permanent signage. Additionally, the electrical room must either have a secondary room or be 25% larger than required to meet the building's service needs. (DEIR, p. 33.) The measure does not provide evidence explaining why the power capacity to support the anticipated initial improvements to the warehouse is deemed the maximum feasible amount. The mitigation measure also fails to provide any rationale or justification for why a secondary room or 25% larger electrical room is deemed sufficient. Consequently, substantial evidence did not support the conclusion that further mitigation is infeasible.

cont'd 9

The Project's GHG Impacts Must be Fully Mitigated

CEQA requires that the Project include fair-share mitigation for all significant cumulative impacts. (*Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364.) Here, this means mitigation of the full extent of the Project's GHG impacts. The DEIR claims that no other mitigation measures are feasible, beyond the identified mitigation measures. But that conclusion is incorrect, and not supported by substantial evidence.

The amount of GHG emissions that comprises the Project's fair share is clear. The reasonable lifespan this Project is approximately 30 years as indicated by the amortization of construction emissions. (DEIR, p. 27.) Therefore, the Project would likely contribute 689,070 MTCO2e during its entire lifespan.[1] This would be a good starting point from which to subtract the effect of additional non-offset mitigation measures, before implementing offset purchases.

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In addition to implementing zero-emission vehicle fleets to the extent feasible, there are also further on-site mitigation measures that are feasible, including solar water heaters and automatic light switches, among many other mitigation strategies that can be incorporated into the project as design features or as mitigation measures.

Solar panel installation also presents a feasible mitigation measure. Law, Ordinances, and Regulations (**LOR**) 3 mandates that 15 percent of the roof area be solar-ready in accordance with Title 24 Energy Efficient Standards (DEIR, p. 31.) Extending this requirement to cover the maximum available surface area, rather than just the minimum 15 percent required would be feasible. Additionally, installing solar panels across the entire available roof surface would also be a

[1] 22,969 MTCO2e per year × 30 years = 689,070 MTCO2e

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feasible measure. Having solar panels capable of offsetting 100% of the buildings' energy demands would enhance the effectiveness and decrease GHG emissions overall.

Even after implementing operational emissions reductions to the maximum-feasible extent, the City could also require the Applicant to purchase offsets for the Project's remaining GHG emissions.

cont'd 10

Offsets Are Feasible

There are many available sources for the purchase of CEQA-compliant offsets, and the City's conclusion that such offsets are infeasible and pre-determined as non-compliant is not supported by substantial evidence. The DEIR raises the point that "reliance on carbon offsets to reduce either the Project's mobile or non-mobile emissions is also not feasible," claiming that the "additional" requirement cannot be met (DEIR p. 29.) However, CEQA allows offsets to be used to mitigate a project's emissions, and offsets are just as accepted as other methods of mitigation (CEQA Guidelines § 15126.4 (c).) Here, the City can easily meet the additionality requirement by using a carbon registry that tracks offsets to ensure that they are additional and have not been claimed by anyone else.[2]

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The DEIR states that the City "has no enforcement authority over offset credits that fund carbon reduction projects outside of the City." (DEIR p. 30.) Yet, the City has the authority to require the Applicant to purchase or otherwise implement offsets. Several carbon registry programs undertake protocols that ensure that the offsets are effective, regardless of where they originate, and make lists publicly available for purchase.

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The lead agency further claims that "no local programs are available that would meet CEQA's criteria for a valid mitigation measure," (DEIR, p. 29) but CEQA does not restrict mitigation to local measures. Since there is no reason why CEQA-compliant offsets are infeasible, the analysis presented in the DEIR is not supported by substantial evidence. Accordingly, the City should require the Applicant to purchase offsets to the extent necessary to mitigate the Project's fair share of emissions. There are numerous offsets available for purchase that could negate the Project's significant GHG emissions, and the failure to identify offsets as a mitigation measure while at the same time concluding unavoidable impact is misleading and not supported by substantial evidence.

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Conclusion

The DEIR fails to require all feasible mitigation, despite concluding that the significant GHG impact will be unavoidable. The lead agency has not met its burden of showing that such

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[2] American Carbon Registry (ACR), list of offset projects, available at https://acr2.apx.com/myModule/rpt/myrpt.asp?r=111 (Accessed July 2, 2024).

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measures are infeasible, and therefore the DEIR should be amended to reflect all feasible mitigation to the fair-share extent. Please put me on the interest list to receive updates about the progress of this Project. We make this request under Public Resources Code, section 21092.2. cont'd 14

Sincerely,



Dean Wallraff, Attorney at Law
Executive Director, Advocates for the Environment

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Responses to Comment Letter O1 - Advocates for the Environment

O1.1 This comment is introductory in nature. Refer to **Responses O1.2** through **O1.14**.

O1.2 The commenter suggests that the City should require the Project to be net-zero. The comment also makes unsubstantiated statements that it is more affordable to construct new buildings to be net-zero now than to retrofit an old building in the future to meet the same standard. The commenter also references California's policy to achieve net-zero GHG emissions no later than 2045 (presumably AB 1279). It should be noted that the State has not adopted a net-zero GHG threshold (or any GHG threshold) for individual development projects. The State's policy to achieve net-zero GHG emissions by 2045 requires CARB to ensure that Scoping Plan updates identify and recommend measures to achieve carbon neutrality, and to identify and implement policies and strategies that enable CO_2 removal solutions and carbon capture, utilization, and storage technologies. As discussed in Draft EIR pages 4.7-31 and 4.7-33, the Project would not conflict with the CARB Scoping Plan following compliance with all applicable regulations and mitigation measures discussed in the Draft EIR.

As noted by the commenter, the State has regulations in place to reduce GHG emissions. The Project will comply with all requirements as required by law. As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted.

O1.3 The commenter states that two of the largest mixed-use developments in the history of California have moved forward as net-zero communities after losing CEQA lawsuits. However, the 2022 CARB Scoping Plan notes that projects that have agreed to net zero GHG emissions such as "…the Newhall and Tejon Ranch projects do not necessarily represent the type of development that California most needs to simultaneously tackle the housing and climate crises…". The 2022 CARB Scoping Plan notes that a number of key State actions should be accounted for in local target-setting, including zero-emission light-duty vehicles (relevant to transportation electrification); smart growth/VMT reduction (relevant to vehicle miles traveled reduction); and new and existing residential and commercial buildings (relevant to building decarbonization).

The 2022 CARB Scoping Plan does not recommend a net-zero GHG threshold for individual development projects, noting that such thresholds may make it more difficult to achieve statewide goals by prohibiting or complicating projects that are needed to support the State's climate goals, like infill development or solar arrays. The Scoping Plan also cautions using net-zero targets and specifically notes that jurisdictions considering a net-zero target should carefully consider the implications it may have on emissions in neighboring communities and beyond. Appendix D page 18 of the Scoping Plan states the following:

> *Jurisdictions should also avoid creating targets that are impossible to meet as a basis to determine significance. For example, a net-zero target may imply that the GHG emissions of any project that are not reduced or offset to zero would be considered potentially significant. This may lead to undue burdens and frustrate project approval processes, which may be particularly problematic for residential development in*

climate-smart, infill areas. In addition, some jurisdictions have more land capacity to remove and store carbon, while others host GHG-emitting facilities that serve necessary functions and will take time to transition to new technology (e.g., municipal wastewater treatment plants, landfills, energy generation facilities).

Local governments have the discretion to adopt targets that apply to their jurisdictions as long as those targets are supported by substantial evidence. The Draft EIR uses a GHG threshold developed by SCAQMD, which is based on substantial evidence as explained in the Draft EIR on page 4.7-15. Moreover, the Draft EIR has identified a significant and unavoidable impact based on the City's 3,000 $MTCO_2e$ threshold even after mitigating GHG emissions to the maximum extent feasible. Were the City to adopt a net-zero threshold, the impact would remain the same, significant and unavoidable with regards to GHG emissions, and the type and extent of mitigation that the Project is already deploying would be the same. Accordingly, a net-zero threshold would not change the EIR's conclusions.

The Project is a speculative warehouse and is not comparable to the projects identified by the commenter. The comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects; therefore, no further response is warranted.

O1.4 The commenter urges the City to adopt net-zero as the GHG significance threshold, but does not make a specific comment with regard to the Draft EIR analysis. It should be noted that CARB Scoping Plan Appendix D (Local Actions) does not recommend a net-zero project level threshold. Specifically, the CARB Scoping Plan Appendix D states: "… a net-zero target…may lead to undue burdens and frustrate project approval processes…" (page 18). Additionally, the measures and recommendations within Scoping Plan Appendix D are focused on residential and mixed-use development projects and not industrial or warehouse projects (see Scoping Plan page 21). As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted.

O1.5 The commenter summarizes their view of the Draft EIR GHG analysis, threshold, and mitigation. The comment does not raise any specific issue with respect of the adequacy of the Draft EIR. Responses to comments specific to the Draft EIR analysis are provided below.

O1.6 Draft EIR pages 4.7-20 through 4.7-25 identify all feasible mitigation and explains that additional mitigation is not feasible. As shown in Table 4.7-3: Project Greenhouse Gas Emissions on page 4.7-20, the majority of the Project emissions (90 percent) are from vehicle emissions which are regulated by State and Federal standards, and the Project has no control over these standards. Mobile source emissions would decline in the future due to statewide measures, as well as cleaner technology and fleet turnover. Several of the State's plans and policies would contribute to an increasing reduction over time in mobile source emissions from the Project. These include the following as summarized:

- CARB's Advanced Clean Truck Regulation: CARB's Advanced Clean Truck Regulation requires truck manufacturers to transition from diesel trucks and vans to electric zero

emission trucks beginning in 2024. By 2045, every new truck sold in California is required to be zero-emission.

- Executive Order N-79-20: Executive Order N-79-20 establishes the goal for all new passenger cars and trucks, as well as all drayage/cargo trucks and off-road vehicles and equipment, sold in California, to be zero-emission by 2035 and all medium and heavy-duty vehicles to be zero emission by 2045. It also directs CARB to develop and propose rulemaking for passenger vehicles and trucks, medium-and heavy-duty fleets where feasible, drayage trucks, and off-road vehicles and equipment "requiring increasing volumes" of new zero-emission vehicles (ZEVs) "towards the target of 100 percent."
- CARB's Mobile Source Strategy: CARB's Mobile Source Strategy takes an integrated planning approach to identify the level of transition to cleaner mobile source technologies needed to achieve all of California's targets by increasing the adoption of ZEV buses and trucks.
- CARB's Sustainable Freight Action Plan: This plan improves freight system efficiency, uses near-zero emissions technology, and deployment of ZEV trucks. It applies to all trucks accessing the Project site and may include existing trucks or new trucks that are part of the statewide goods movement sector.
- CARB's Emissions Reduction Plan for Ports and Goods Movement: CARB's plan identifies measures to improve goods movement efficiencies such as advanced combustion strategies, friction reduction, waste heat recovery, and electrification of accessories.
- South Coast Air Quality Management District Rule 2305 (Warehouse Indirect Source Rule): Rule 2305 requires warehouse operators to track annual vehicle miles traveled associated with truck trips to and from the warehouse. These trip miles are used to calculate the warehouses WAIRE (Warehouse Actions and Investments to Reduce Emissions) Points Compliance Obligation. WAIRE Points are earned based on emission reduction measures and warehouse operators are required to submit an annual WAIRE Report which includes truck trip data and emission reduction measures. Warehouse operators that do not earn a sufficient number of WAIRE points to satisfy the WAIRE Points Compliance Obligation would be required to pay a mitigation fee. Funds from the mitigation fee will be used to incentivize the purchase of cleaner trucks and charging/fueling infrastructure in communities nearby.

While these measures are not directly applicable to the Project, any commercial activity associated with goods movement would be required to comply with these measures as adopted. The Project would not obstruct or interfere with efforts to increase ZEVs or State efforts to improve system efficiency. As such, the Project would not interfere with their implementation. Furthermore, the Project would not impede the State's progress towards carbon neutrality by 2045 under the 2022 Scoping Plan. The Project would be required to comply with applicable current and future regulatory requirements promulgated through the 2022 Scoping Plan (see Draft EIR pages 4.7-6 through 4.7-8).

O1.7 The commenter suggests that MM GHG-2 is unenforceable and improperly defers mitigation. The commenter notes that MM GHG-2 provides the applicant two options to achieve compliance with MM GHG-2. Option 1 is to achieve LEED certification; this option is a mitigation measure suggested by the California Attorney General on page 8 of Warehouse Projects: Best Practices and Mitigation Measures to Comply with CEQA. Option 2 is to meet or exceed CALGreen Tier 2 Standards. CALGreen Tier 1 adds additional optional requirements beyond the mandatory CALGreen requirements. Tier 2 increases those requirements. Option 2 of MM GHG-2 would require the Project to achieve or exceed the requirements identified in the CALGreen Verification Guidelines Tier 2 Checklist. Compliance with CALGreen Tier 2 results in roughly a 30 percent reduction in GHG emissions over the mandatory CALGreen requirements; however, modeling for the Project conservatively only took credit for a 3 percent reduction in GHG emissions.

O1.8 The commenter states that all mitigation measures should be detailed in the DEIR. GHG MMs GHG-1 through GHG-5 are listed on Draft EIR pages 4.7-24 and 4.7-25.

O1.9 The commenter suggests that the Draft EIR provide substantial evidence that additional mitigation would not be feasible. However, Draft EIR Table 4.7-3 on page 4.7-20 has shown that GHG emissions associated with area and indirect sources; energy consumption, offroad equipment (forklifts and yard trucks), emergency backup generators, solid waste generation, water and wastewater treatment were reduced through mitigation from 6,471 $MTCO_2e$ to 2,392 $MTCO_2e$, which is below the 3,000 $MTCO_2e$ threshold. The Project only exceeds the GHG threshold when taking into account emissions from mobile sources, which the City and Project do not have the authority to regulate.

The commenter notes that the City of Banning has no regulatory control over emission control technology and has limited ability to control or mitigate emissions from vehicles associated with the Project. However, the commenter suggests that the City could require that vehicle fleets use non-diesel fuels such as gasoline, ethanol, or biofuels. Unfortunately, the suggested mitigations are not feasible to implement because the availability of heavy-duty trucks equipped to use non-diesel fuel technology at the time of the Project's opening year would be speculative and cannot be feasibly enforced.

Currently, CARB's goal is to transition to clean cars, trucks, and off-road equipment to Governor Newsom's Executive Order to reach 100 percent ZE vehicles sales for cars and medium-duty trucks by 2035, and for heavy-duty trucks by 2045. Requiring a Project to use vehicles equipped with non-diesel technology would not be cost effective, as the vehicles would be difficult and costly to acquire in the short term and would still require replacing with ZE vehicles in the future to meet Governor Newsom's long term goals. In addition, beyond the commenter's suggestion that the applicant sign a lease agreement, the suggested mitigation does not provide any feasible method for City enforcement.

The commenter suggests that tenants should sign contracts to use zero-emission commercial vehicles upon reasonable availability. This is not an appropriate mitigation measure under CEQA

because it defers mitigation until ZE trucks are reasonably available and the City does not have a way to enforce this mitigation.

Even with adoption of CARB's Advanced Clean Truck Rule, it will take time for ZE and NZE vehicles to become commercially available and to penetrate the market. For example, CARB's Staff Report for the Proposed Amendments to the Advanced Clean Trucks Regulation and the Zero-Emission Powertrain Certification Test Procedure (March 26, 2024) explains that the regulation requires manufacturers to sell an increasing percentage of ZE trucks in California. Additionally, by 2035 ZE truck/chassis sales would need to be 55 percent of Class 2b – 3 truck sales, 75 percent of Class 4 – 8 straight truck sales, and 40 percent of truck tractor sales. Based on the regulation's phase-in, it will take time for fleets to turn over and for the ZE percentages of new truck sales to penetrate the market.

The commenter also suggests mitigation that requires tenants to enter a contract to use ZE trucks and maintain solar powered charging stations on the Project site. Refer to **Response O1.6** regarding the State's plans and policies to transition California from combustion engine powered vehicles to ZE vehicles.

The commenter then questions the rationale for MM GHG-5, which requires the installation of conduits for future electric trucks and trucks with auxiliary power units based on a ratio of one charging station for every fifty doors, and questions how the ratio of one charging station for every 50 doors was deemed the maximum feasible amount. However, MM GHG-5 does not identify the maximum amount, it identifies the minimum amount of charging stations to be located at the dock doors. This mitigation is in addition to EV charging requirements identified in the 2022 CALGreen.

The 2022 CALGreen establishes mandatory requirements for nonresidential construction with special additional requirements for buildings used as grocery stores, retail, and warehouses. These requirements would require the Project to make a minimum of 20 percent of the required parking spaces EV Capable and a minimum of 25 percent of those EV Capable spaces must be fitted with EV supply equipment (208/240 Volt 40-ampere branch circuit, and the electric vehicle charging connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises and the electric vehicle). The 2022 CALGreen would also require the Project's electrical panel to include 400 KVA of additional capacity for future charging equipment. The additional electrical hookups for charging electric trucks and trucks with auxiliary power units at the dock doors required by MM GHG-5 is in addition to these building code requirements.

The commenter goes on to summarize the requirements under MM GHG-1 and questions why generating electricity from renewable sources equal to warehouses anticipated initial improvements to the warehouse is the maximum feasible amount. MM GHG-1 requires the operator to install solar panels to generate electricity or purchase electricity from a renewable source equal to the energy demand of the Project, as a result, this is the maximum amount

feasible. The Project is under no obligation to generate more electricity than is required by the Project.

The commenter also questions why MM GHG-1 requires the electrical room must either have a secondary room or be 25 percent larger than required to meet the building's service needs. The required additional room is to ensure that there will be enough room for future electrical panels and transformers as ZE vehicles become more common and the demand increases. Please note that the 2022 CALGreen also requires the Project's electrical panel include 400 KVA of additional capacity for future charging equipment.

O1.10 The comment states that the Project should include fair-share mitigation for all cumulative impacts. The Draft EIR includes numerous mitigation measures to reduce GHG emissions (see Draft EIR pages 4.7-24 and 4.7 25 for GHG mitigation measures and Draft EIR pages 4.2-19 through 4.2-21 for air quality mitigation measures). Specifically, MM GHG-1 requires the Project to install a solar photovoltaic (PV) system or offset an equivalent amount of energy demand through the purchase of renewable energy. MM GHG-2 requires the Project to meet or exceed CALGreen Tier 2 standards. MM GHG-3 requires the Project to divert 75 percent of waste from landfills, MM GHG-4 requires landscape equipment to be 100 percent electric. MM GHG-5 requires electric hookups for future electric trucks. Additionally Draft EIR Air Quality MMs AQ-2 through AQ-6 would also reduce GHG emissions. MM AQ-2 requires the operators to prepare and submit a Transportation Demand Management program to the City. MM AQ-3 requires EV ready infrastructure and EV charging stations in employee parking lots. MM AQ-4 requires operators to post signage with instructions that reduce emissions. MM AQ-5 requires the facility operator to provide tenants with information on incentive programs such as the Moyer program and SmartWay program to increase transportation efficiency. MM AQ-6 requires the operators to provide necessary charging stations for cargo handling equipment, such as forklifts and yard trucks.

The commenter attempted to quantify the Project's lifetime GHG emissions. However, the comment incorrectly assumes the Project's annual emissions would remain the same for the entire Project lifetime. The purpose of the EIR's GHG analysis is to disclose the potential effects of the Project on the existing environment and, as such, the analysis provided in the EIR serves as a snapshot in time. Refer to **Response O1.6**. As discussed above, mobile emissions will decrease in future years due to implementation of current and future regulations. CEQA precludes the EIR from speculating as to what the Project's emissions may be 30 years in the future. Therefore, using the commenter's calculations as "a good starting point" for assessing Project impacts is not appropriate because the available analytical models cannot presently quantify all Project-related emissions in those future years due to the technological shifts anticipated and the unknown parameters of the regulatory framework in the future.

As described above, continued emissions reductions would occur from current and future State and federal regulations. As engine efficiency increases and the vehicle fleet shifts to low or zero-emission vehicles (including achieving 100 percent zero emission vehicle sales in 2035 and implementing the Advanced Clean Fleets regulation), these emissions will decrease

(see **Response O1.6**, above). Additionally, as described on Draft EIR page 4.7-14, the Project would be subject to SCAQMD Rule 2305, the Warehouse Indirect Source Rule, which would facilitate the acquisition of near-zero emission and/or zero emission on-road trucks, zero emission cargo handling equipment, solar panels, or zero emission charging and fueling infrastructure.

The commenter suggests additional mitigation measures such as solar water heaters and automatic light switches to reduce GHG. Although the Project does not include mitigation that requires solar water heaters or automatic light switches, these features are covered under the CALGreen, with which the Project must comply.

The commenter suggests installing solar panels as feasible mitigation. The commenter notes that LOR-3 mandates that 15 percent of the roof area be solar-ready in accordance with Title 24 Energy Efficiency Standards and suggests mitigation installing solar panels across the entire available roof surface or having solar panels capable of offsetting 100 percent of the building's energy demand. As noted previously, Draft EIR MM GHG-1 states that "prior to issuance of tenant occupancy permits, the Project shall be required to install a solar photovoltaic (PV) system or otherwise acquire energy from the local utility that has been generated by renewable sources, sufficient to power the anticipated initial improvements for the warehouse (i.e., the Title 24 electricity demand and the plug-load"). As a result, all the Projects energy demands will be generated on-site with solar or purchased from a local utility that has generated the required energy from renewable sources. As a result, the goal of the commenter's suggested mitigation is already achieved through MM GHG-1.

O1.11 The commenter suggests that the City require the Applicant to purchase offsets for the Project's remaining GHG emissions. Although it is possible to purchase carbon offsets, even offset credits purchased from CARB-approved offset project registries have been determined in certain circumstances to not adequately assure that purchased offset credits accurately and reliably represent actual emissions reductions or guarantee that such reductions are not already required by law. This is due to the fact that "over-crediting" can occur based on the generation of credits from actions that would have happened regardless of the offset program. For example, a pair of studies published in 2019 and 2021 examined California's forest carbon offsets program and found that it was likely to have overstated its total emission reductions by 80 percent or more. If an offset program generates credits from reductions that would have happened regardless of the offset program, and this causes the protocols to generate more credits than actual reductions in emissions, the emitter's emissions are not truly offset, and therefore would not be considered adequate mitigation under CEQA.

In addition, it should be noted that the vast majority of emissions that would be generated by the Project, including mobile emissions and energy emissions, are subject to the California Cap and Trade program, which places an economy-wide "cap" on major sources of GHG emissions, such as refineries, power plants, industrial facilities and transportation fuels. For example, "'Fuel suppliers' are responsible for the carbon pollution from fuels under the Cap-and-Trade Program" and thus must acquire "allowances" to cover all carbon pollution from such fuels. They may also purchase certain approved offsets to fulfill up to eight percent of their compliance obligation.

Given that more than 99 percent of the emissions that would be generated by the Project are covered by Cap and Trade and thus are already subject to a regulatory program that includes offsets, the City finds it would be inappropriate and infeasible to use offsets to mitigate such emissions. Rather, mitigation measures should focus on reducing emissions from the Project.

The Draft EIR includes numerous mitigation measures to reduce GHG emissions (see Draft EIR pages 4.7-24 and 4.7-25). The Project would reduce energy emissions through on-site renewable/solar energy, requiring trucks to participate in efficiency programs, providing EV infrastructure for passenger vehicles and trucks, electric cargo handling equipment, solid waste reduction, and zero emission landscape equipment, among others. The Project mitigation focuses on providing infrastructure to facilitate shifts in vehicle types and energy sources envisioned by the State in the future.

O1.12 The commenter disagrees with the DEIR's statement that the City has no enforcement authority over offset credits that fund projects outside of the City. The commenter suggests the City use carbon registry programs that ensure offsets are effective. Refer to **Response O1.11** for why the City has determined that requiring the purchase of offsets is infeasible to reduce the Project's GHG emissions because of the lack of City enforcement authority and the inability to ensure the effectiveness of the commenter's proposed mitigation.

O1.13 Refer to **Response O1.11** above.

O1.14 The commenter suggests that the Draft EIR fails to include all feasible mitigation. However, the commenter also does not provide any evidence that the commenter's suggested mitigation measures would substantially reduce the Project's GHG emissions. CEQA does not require adoption of every imaginable mitigation measure. CEQA's requirement applies only to feasible mitigation that will "substantially lessen" a project's significant effects (Public Resources Code Section 21002). As explained by one court, A lead agency's "duty to condition project approval on incorporation of feasible mitigation measures only exists when such measures would [avoid or] 'substantially lessen' a significant environmental effect." (San Franciscans for Reasonable Growth v. City and County of San Francisco [1989] 209 Cal.App.3d 1502, 1519.) "Thus, the agency need not, under CEQA, adopt every nickel and dime mitigation scheme brought to its attention or proposed in the project EIR." (Ibid.) Rather, an EIR should focus on mitigation measures that are feasible, practical, and effective (Napa Citizens for Honest Government v. Napa County Board of Supervisors [2001] 91 Cal.App.4th 342, 365.). As disclosed in the EIR and supported by substantial evidence in the record, the Project's EIR includes all feasible mitigation measures that are capable of substantially reducing the Project's GHG emissions. See also **Response O1.11** for why the City has determined that it would be infeasible and inappropriate to claim further mitigation for the purchase of offsets due to the lack of enforcement authority and ambiguity as to their efficacy. No revisions to the EIR or additional mitigation measures are required.

Comment Letter O2 – California Native Plant Society

Comment Letter O2

Riverside/ San Bernardino Chapter
CALIFORNIA
NATIVE PLANT SOCIETY

August 2nd, 2024

Re: Banning Commerce Center Draft Environmental Impact Report

Submitted electronically to:
epapp@banningca.gov

CC:
karin_cleary-rose@fws.gov
carly.Beck@wildlife.ca.gov
amontalvo@cnps.org

Dear Emery J. Papp,

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report ("DEIR") for the Banning Commerce Center Project in accordance with the California Environmental Quality Act ("CEQA"). The following comments are submitted on behalf of the Riverside-San Bernardino Chapter of California Native Plant Society ("CNPS").

The California Native Plant Society is a non-profit environmental organization with 13,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, communities, and local planners to advocate for well-informed policies, regulations, and land management practices. 1

One of the predominant purposes of the DEIR is to allow community members as well as experts to provide suggestions and corrections to potential oversights associated with proposed projects. We are providing the following comments and suggestions to assist the City of Banning with achieving environmental compliance under state law and also to provide input about important and rare plant resources that exist in the State of California and specifically in the Banning area.

1. Inadequate Inventory and Mitigation of Sensitive Natural Communities

Section 4.3-2 of DEIR discusses vegetation and land cover features that were documented throughout the project site. Prior to the development of the DEIR, the California Department of Fish and Wildlife ("CDFW") suggested in its comment on the Notice of Preparation ("NOP") in 2022 that the DIER include: 2

> *An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic,* ***alliance- and/or association-based mapping*** *and assessment be completed* ***following The Manual of California***

> ***Vegetation, second edition (Sawyer et al. 2009)***. *Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.*

CDFW again stated in its 2022 comments on the NOP:

> *Sensitive Plant Communities: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in* ***The Manual of California Vegetation (Sawyer et al. 2009).*** *The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.*

Despite this recommendation from CDFW in 2022, page 6 of the Biological Resources Technical Report ("BRTR") prepared in 2024 by Cadre Environmental stated:

> *Natural community names and hierarchical structure follows the CDFW* ***"List of California Terrestrial Natural Communities" and/or Holland (1986)*** *classification systems, which have been refined and augmented where appropriate to better characterize the habitat types observed onsite when not addressed by the MSHCP classification system.*

cont'd
2

And again, rather than referring to updated and current guidance from CDFW with respect to vegetation classification, page 31 of BTRT for the Banning Commerce Center reads:

> *"One purpose of the vegetation classification is to assist in determining the level of rarity and imperilment of vegetation types. Ranking of alliances according to their degree of imperilment (as measured by rarity, trends, and threats) follows NatureServe's Heritage Methodology, in which all alliances are listed with a G (global) and S (state) rank. For alliances with State ranks of S1-S3, all associations within them are also considered to be highly imperiled" (CDFW 2012) No vegetation communities listed by CDFW as sensitive were documented within or adjacent to the Project Site.*

As detailed in the above accounts, we summarize the chronological record below:

1. October 2022 - CDFW and USFWS submitted comments on the Notice of Preparation specifically stating that a vegetation classification needed to be performed according to most up-to-date standard published in 2009, *The Manual of California Vegetation, second edition (Sawyer et al. 2009)* ("MCV2").
2. October 2022 – CDFW and USFWS also submitted comments on the Notice of Preparation specifically stating that sensitive vegetation communities should be appropriately inventoried and avoided.
3. January 2024 – The consultant for the Banning Commerce Center published the BRTR indicating that a 1989 methodology (referred to as "Holland"), an outdated vegetation classification methodology, published 20 years prior to the current acceptable text of MCV2 (2009), was used to define and describe onsite vegetation stands.

4. January 2024 – The consultant for the Banning Commerce Center concluded on the basis of an outdated vegetation classification system and an outdated CDFW guidance that no sensitive vegetation communities are present within or adjacent to the site.

For reference we would refer the consultant, project proponent, and the City of Banning to updated CDFW methodologies which were not referred to by the consultant in their determination of vegetation communities:

- Survey of California Vegetation Classification and Mapping Standards, (March 6, 2024)[1]
- CDFW-CNPS Protocol for the Combined Vegetation Rapid Assessment and Relevé Field Form[2]

Despite clear guidance and requirements for adequately determining vegetation alliances and associations according to the two guideline and protocol references provided above, page 11 of the BRTR simply asserts that 106.36 acres of the project area consist of "desert scrub" without reference to sampling forms and without following clear protocols set forth by the CDFW and CNPS. The relict name of "desert scrub" comes from the 1989 Holland classification system and is not acceptable for determining impacts under CEQA. Whether or not using the Holland system is useful for determining impacts under the MSHCP is irrelevant this case. Because vegetation communities were not sufficiently inventoried, impacts to such vegetation communities cannot reasonably be assessed under CEQA and the DEIR is therefore insufficient and incomplete.

cont'd 2

The CNPS Riverside-San Bernardino Chapter has conducted preliminary Rapid Assessments of the project area and has determined that under the membership rules of MCV2, the vegetation alliance of the vegetation of the project area is best characterized as acacia - desert lavender - chuparosa scrub (*Senegalia greggii – Hyptis emoryi – Justicia californica* Shrubland Alliance). The San Gorgonio Pass and this project site specifically represent the western-most extent of the natural range of catclaw acacia (*Senegalia greggii*), the dominant or codominant plant species represented in the acacia - desert lavender - chuparosa scrub. This is why the specific plant assemblage of this area is highly unique and consists of an intermixing of coastal and inland desert species with a low growing dominant form of catclaw acacia. The CNPS Riverside-San Bernardino Chapter has conducted preliminary investigations of this specific vegetation composition and determined that it is only present within the San Gorgonio pass area between banning and Cabazon and present across less than 500 total acres. There are currently five associations of acacia - desert lavender - chuparosa scrub that area listed by the State as **designated sensitive** vegetation types[3] and this stand certainly represents an understudied and undescribed vegetation composition that would likely be designated as sensitive following adequate data collection of the sort that should have been conducted by the consultant.

3

With respect to vegetation communities present within the proposed project, the City of Banning has failed to adequately document vegetation stands to the alliance and association levels according to existing standards and protocols. The City of Banning has therefore failed to adequately address impacts to sensitive vegetation communities as required under CEQA including the City's own established thresholds of significance that were used to assess the impacts of the Banning Commerce Center project. We request that impacts to vegetation communities be re-assessed by a qualified consultant to include the following:

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[1] SCV Classification and Mapping Standards 20221104
[2] CNPS Rapid Assessment Protocol (ca.gov)
[3] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153398&inline

a) A vegetation map which includes alliance and association level designations of vegetation types present and according to *The Manual of California Vegetation, second edition (Sawyer et al. 2009)*
b) Associated Relevé and/or Rapid Assessment forms that were used to determine vegetation alliances and community designations
c) An analysis of impacts to the acacia scrub vegetation which is highly unique and most likely constitutes and undescribed association of the acacia scrub alliance
d) Evidence of consultation with State CDFW/CNPS vegetation experts with respect to this unique vegetation stand
e) A summary of consultant qualifications to perform vegetation community delineations

cont'd 4

2. Present Rare Plant Resources

In comments submitted on the NOP in 2022, CDFW recommended:

A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.

Page 8 of the BRTR indicated that:

Focused Survey Program Developed for MSHCP Target Plants Floristic and focused plant surveys were conducted in order to identify all species observed on the Project Site. Additionally, program goals would also locate, census, and map the target MSHCP plants, and other CNPS or species of local concern, if present, occurring onsite.

The CNPS Riverside-San Bernardino Chapter conducted independent site assessments of the property and within five minutes, determined that a large population of 100+ individuals of Parry's spineflower (*Chorizanthe* var. *parryi parryi*) is present at approximately - Lat/Long: 33.92903, -116.8501. Additional populations are likely to be present throughout the project area. The BRTR reported in Table 4 that this plant species was not detected during focused surveys (see below screen capture of Table 4. from the BRTR).

5

Parry's spineflower (*Chorizanthe parryi* var. *parryi*) CRPR 3.2 MSHCP Covered	Sandy or rocky soils in open habitats of chaparral and coastal sage scrub.	No Potential. Not detected during focused surveys conducted in 2023.

The failure to detect present rare plant populations is concerning and puts into question the validity of other biological resource information that is presented in the BRTR. Despite coverage under the MSHCP, the DEIR needs to include accurate information about present rare plant species. We recommend reevaluating plant species presence and specifically request the following actions/EIR revisions be made:

a) All rare plant species including Parry's spineflower be accurately inventoried including noting locations and estimated number of individuals
b) Prepare and include a map graphic that displays geographic populations sizes and locations

c) Assemble a full species list of all plant species that were present within the project area during the inventory, which was not, but should have been included in the DEIR or BRTR.

cont'd 5

3. Jurisdictional Waterways

The DEIR and BRTR identified several jurisdictional waterways within the proposed project area and identified total permanent impacts to 0.54 acre of jurisdictional features. Figure 16 and Mitigation Measure BIO-1("MM BIO-1") which are excerpted from the DEIR and BRTR below describe the proposed mitigation for this impact:

Mitigation Measure BIO-1: Permanent impacts to 0.54-acres of jurisdictional features will be mitigated at a 5:1 ratio (2.67 acres) through the creation of in-kind habitat onsite along the northeastern and eastern most Project site. If it is determined that onsite mitigation or offsite is not feasible, additional alternatives could include, payment into an acceptable an approved mitigation bank should one become available at the time of impacts and permitting.

Page 25 of the MSHCP DBESP Appendix to the DEIR then asserts that:

The habitats will be restored to equivalent or superior conditions resulting in a functional lift through implementation of a habitat mitigation and monitoring plan (HMMP).

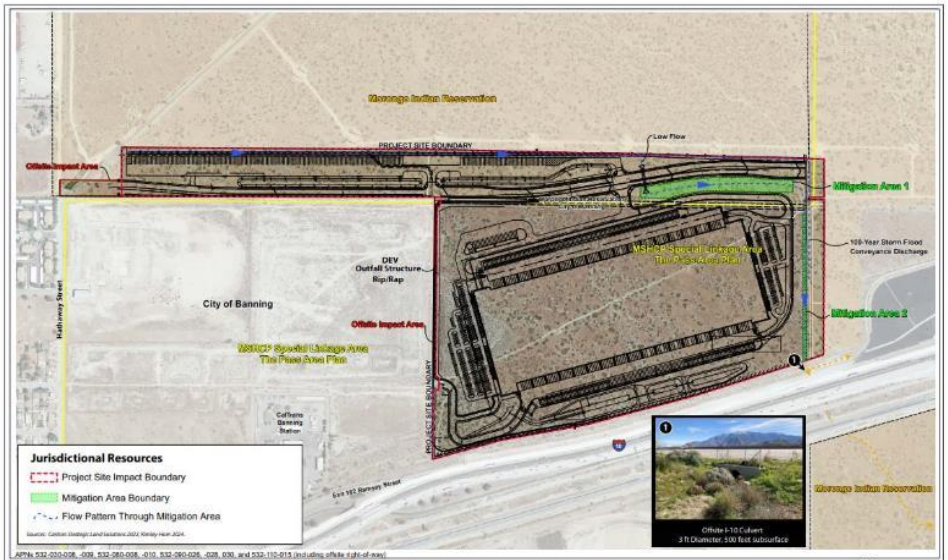


Figure 16 - Onsite Mitigation Area Map
Determination of Biologically Equivalent or Superior Preservation
Banning Commerce Center Project
Source: Kimley Horn 2024
CADRE Environmental

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With reference to the above map, the assertion that *habitats will be restored to equivalent or superior conditions* is a logically false assertion. The jurisdictional waterways within the project footprint currently exist in their natural context with large natural buffers on either side of the waterways. The current waterway also maintains upstream and downstream connectivity while supporting natural water flows and serving to provide all the ecological functions associated with waterways. Episodic streams are defined by a system of flashy, high intensity flows, whereby adjacent upland refugia habitats play an integral ecological role for plants as well as wildlife. The proposed mitigation concept (MM Bio-1) which proposes to sandwich restoration areas between the Wilson Street expansion and the proposed commerce center would drastically decrease the ecological and functional features of the existing waterways, eliminating all refugia and disconnecting important waterflow mechanisms from broader habitats. Not only does the mitigation concept eliminate all refugia habitat, but the concept also places a road immediately to the north of the proposed habitat restoration which has clear negative implications for all wildlife that would presumably be using the mitigation area habitat. The California Rapid Assessment Method (CRAM), which has become a state standard for assessing function of aquatic resources including episodic streams such as that present with the project impact area, includes analysis and function of buffers in the formal practitioner modules. CRAM specifically uses a 500-meter distance in the Episodic Stream Module[4] to indicate high function versus lower function. In its current state, the jurisdictional waterway contains high quality native buffer on either side of the present stream channels extending beyond 500 meters in either direction. Impacts to the native buffer would lower the overall CRAM score which translates into a significant decrease in overall function of the waterway. CRAM also accounts for upstream and downstream connectivity which will be severed under the proposal of MM BIO-1 which essentially proposes to creates a habitat island amongst a sea of developed concrete and asphalt. Despite a 5:1 mitigation ratio, this concept simply does not adequately mitigate for the real impacts associated with the impacts to waterways, specifically with respect to the broader context and function of the waterways. We recommend that the mitigation concept for jurisdictional waterways be reassessed and a rationale for the mitigation concept be provided. In its current form, this mitigation concept is clearly deficient and does not adequately mitigation for impacts.

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4. Conclusion and Recommendations

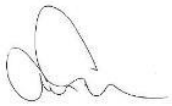
The combined significant oversights that have been described above contribute to an overall EIR that is far from adequate. The City of Banning (1) failed to perform a valid vegetation alliance and association delineation using the standard set forth in *A Manual of California Vegetation, Second Edition* as suggested by CDFW and USFWS, (2) failed to adequately inventory (and provided mitigation measures for) rare plant species that are present within the project footprint, and (3) failed to provide an adequate mitigation concept for impacts to jurisdictional waterways. With these oversights, we consider the current version of the EIR to be deficient and incomplete and request that substantial revisions be made to comply with California environmental laws.

7

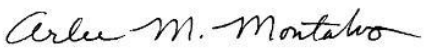
[4] Episodic Riverine CRAM Field Book_v6.2.pdf (cramwetlands.org)

Sincerely,

Aaron Echols, Conservation Chair, Riverside/San Bernardino Chapter, California Native Plant Society



Arlee M. Montalvo, Chapter President, Riverside/San Bernardino Chapter, California Native Plant Society



cont'd
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Responses to Comment Letter O2 - California Native Plant Society

O2.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O2.2 The commenter suggests that the Project site is best characterized as acacia - desert lavender - chuparosa scrub (*Senegalia greggii – Hyptis emoryi – Justicia californica* Shrubland Alliance/Association), a CDFW sensitive vegetation. However, following general and sensitive plant surveys conducted during the spring of 2023 which included the preparation of a plant compendium, two (2) of the three (3) species which are easily identifiable, and define this vegetation community including *Hyptis emoryi* and *Justicia californica* were not documented onsite. The approach of documenting all dominant species onsite is more credible and defensible than a rapid assessment as proposed by CNPS. The EIR vegetation description of desert scrub lists the dominant species observed onsite. Furthermore, per the Membership Rules for the acacia - desert lavender - chuparosa scrub vegetation community include:

- *Hyptis emoryi* must exceed or be equal to 2% absolute cover in the shrub canopy; it exceeds any other shrub in cover.
- *Hyptis emoryi* > 30% relative cover in the shrub canopy often with *Senegalia gregii*, *Bebbia juncea*, and other shrubs
- *Justicia californica* characteristically present and often co-dominant with other shrubs such as *Hyptis emoryi, Ambrosia salsola, Larrea tridentata*, and others.

As stated above and within the BRTR (**Appendix B** to this Final EIR), *Hyptis emoryi* and *Justicia californica* were not observed onsite. Therefore, the vegetation community does not meet the Membership Rules of acacia - desert lavender - chuparosa scrub.

The approach of documenting all dominant species onsite is more credible and defensible than a rapid assessment as proposed by the commentor. The desert scrub vegetation community and associated species documented onsite are not consistent with any of the five (5) associations listed in Sawyer 2009. The vegetation onsite is more closely associated with a desert scrub/Riversidean sage scrub ecotone transitional area. However, due to the dominance of catclaw acacia (*Senegalia greggii*), the vegetation was characterized as desert scrub based on the MSHCP collapsed vegetation community classification. Furthermore, the County of Riverside GIS vegetation database also has the Project site mapped as desert scrub. As such, the methodology of the BRTR is adequate under CEQA. As such, the Draft EIR is sufficient, and recirculation is not required.

O2.3 Refer to **Response O2.2**.

O2.4 Refer to **Response O2.2**.

O2.5 The BRTR states "Low potential for slender-horned spineflower (*Dodecahema leptoceras*), Parry's spineflower (*Chorizanthe parryi var. parryi*), Robinson's pepper-grass (*Lepidium virginicum var. robinsonii*), Payson's jewelflower (*Caulanthus simulans*), and chaparral sand-verbena (*Abronia*

villosa var. *aurita*)." Table 4, Sensitive Plant Species with Potential to Occur Onsite within the BRTR has been updated to reflect this inconsistency between the text. It should be noted that the text of the BRTR and the information provided within the Draft EIR indicated, at the time of public review, that Parry's spineflower has a low potential to occur on the Project site, as such, no revisions to the Draft EIR are necessary. Following the commenter's submittal of the observance of Parry's spineflower, the table has been updated to include the species observation. The BRTR will update the floral table to "observed onsite in 2024 (CNPS 2024)." Regardless, Parry's spineflower is an MSHCP covered species and focused surveys are not required. A floral compendium has been added to the BRTR. The revised BRTR is available as **Appendix B** to this Final EIR.

O2.6 Pursuant to CEQA and the CEQA Guidelines, the BRTR assessed the Project's impacts on jurisdictional waters of the U.S. and waters of the State. A delineation was conducted in accordance with the Arid West Manual and the project disturbance limits were used to calculate impacts. The Commentor asserted that the California Rapid Assessment Method (CRAM) should have been used to determine impacts. This assertion is incorrect and inconsistent with industry standards. CRAM is more commonly used during the assessment of restoration projects, not to determine the extent of jurisdictional impacts under CEQA.

During preparation of the BRTR, the Applicant held early consultation meetings with the MSHCP and regulating Agencies, including the RCA, USFWS, U.S. Army Corps of Engineers, RWQCB, and CDFW on February 7, 2023, and December 13, 2023, even though the Project site is not located within an MSHCP Criteria Cell. The BRTR included preparation of an MSHCP Consistency Analysis and DBESP, and documented consistency with adopted Habitat Conservation Plans pursuant to the CEQA Guidelines. While the Lead Agency, who is a signatory of the MSHCP document, is ultimately responsible for determining MSHCP consistency for projects found outside of the criteria cells, the Wildlife Agencies provide recommendations for the DBESP and MSHCP consistency document.

Pursuant to CEQA, the BRTR found a potentially significant impact to jurisdictional waters. The BRTR recommended mitigation that was included in the EIR to reduce impacts to less than significant. The mitigation includes creation of jurisdictional waters at a 5:1 ratio of mitigation to impacts for a total of 2.67 acres. The commentor expressed objection to the type of mitigation, which is noted. However, based on the evidence presented in the BRTR and the Draft EIR, it has been determined that pursuant to CEQA the proposed mitigation reduces the impacts to less than significant. The proposed mitigation as outlined within MM BIO-1 provides for a no net loss of jurisdictional waters and associated habitat; proposes creation of additional jurisdictional features, which supports creation of additional associated habitat; controls flow to minimize the risk of downstream erosion and scour; and provides for wildlife movement from the northern Morongo Indian Reservation through the Project site to the Interstate 10 freeway, located south of the Project site. Furthermore, contrary to the commentor's statement, storm flows leaving the Project site continue south in a defined soft-bottom drainage ditch that extends parallel to Interstate 10 prior to entering a concrete-lined culvert/open channel that circumvents the

Caltrans Banning weigh station and flows under Interstate 10. Therefore, as documented in the BRTR, there are no direct impacts to the downstream condition.

The HMMP and Long-term Management Plan will be prepared, reviewed, and approved by the CDFW and USFWS. The MSHCP DBESP and HMMP will be reviewed and approved by the appropriate regulatory branch of CDFW during the 1602 permit process and RWQCB during compliance with waste discharge requirement. In order to comply and answer the CEQA Appendix G question as it relates to jurisdictional features, jurisdictional limits, and jurisdictional impact, the proposed mitigation of 2.67 acres, which represents a 5:1 mitigation ratio, reduces the potentially significant impact to less than significant with mitigation. The commentor states the "assertion that habitat will be restored to equivalent or superior conditions is a logically false assertion" due to the "large natural buffers on either side of the waterways." The jurisdictional resource agencies, CDFW and RWQCB, as defined by current regulation take authority and jurisdiction of bed and bank and associated water dependent vegetation, of which do not extend to any natural buffers on either side of waterways. The jurisdiction ends at the top of the bank. The proposed mitigation as outlined within MM BIO-1 provides for a no net loss of the waters and proposes creation of additional jurisdictional features to convey flow.

It should be noted that the Applicant is also required to obtain permits from the Resource Agencies for impacts to Waters of the State and Waters of the U.S. It is possible that during the permitting process the required mitigation could change, and it would be up to the Lead Agency to determine if the revised mitigation is substantially consistent with the mitigation required in the EIR.

O2.7 Refer to **Responses O2.2** through **O2.6**. The comment is conclusionary in nature, and no further revisions to the Draft EIR are required.

Comment Letter O3 – Center for Biological Diversity

Comment Letter O3



August 1, 2024

Sent via email

Emery Papp
Senior Planner
Community Development Department
City of Banning
99 East Ramsey Street,
Banning, California 92220
epapp@banningca.gov

Re: Draft EIR for the Banning Commerce Center Project, SCH # 2022090102

Dear Mr. Papp:

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") regarding the Banning Commerce Center Project, SCH # 2022090102 (the "Project"). The Center has reviewed the Draft Environmental Impact Report ("DEIR") closely and is troubled by its failure to disclose and mitigate significant impacts to biological resources, including mountain lions, burrowing owls, and wildlife connectivity. The Center is also concerned with the DEIR's conclusions of significant and unavoidable impacts regarding the Project's air quality impacts and greenhouse gas emissions – conclusions that ignore relevant, feasible mitigation measures. The Center urges the City of Banning recirculate a legally compliant EIR that fully analyzes, discloses, and mitigates all significant impacts. 1

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Riverside County.

I. THE DEIR FAILS TO ADEQUATELY ASSESS AND MITIGATE THE PROJECT'S IMPACTS TO BIOLOGICAL RESOURCES.

The California Environmental Quality Act (CEQA) requires an EIR to provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project might be minimized, and to indicate alternatives to the project. (Pub. Res. Code § 21061.) CEQA further requires a lead agency to mitigate to the extent feasible significant impacts. (CEQA 2

Guidelines § 15064.4.) The DEIR fails to provide sufficient analyses and mitigation for the Project's potential impacts to biological resources and therefore fails to comply with CEQA.

The Project must be considered in context of the landscape it is located in and surrounded by. The proposed Project includes destroying more than 130 acres of undeveloped habitat that supports numerous sensitive and special-status species located within an identified vital ecological connectivity area between the transverse and peninsular ranges. Special-status species and sensitive habitats that occur in, near, and downstream of the proposed Project will be significantly impacted by a large warehouse project that will increase traffic, noise and light pollution, runoff, and carbon emissions. The DEIR fails to adequately assess the Project's impacts to wildlife connectivity and the special-status species and sensitive habitats that occur, potentially occur, or historically occurred in and near the Project area.

cont'd 2

A. The DEIR fails to adequately assess, and mitigate the Project's impacts to special-status species

As mentioned in the Center's NOP comments[1] (Exhibit 1), CEQA requires that an EIR provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment. (Pub. Res. Code § 21061.) The EIR must adequately assess and mitigate impacts to special-status species that are known to occur, have the potential to occur, or historically occurred in and near the Project area. Yet the DEIR fails to adequately describe, assess, and mitigate the Project's impacts to numerous special-status species that occur, potentially occur, or historically occurred in or near the Project area, including mountain lions (CESA-candidate species), coastal California gnatcatcher (federally threatened, state species of special concern [SSC]), burrowing owl (state SSC that is currently being petitioned to be listed under CESA (Miller, 2024)), Coachella Valley fringe-toed lizard (federally threatened, state endangered), and many others.

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Regardless of the species' status in the MSHCP, to comply with CEQA the DEIR must adequately analyze and mitigate the Project's impacts to any special-status species that occurs, may occur, or historically occurred in and near the Project area. The existence of State and federal standards does not absolve the City from the duty to do everything that is within its power to mitigate the impacts of this Project. (See *Save Our Capitol! v Department of Gen. Servs*. (2023) 87 CA5th 655, 696 (agency could not rely on compliance with LEED and CAL-Green building standards to mitigate light and glare impacts in absence of project-specific analysis of impacts and effect of compliance); *Californians for Alternatives to Toxics v Department of Food & Agric*. (2005) 136 CA4th 1 (EIR failed to analyze environmental and health risks of crop disease control program and instead presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation). See also *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 C4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain registered herbicides in general not excuse its failure to assess effects of their use for specific timber harvesting project).)

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[1] The Center's NOP comments were submitted on October 3, 2022 yet excluded from the DEIR. This is concerning given the City's responsibility to consider all comments submitted on the Project. (14 Cal Code Regs §15084(c); Pub Res C §21082.1.)

The DEIR buries most information in its appendices; however, analyses need to be provided within the main text of the EIR – "a report buried in an appendix is not a substitute for a good faith reasoned analysis" (*Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007)). Exhibit 2 lists special-status species that have been documented within the California Natural Diversity Database (CNDDB) quadrant that the Project area is located in; the DEIR should provide adequate analyses and assessments regarding the Project's impacts on at least these species within the main text of the EIR. The DEIR fails to accomplish this, and therefore fails to comply with CEQA. 5

Below are a few in-depth examples of the DEIR's deficiencies. This is not a comprehensive list and there are likely other special-status species that require additional impact analyses.

i. Mountain Lions

The DEIR fails to adequately describe, assess, and mitigate the Project's impacts to local mountain lions, candidate species under the California Endangered Species Act (CESA). In fact, there is no mention of mountain lions in the main text of the DEIR at all. Instead, the limited information regarding mountain lions is buried in a table in an appendix (DEIR Appendix C1 Table 5) with no mention of their CESA status nor sufficient analysis or discussion regarding the Project's impacts to this sensitive species that is currently experiencing an extinction vortex. The appendix merely mentions mountain lions as an MSHCP Covered Species and states they have "low potential" to occur in or move through the Project area without providing substantial evidence to support such claims (DEIR Appendix C1 Table 5), as no movement studies were conducted. The conclusion in the appendix is pure conjecture and not based on the best available science. 6

CEQA condemns an agency's failure to include important information on analysis and methodology by only including such information in appendices. (*San Joaquin Raptor Rescue Ctr. v. Cty. of Merced*, 57 Cal. Rptr. 3d 663, 675 (Cal. Ct. App. 2007)). As the California Supreme Court has held, information in a CEQA analysis "must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 442). Information and analysis "buried in an appendix is not a substitute for a good faith reasoned analysis." *Id*. (citations omitted). Sufficient information regarding wildlife connectivity must be provided within the main text of an EIR. The DEIR fails to comply with CEQA. 7

As mentioned in the Center's NOP comments (Exhibit 1), local mountain lions are within the Southern California and Central Coast Evolutionarily Significant Unit (ESU) that is currently a candidate threatened species under CESA. There is ample scientific evidence that indicates mountain lion populations in and around the Project area are struggling to survive and that human activities and land use planning that fail to integrate adequate habitat connectivity can have adverse impacts on mountain lions. Continued habitat loss and fragmentation has led to 10 genetically isolated populations within California. There are six identified mountain lion 8

populations in the ESU, and several are facing an "extinction vortex" due to high levels of inbreeding, low genetic diversity, and high human-caused mortality rates from car strikes on roads, depredation kills, rodenticide poisoning, poaching, disease, and increased human-caused wildfires. (Benson et al., 2016, 2019; Ernest et al., 2003; Gustafson et al., 2018, 2021; Riley et al., 2014; Vickers et al., 2015). The primary driver of this extinction vortex is lack of connectivity. (Yap et al., 2019).

cont'd 8

The Project area is located between the San Gabriel/San Bernardino (SGSB) population and the Eastern Peninsular Range (EPR) population, and the Santa Ana Mountains (SAM) population is nearby to the southwest. Scientists have documented physical and reproductive signs of inbreeding depression in local mountain lions (from the EPR and Santa Ana mountains, as well as the nearby Central Coast South [i.e. Santa Monica Mountains]) due to being boxed in by roads and development (Huffmeyer et al., 2021). Researchers have found that, of the California mountain lion subpopulations, the SGSB population has the smallest effective population size and the smallest area of available habitat (Dellinger et al., 2020; Gustafson et al., 2021). Scientists suggest that the SGSB population "may be approaching levels of genetic drift and inbreeding similar to the well-monitored and genetically depauperate Santa Ana and Central Coast South populations (Ernest et al., 2014; Gustafson et al., 2017; Riley et al., 2014)" (Gustafson et al., 2021), which are predicted to have a 99% chance of becoming locally extinct within 50 years if inbreeding depression continues. (Benson et al., 2019). This emphasizes the importance of protecting the remaining SGSB population, specifically through maintaining and enhancing connectivity among and between the subpopulations.

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Collared mountain lions have been documented moving through the Project area to approach I-10. The proposed Project has the potential to amplify the barrier effects of I-10, especially given the Project's proximity to a critical riparian corridor (San Gorgonio River) with an undercrossing that has the best vegetation cover to support mountain lion movement between the San Jacinto and San Bernardino mountains. The proposed Project could degrade this important connectivity area and drive the SGSB, EPR, and SAM puma populations towards extinction.

The EIR must consider that the Project's impacts to mountain lions (and other special-status species and sensitive habitats) extend beyond its physical footprint. Ample evidence documents the effects of human activity on mountain lions. One study found that mountain lions are so fearful of humans and noise generated by humans that they will abandon the carcass of a deer and forgo the feeding opportunity just to avoid humans (Smith et al., 2017). The study concluded that even "non-consumptive forms of human disturbance may alter the ecological role of large carnivores by affecting the link between these top predators and their prey" (Smith et al., 2017). In addition, mountain lions have been found to respond fearfully upon hearing human vocalizations, avoiding the area and moving more cautiously when hearing humans (Smith et al., 2017; Suraci et al., 2019). Other studies have demonstrated that mountain lion behavior is negatively affected when exposed to other evidence of human presence, such as lighting or vehicles/traffic (Smith et al., 2015; Wang et al., 2017; Wilmers et al., 2013). Therefore, both physical and behavioral barriers drive genetic isolation, and continued land use that further fragments mountain lion habitat in the region without adequately minimizing impacts to functional connectivity, will drive pumas in the area to extinction. The Project will result in

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increased traffic, light, noise, etc. in an important connectivity area between the San Bernardino and San Jacinto mountains, where mountain lions are known to occur and are known to be struggling. The Project will significantly impact how mountain lions navigate the landscape by fortifying existing human-made barriers and decreasing opportunities for them to move between mountain ranges. The DEIR fails to adequately assess and mitigate the Project's impacts to mountain lions. cont'd 10

Yovovich et al., (2020) further documented the impacts of human activities on local mountain lions, specifically on communication and reproductive behaviors important for their survival. Males use scrapes to delineate territories as well as attract potential mates (M. L. Allen et al., 2015, 2016), and the males in the study preferred to use relatively flat areas away from human influence as scrape habitat (Yovovich et al., 2020). Similarly, when nursing females (with kittens less than 8 weeks old) shrank their home ranges to an average of 9 km^2 while their young were most vulnerable, they also selected undeveloped lands away from human disturbance, opting for habitat with protective cover and sufficient water and prey availability (Yovovich et al., 2020). The loss of adequate undisturbed communication and nursery habitat could disrupt important communication and reproductive behaviors that facilitate social structure and overall survival. 11

In a study that investigated the drivers of fine-scale movement decisions by pumas in fragmented landscapes in the Santa Cruz Mountains, (Suraci et al., 2020) identified that mountain lions prefer larger habitat patches that are closer together and further away from buildings, and they preferred shrub over tree patches. However, mountain lions were willing to accept higher densities of anthropogenic features if target habitat patch areas were larger or the distance between patches was shorter (Suraci et al., 2020). In addition, pumas were found to travel longer distances through open habitats to access larger habitat patches, perhaps for more protective cover and/or for better hunting opportunities within the larger habitat patch areas (Suraci et al., 2020). These findings corroborate those of (Smith et al., 2019), which found that pumas are able to move through partially developed habitat, though they are less likely to move through parcels with higher densities compared to parcels with less dense housing in and around the parcels. In fact, puma avoidance increased sharply as housing density increased up to 41 houses/km^2, after which avoidance remained high. Although these studies demonstrate that mountain lions have some tolerance of human presence, they mostly highlight the negative impacts of increased human use/density on the movement and survival of mountain lions and the importance of habitat connectivity among large, intact, heterogeneous habitat patches. 12

In addition, (Riley et al., 2021) found that, although pumas had some flexibility to navigate urbanized landscapes, they spent more than 95% of their time away from developed areas and actively avoided open areas like golf courses, cemeteries, and other altered landscaped spaces. Mountain lions consistently selected native vegetation types with dense cover, like chaparral, riparian woodland, and coastal sage scrub, with shrublands being their preferred habitat. This highlights the importance of intact and connected natural heterogeneous landscapes to the long-term health and persistence of constrained mountain lion populations. The authors state, "An important requirement for the effective conservation of at-risk mountain lion populations in southern California is preserving and enhancing connectivity between larger natural areas." (Riley et al., 2021). In addition, especially in areas where pumas are severely

isolated and wildlife connectivity is already constrained, like in and near the Project area, it is important to note that even a single migrant from a different population can help enhance genetic diversity in inbred puma populations (Gustafson et al., 2017). This suggests that any area with important connectivity is critical for the long-term survival of local pumas. The proposed Project could drive local puma populations towards extinction while harming other wildlife. cont'd 12

Mountain lions are a key indicator species of wildlife connectivity and healthy ecosystems. As the last remaining wide-ranging top predator in the region, the ability to move through large swaths of interconnected habitat is vital for genetic connectivity and their long-term survival. In addition, impacts to mountain lions in the region could have severe ecological consequences; loss of the ecosystem engineer could have ripple effects on other plant and animal species, potentially leading to a decrease in biodiversity and diminished overall ecosystem function. Many scavengers, including California condors, kit foxes, raptors, and numerous insects, would lose a reliable food source (Barry et al., 2019; Ruth & Elbroch, 2014). Fish, birds, amphibians, reptiles, rare native plants, and butterflies would potentially diminish if this apex predator were lost (Ripple et al., 2014; Ripple & Beschta, 2006, 2008). In fact, a recent literature review found that mountain lions are important ecosystem engineers and have been documented to have ecological interactions with at least 485 plant and animal species (Labarge et al., 2022). Adequate assessment and mitigation of the Project's impacts to mountain lions is necessary to ensure their long-term survival as well as the long-term health of the area's biodiversity and ecosystems. 13

Wildlife connectivity in this region is paramount for the survival of the Southern California mountain lions. Any project that does not adequately assess and address impacts to mountain lions and wildlife connectivity could lead to the extirpation of local mountain lions and severe loss of biodiversity and ecosystem function in the region. Further destruction of wildlife connectivity in the area will push local mountain lions closer towards extinction. See further discussion below regarding the DEIR's requirement to adequately describe, assess, and mitigate impacts to wildlife movement and connectivity. 14

ii. Special-status and Migratory Birds, including Burrowing Owl

Many bird species throughout North America area experiencing declines. The widely-publicized results of a 2019 research study showed that nearly three billion birds have been lost in the last half-century, with grassland birds experiencing the heaviest losses (Rosenberg et al., 2019). Threats to birds are numerous and complex, and include habitat loss, pesticide and rodenticide use, urban and agricultural development, and climate change, among others. 15

The DEIR fails to adequately describe, assess, and mitigate the Project's impacts to burrowing owls. The DEIR fails to mention that local burrowing owls are currently being petitioned to be listed under CESA (Miller, 2024). The DEIR also fails to list burrowing owl as a "special-status species potentially occurring onsite" in the main text (DEIR at 4.3-5) despite the presence of suitable habitat throughout the Project area and nearby burrows. The DEIR states that "[s]uitable burrowing owl burrows potentially utilized for refugia and/or nesting were documented adjacent to the property including foraging habitat documented throughout the Project site" (DEIR at 4.3-12), while consultants documented California ground squirrels, whose 16

burrows burrowing owls depend on, in and near the Project area (DEIR at 4.3-3). According to numerous publicly available databases, including iNaturalist,[2] eBird,[3] and the Global Biodiversity Information Facility (GBIF),[4] burrowing owls have been documented in the vicinity. These owls have been found to forage up to two miles from their burrows. Therefore, the Project area should be considered burrowing owl habitat and the DEIR should assume burrowing owls use the area. cont'd 16

The DEIR states that "No burrowing owl or characteristic sign such as white-wash, feathers, tracks, or pellets were detected within or immediately adjacent to the Project site during the 2023 survey effort" (DEIR at 4.3-13) and therefore assumes burrowing owls have "low potential" to occur in the Project area (DEIR Appendix C1 Table 5). However, only spring breeding season surveys were conducted, and lack of detection of burrowing owls in just one breeding season should not lead to the assumption that burrowing owls are absent. Even if the area was not used as breeding habitat in the spring of 2023, it is possible that burrowing owls could establish or re-establish a colony in the area. In addition, it is possible that the Project area supports wintering burrowing owls. The DEIR should include both summer and winter burrowing owl surveys to determine burrowing owl presence. The DEIR fails to adequately assess the Project's impacts to burrowing owls. 17

Burrowing owls have experienced significant declines in California. The Southwestern California population, which includes burrowing owls local to the Project area, along with two other populations, was recently petitioned for listing as endangered under CESA due to substantial population declines. As the petition states:

> Burrowing owls were historically abundant throughout Southwestern California. Focused surveys from 1991-1993 estimated 263 pairs in the region (227 in the interior and 36 on the coast), a 57-85% decline since the mid-1980s… Resurvey efforts from 2006-2007 estimated 150 pairs in the interior, a further 34% decline… Significant breeding populations remained in western Riverside and southwestern San Bernardino counties, where further recent declines have been documented and long term persistence is unlikely. Southwestern California owls are threatened by urban development, habitat loss, degradation and fragmentation, ground squirrel eradication, coastal predator management, and disturbance. (Miller, 2024).

Any impacts to burrowing owls in the Project area, including loss of current or potential habitat and further habitat fragmentation, will push this population closer to extinction. 18

MM BIO-1 and MM BIO-2 require burrowing owl and nesting bird preconstruction surveys, respectively (DEIR at 4.3-14); however, these mitigation measures are insufficient and improperly deferred. Although MM BIO-1 requires a 30-day pre-construction survey for burrowing owls prior to ground-disturbing activities, a Burrowing Owl Protection and Relocation Plan would only be prepared if burrowing owls are documented on site during the surveys (DEIR 19

[2] https://www.inaturalist.org/observations?place_id=any&subview=map&taxon_id=19975 (accessed July 25, 2024)
[3] https://ebird.org/species/burowl (accessed July 25, 2024)
[4] https://www.gbif.org/occurrence/map?q=burrowing%20owl (accessed July 25, 2024)

at 4.3-14). Meanwhile MM BIO-2 states "[i]f active nests are documented, species-specific measures will be prepared by a qualified biologist and implemented to prevent abandonment of the active nest" (DEIR at 4.3-14) without providing specific measures for burrowing owls or other special-status species. At a minimum, no-work buffers of at least 300 feet should be implemented should burrowing owl or other raptor nests be identified. cont'd 19

The DEIR provides insufficient detail for the public and decision makers to ascertain whether such measures would adequately mitigate the Project's impacts to burrowing owls and burrowing owl habitat *before* the Project is approved. (See *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [EIR inadequate where the success or failure of mitigation efforts "may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR"]). In the limited circumstances in which deferred mitigation is appropriate, the agency must meet all of the following elements: (1) practical considerations prevented the formulation of mitigation measures during the planning process; (2) the agency committed itself to developing mitigation measures in the future; (3) the agency adopted specific performance criteria prior to project approval; and (4) the EIR lists the mitigation measures to be considered, analyzed, and possibly incorporated into the mitigation plan. (See *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 736-37 [review denied].) The DEIR's proposed mitigation fails to meet these criteria. 20

The California Department of Fish and Wildlife recommends numerous additional mitigation measures, including the development of a Burrowing Owl Exclusion Plan as well as securing and permanently protecting lands to mitigate for loss of habitat *before* any activities that may impact BUOW begin (CDFW, 2012). Mitigation measures should include the permanent protection of occupied nesting and foraging habitat at a mitigation ratio of 5:1, with adequate resources set aside to protect, monitor, and adaptively manage these areas in perpetuity. The DEIR fails to adhere to best practices regarding BUOW surveys and mitigation. 21

Numerous other special-status bird species may also be present, including coastal California gnatcatcher (federally threatened, SSC), northern harrier (SSC), loggerhead shrike (SSC), white-tailed kite (a state fully protected species), and many others. These species were included in Table 5 within the Biological Resources Technical Report (Appendix C1) but were not discussed in the EIR itself. As mentioned above, analyses need to be provided within the main text of the EIR—" a report buried in an appendix is not a substitute for a good faith reasoned analysis" (*Vineyard Area Citizens for Responsible Growth, Inc. v City of Rancho Cordova* (2007)). The DEIR fails to adequately assess and mitigate the Project's impacts to burrowing owls and other special-status birds in and near the Project area, and therefore fails to comply with CEQA. 22

As discussed in more detail below, edge effects like noise and light from Project construction and operation will have impacts on wildlife and wildlife movement. Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, and invasive weeds have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute, 2003). This is important to consider when open space is immediately adjacent to the Project area, as birds and 23

other wildlife have been found to be sensitive to edge effects. For example, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al., 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding behavior and duration, as well as increased vigilance behavior (Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. Another study found a 28% decrease in bird abundance in areas when traffic noise was present compared to when there was no traffic noise (McClure et al., 2013). The DEIR fails to analyze these impacts and should be revised to determine the Project's impacts to special-status birds. cont'd 23

B. The DEIR fails to adequately disclose, assess, and mitigate the Project's impacts to wildlife connectivity.

The DEIR fails to adequately describe the Project area's importance for wildlife connectivity. Although the Biological Resources Technical Report (Appendix C1) acknowledges that the Project site is within a Special Linkage Area (SLA) within the Western Riverside Multi-species Habitat Conservation Plan (WS-MSHCP) that serves as a connection between the San Bernardino and San Jacinto Mountains via the San Gorgonio River (DEIR Appendix C1 at 50), there is no mention of this within the main text of the DEIR. The DEIR simply states that "the Project site does not serve as a regional travel route, wildlife corridor, or wildlife crossing, the mitigation area" (DEIR at 4.3-20) and erroneously concludes that the Project would result in "a less than significant impact" (DEIR at 4.3-18) without providing substantial evidence to support such claims. The DEIR is misleading and insufficient. 24

CEQA condemns an agency's failure to include important information on analysis and methodology by only including such information in appendices. (*San Joaquin Raptor Rescue Ctr. v. Cty. of Merced*, 57 Cal. Rptr. 3d 663, 675 (Cal. Ct. App. 2007)). As the California Supreme Court has held, information in a CEQA analysis "must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 442). Information and analysis "buried in an appendix is not a substitute for a good faith reasoned analysis." *Id*. (citations omitted). Sufficient information regarding wildlife connectivity must be provided within the main text of an EIR. The DEIR fails to comply with CEQA. 25

Both the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) expressed concerns about the Project being located within the SLA, stating that the SLA "provides a connection between the San Bernardino and San Jacinto mountains" that is "vital to ensuring regional connectivity from the U.S.-Baja California border to the southern Sierra Nevada" (DEIR Appendix A3). The San Bernardino-San Jacinto Connection is where the Transverse and Peninsular Ranges converge and is in an ecological transition zone between the South Coast and Desert ecoregions" (DEIR Appendix A3). Yet the DEIR fails to mention this. 26

The USFWS and CDFW go on to express concerns regarding the Project's downstream impacts. In particular, the agencies state: 27

> "Project activities have the potential to cause significant downstream impacts to sediment transportation through fluvial and aeolian riverine systems, which may further impact federally endangered Coachella Valley (*Astragalus lentiginosus var. coachellae*) and triple-ribbed milkvetch (*Astragalus tricarinatus*) and the fringe-toed lizard (*Uma inornate*), species identified within the CV-MSHCP with specific conservation objectives. Additionally, the Special Linkage Area within the WR-MSHCP directly connects to the CV-MSHCP Cabazon Conservation Area providing further wildlife movement and connectivity between the MSHCPs. The primary goal of the Cabazon Conservation Area is conserve lands that provide for vital sand transport functions to the core conservation areas for the CV-MSHCP covered species" (DEIR Appendix A3).

cont'd 27

Yet the DEIR fails to mention the importance of the SLA to local and regional wildlife connectivity, fails to conduct any species movement studies in or near the Project area, and fails to assess the Project's downstream impacts on special-status species and sand transport functions.

As mentioned in the Center's NOP comments (Exhibit 1), to comply with CEQA the EIR must adequately disclose the existing conditions of the site and adequately assess and mitigate the Project's impacts to wildlife connectivity. Not only does the DEIR fail to acknowledge that the Project are is located within an SLA in the WS-MSHCP within the main text, but the DEIR also fails to mention that CDFW has prioritized an adjacent stretch of the I-10 for wildlife connectivity enhancement (CDFW, 2022). The area is particularly important for mountain lions, black bears, bobcats, birds, and bats, and CDFW states that resources should be focused to improve wildlife movement at this priority barrier (CDFW, 2022). It is located within the floodplain of the San Gorgonio River immediately adjacent to an undercrossing that has the best vegetation cover to support mountain lion movement between the San Jacinto and San Bernardino mountains. In fact, it is likely the last-chance connection between the San Gabriel-San Bernardino and the Eastern Peninsular Range puma populations. 28

Given that CDFW is calling for resources to be directed to improve an existing barrier immediately adjacent to the Project area, the DEIR should adequately consider and analyze the Project's impacts to present and future wildlife connectivity. The proposed Project will result in habitat loss and edge effects due to increased human presence and activities (e.g., traffic, noise, light, runoff etc.) that will further degrade this last-remaining connectivity and undermine connectivity enhancement efforts in the area. The DEIR fails to adequately assess and mitigate the Project's impacts to wildlife connectivity and erroneously concludes that the Project's impacts to wildlife connectivity will be less than significant. 29

The DEIR also fails to mention that CDFW identifies the Project area as "ACE Rank 4 – Conservation Planning Linkages" (Figure 1), which are areas that "represent the best connections between core natural areas to maintain habitat connectivity" (CDFW, 2019). Importantly, CDFW also defines the area as having a high ecoregion biodiversity ranking (Figure 1), which makes wildlife movement and habitat connectivity critical to protect the area's existing biodiversity. 30

Yet the DEIR fails to adequately disclose, assess, and mitigate the Project's impacts to wildlife movement and habitat connectivity in and near the Project area.

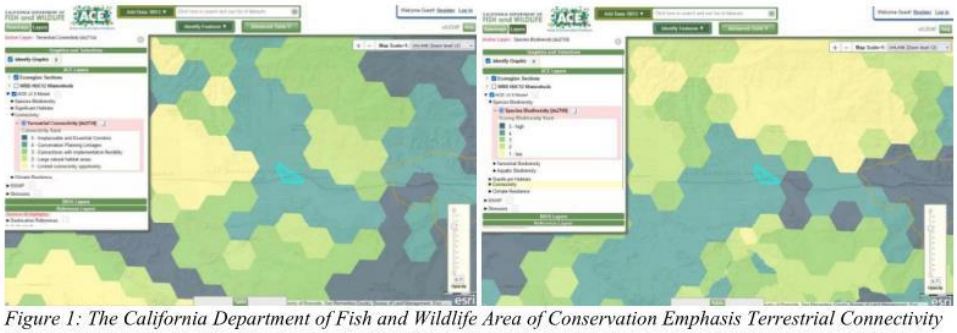


Figure 1: The California Department of Fish and Wildlife Area of Conservation Emphasis Terrestrial Connectivity Rankings (top) and Biodiversity Rankings (bottom) in and near the Project area. The Project is generally located within the highlighted turquoise polygon. Source: https://apps.wildlife.ca.gov/ace/. Accessed July 18, 2024.

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As detailed in a 2021 Center Report (Yap et al., 2021), roads and development create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Brehme et al., 2013; Ceia-Hasse et al., 2018; Haddad et al., 2015; Marsh & Jaeger, 2015; Mitsch & Wilson, 1996; Trombulak & Frissell, 2000; van der Ree et al., 2011). For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Ernest et al., 2014; Riley et al., 2014; Vickers et al., 2015), increase local extinction risk in amphibians and reptiles (Brehme et al., 2018; Cushman, 2006), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al., 2010; Kantola et al., 2019; Loss et al., 2014), and alter pollinator behavior and degrade habitats (Aguilar et al., 2008; Goverde et al., 2002; Trombulak & Frissell, 2000). 31

Habitat loss and fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al., 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al., 2019). In addition, connectivity is important to allow for range shifts and species migrations as climate changes (Cushman et al., 2013; Heller & Zavaleta, 2009; Krosby et al., 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems. It also prevents the reestablishment of native species, like bald eagles, vernal pool fairy shrimp, and valley elderberry longhorn beetles that may occur in or near the Project area.

Edge effects like noise and light from Project construction and operation will have impacts on wildlife and wildlife movement, particularly next to open space like the IBA as well as the designated critical habitat for numerous fish species, including the federally threatened North American green sturgeon (southern DPS), federally-threatened delta smelt, federally-and 32

state-threatened Chinook salmon (Central Valley spring run ESU), federally- and state-endangered Chinook salmon (Sacramento winter run ESU), and federally-threatened steelhead (Central Valley DPS). cont'd 32

Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, and invasive weeds have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute, 2003). This is important to consider when open space is immediately adjacent to the Project area, as birds and other wildlife have been found to be sensitive to edge effects. For example, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al., 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding behavior and duration, as well as increased vigilance behavior (Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. Another study found a 28% decrease in bird abundance in areas when traffic noise was present compared to when there was no traffic noise (McClure et al., 2013). Negative edge effects of roads and development have been documented in wide-ranging predators, such as mountain lions and bobcats (Crooks, 2002; Delaney et al., 2010, 2021, p. 202; Lee et al., 2012; Riley et al., 2006; Smith et al., 2015, 2017; Vickers et al., 2015; Wang et al., 2017), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Benítez-López et al., 2010; Cushman, 2006; Kociolek et al., 2011; Slabbekoorn & Ripmeester, 2008). 33

The Project will result in significant impacts to wildlife connectivity due to habitat loss as well as increased traffic, noise and light pollution, and runoff. The DEIR fails to analyze these impacts and should be revised to determine the Project's impacts to wildlife connectivity and provide appropriate mitigation.

C. The DEIR fails to adequately assess the Project's cumulative impacts to special-status species and wildlife connectivity.

The DEIR concludes that the Project "will not result in an adverse cumulative impact" to biological resources (DEIR at 4.3-23) without providing substantial evidence to support such claims. The DEIR fails to mention other development projects in the region that would cumulatively negatively affect special-status species, sensitive habitats, and wildlife connectivity. For example, there are two important connectivity areas/critical linkages between the San Bernardino Mountains and San Jacinto. The Project area is located in one linkage, while the other linkage is located northwest of the Project area near the City of Calimesa. The linkage near Calimesa is under threat from development. Prior to filing for bankruptcy, the Oak Valley Town Center graded a large area of the critical linkage, and the Oak Valley North warehouse project is being considered within that same linkage. In addition, the Mesa Verde Specific Plan is also being considered for development within that linkage. These projects must be considered in the DEIR's cumulative impacts to biological resources. The Project area is located within the area's last-remaining, mostly-intact corridor for imperiled local mountain lions and other wildlife to be able to move between the San Bernardino Mountains and the San Jacinto range. Further encroachment on this connectivity area will have significant impacts on local pumas, burrowing 34

owls, and other sensitive and special-status species and habitats. The DEIR fails to adequately assess and mitigate the Project's cumulative impacts. cont'd 34

The DEIR fails to consider corridor redundancy (*i.e.* the availability of alternative pathways for movement), which allows for improved functional connectivity and resilience. Compared to a single pathway, multiple connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Mcrae et al., 2012; Olson & Burnett, 2013; Pinto & Keitt, 2008). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Cushman et al., 2013; Mcrae et al., 2008, 2012; Olson & Burnett, 2013; Pinto & Keitt, 2008). Ensuring a more permeable landscape will allow bighorn sheep, pumas, and other sensitive and special-status species to safely move through habitats to find the resources they need to survive.

Corridor redundancy is critical when considering the impacts of climate change on wildlife movement and habitat connectivity. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al., 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens, 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifici et al., 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al., 2016). Genes are changing, species' physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Cahill et al., 2012; Chen et al., 2011; Maclean & Wilson, 2011; Parmesan, 2006; Parmesan & Yohe, 2003; Root et al., 2003; Warren et al., 2011). 35

It is widely recognized that the continuing fragmentation of habitat by humans threatens biodiversity and diminishes our (humans, plants, and animals) ability to adapt to climate change. In a report for the International Union for Conservation of Nature (IUCN), world-renowned scientists from around the world stated that "[s]cience overwhelmingly shows that interconnected protected areas and other areas for biological diversity conservation are much more effective than disconnected areas in human-dominated systems, especially in the face of climate change" and "[i]t is imperative that the world moves toward a coherent global approach for ecological connectivity conservation, and begins to measure and monitor the effectiveness of efforts to protect connectivity and thereby achieve functional ecological networks" (Hilty et al., 2020). The DEIR fails to adequately assess and mitigate the Project's cumulative impacts to wildlife connectivity and sensitive and special-status species. 36

II. THE DEIR FAILS TO ADEQUATELY ANALYZE OR MITIGATE GREENHOUSE GAS EMISSIONS.

A. Climate change is a catastrophic and pressing threat to California.

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and that climate change threats are becoming increasingly dangerous. The Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change, concluded in its 2023 Sixth Assessment Report that: "[u]nsustainable and unequal energy and land use as well as more than a century of burning fossil fuels have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020." (IPCC 2023.) The increase in global surface temperature has resulted in sea level rise, increased frequency of extreme weather events, and has resulted in "irreversible losses" at the species and ecosystem levels. (IPCC 2023.) These findings were echoed in the United States' own 2023 Fifth National Climate Assessment, prepared by scientific experts and reviewed by the National Academy of Sciences and multiple federal agencies. The 2023 Assessment concluded that "[t]he global warming observed over the industrial era is unequivocally caused by greenhouse gas emissions from human activities–primarily burning fossil fuels" and long-term responses include "sea level rise, ice sheet losses, and associated disruptions to human health, social systems, and ecosystems." (Jay 2023.)

Immediate and aggressive greenhouse gas emissions reductions are necessary to keep warming well below 2°C above pre-industrial levels. The IPCC Sixth Assessment Report and other expert assessments have established global carbon budgets, or the total amount of carbon that can be burned while maintaining some probability of staying below a given temperature target. According to the IPCC, "[t]he best estimates of the remaining carbon budgets from the beginning of 2020 are 500 GtCO2 for a 50% likelihood of limiting global warming to 1.5°C and 1150 GtCO2 for a 67% likelihood of limiting warming to 2°C." (IPCC 2023 at 19.) Additionally, "[i]f the annual CO2 emissions between 2020-2030 stayed, on average, at the same level as 2019, the resulting cumulative emissions would almost exhaust the remaining carbon budget for 1.5°C (50%), and deplete more than a third of the remaining carbon budget for 2°C (67%)." (IPCC 2023). As of 2023, climate policies by the world's countries would lead to an estimated 2.7°C of warming, and possibly up to 3.4°C of warming, well above the level needed to avoid the worst dangers of climate change. (Climate Action Tracker, The CAT Thermometer 2023.)

In California, climate change will transform our climate, resulting in increased temperature and frequency of wildfires, and a reduction in snowpack, precipitation levels, and water availability. (Turco 2023.) California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement of and compliance with these steps are essential in order to stabilize the climate and avoid catastrophic impacts to our environment.

California has a mandate under AB 1279, the California Climate Crisis Act, to achieve net zero GHG emissions by no later than 2045, and achieve and maintain net negative GHG emissions thereafter, and to ensure that by 2045, statewide GHG emissions are reduced to 85% the level in 1990. (AB 1279 2022.) In 2019, Governor Newsom issued an executive order to leverage state investments to further California's climate goals (Executive Order N-19-19 (2019).) Newsom has continued to issue climate-related executive orders, such as a 2020 order requiring that, by 2035, all passenger vehicles will be zero-emission, in addition to other motor

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vehicle emission goals. (Executive Order N-79-20 (2020).) Through these bills and orders, California has laid a path that may allow the state to achieve tangible climate solutions, but there is still work to be done.

Although some sources of GHG emissions may seem insignificant, climate change is a problem with cumulative impacts and effects. (*Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, (9th Cir. 2008) 538 F.3d 1172, 1217 ("the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis" that agencies must conduct).) One source or one small project may not appear to have a significant effect on climate change, but the combined impacts of many sources can drastically damage California's climate as a whole. Therefore, project-specific GHG emission disclosure, analysis and mitigation is vital to California meeting its climate goals and maintaining our climate.

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B. The DEIR fails to disclose and analyze significant greenhouse gas emissions from lost carbon storage and sequestration.

Despite the urgent dangers of the climate crisis, the DEIR fails to adequately calculate the Project's greenhouse gas emissions from destroying 106.36 acres of undeveloped desert scrub, 17.45 acres of non-native grassland, and 6.26 acres of Riversidean sage scrub (DEIR Appendix C1 Table 6). In fact, carbon emissions from destroying these habitats and degrading adjacent habitats is omitted from the analysis. To adequately assess and mitigate the Project's GHG impacts, the DEIR must include the carbon storage and sequestration potential of these habitats in the analysis.

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Lead agencies are required to quantify and disclose GHG emissions that would occur during construction, and the South Coast Air Quality Management District requires construction GHG emissions to be amortized over the life of the project, defined as 30 years. Yet the DEIR fails to comply with these requirements. When describing the emissions sources during construction activities, the DEIR only lists emissions from "construction equipment and the transportation of employees and materials to and from the Project site" (DEIR at 4.7-19). The DEIR fails to account for carbon emissions from intact habitats that would be dug up and paved over during construction as well as the annual loss of carbon that existing habitats would have continued to sequester for 30 years if the Project were not constructed.

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As detailed in a 2023 Center Report, "Hidden in Plain Sight: California's Native Habitats are Valuable Carbon Sinks" (Yap et al., 2023), diverse native California habitats, including deserts, are important carbon sinks that should be included in carbon calculations. In California, desert landscapes consist of dunes, desert scrub, sandy soil grasslands, juniper-pinyon woodlands and rock formations. The Mojave Desert is dominated by deep-rooted shrub species, including creosote bush and white bursage, as well as many forbs, trees, grasses, and dunes. In the Project area, the landscape consists of a variety of vegetation, including desert scrub, grasses, and Riversidean sage scrub. Although the carbon storage and sequestration potential of such habitats are often overlooked, carbon in these systems is stored in the form of soil organic carbon (e.g., extensive root networks, soil microbial communities, mycorrhizae), soil inorganic carbon (e.g., calcite/caliche), and above-ground vegetation (Janzen, 2004; Meyer, 2012; Mi et al., 2008; Thomey et al., 2014; Wang et al., 2010; Zamanian et al., 2016).

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Any loss of nature-based carbon storage must be accounted for when assessing a Project's GHG impacts. When calculating carbon loss from habitats, it is important to consider the types of habitats. Although more research is needed to understand the carbon storage and sequestration potential for desert systems, it is clear that various desert habitats store and sequester different amounts of carbon. For example, desert ceanothus (*Ceanothus greggii*) was found to store an average of 19.7 metric tons of carbon per acre in their aboveground biomass and 3.23 metric tons of carbon per acre in their belowground biomass while accumulating 2.4 metric tons of carbon per acre per year (this does not include organic or inorganic soil carbon that can store significant amounts of carbon, see Table 1) (Bohlman et al., 2018). Shrublands, including chaparral and sage scrub, have been found to store an estimated average of 22.5 – 35.3 metric tons of carbon per acre (in their aboveground biomass, leaf litter, and soil) and sequester 0.45 to 1.7 metric tons of carbon per acre per year (Bohlman et al., 2018) while non-native grasslands have been found to store an estimated average of 38.4 – 60.3 metric tons of carbon per acre and accumulate 1.05-1.94 metric tons of carbon per acre per year (Koteen et al., 2011). And experts reported "back of the envelope conservative estimates" of carbon storage for creosote bajada scrub and microphyll woodland habitats in California desert as about 2.47 million and 1.23 million metric tons of carbon per acre, respectively (D. M. Allen et al., 2023).

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Table 1: Carbon storage and sequestration of different habitat types in California. Source: Yap et al., (2023).

Habitat Type	Age (years)	Average Aboveground Biomass (metric tons/acre)	Average Belowground Biomass (metric tons/acre)	Average Soil Carbon (metric tons/acre)	Soil Depth (cm)	Average Leaf Litter Biomass (metric tons/acre)	Estimated Average Total Carbon Storage (metric tons/acre)	Estimated Annual Carbon Accumulation (metric tons/acre/year)	Ref.
Riparian Habitat[a]	1-45	233.8	51.6	40.2	50			0.81	2
Channel		61.8	14						2
Floodplain		92.9	20.1	17.5	50			0.35	2
Upper Bank		79.1	17.5	22.7	50			0.45	2
Grasslands									
Dominated by *Agrostis halli* (native species)		1.34 - 1.7	0.85 - 1.66	71.2	50		71.2[b]	2.18 - 3.36	3
Dominated by *Festuca rubra* (native species)		1.41 - 1.5	2.02 - 4.09	68.4	50		68.4[b]	3.44 - 5.58	3
Nassella pulchra, Bromus carinatus, Elymus glaucus mix (native species)		1.05 - 1.05	1.5 - 3	59.5	50		59.5[b]	2.55 - 4.05	3
Non-native Grasslands		0.49 - 1.13	0.57 - 0.81	38.4 - 60.3	50		38.4 - 60.3[b]	1.05 - 1.94	3
Rangelands				15.8 - 23	40		15.8 – 23[b]		4
Shrubland									
Mixed Chaparral	1 - 30+	14	5.38	5.66	100	10.3	35.3	1.73	5,6
Chamise Chaparral	1 - 30+	8.55	5.13[c]	3.65	100	5.17	22.5	0.45	5,6
Coastal Sage Scrub	1 - 10+	6.4				5.63			5,6
Desert							4.17[d]	0.4-0.51[d]	7–9
Ceanothus greggii (desert shrub)	21 - 24	19.7	3.23					2.41	5
Natural Forest[e]							48.6	1.21 - 3.16	10
Urban Trees[f]							3.3 - 6.2	1.3 - 2	11

a Only maximum estimates of carbon storage and carbon sequestration rates are provided.
b Only includes average soil carbon because average biomass data was provided as a range.
c Calculated based on the 0.6 shoot:root ratio provided for chamise (*Adenostoma fasciculatum*) in Bohlman et al. (2018).
d Estimates are based on measurements taken in the northern Mojave Desert in Nevada.
e Estimates include forests in Northern California and Oregon, only includes total tree biomass.
f Only includes total tree biomass.

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Given that the Project area is vegetated and filled with desert scrub, Riversidean sage scrub, and non-native grasslands, it is likely that the area stores and sequesters a significant amount of carbon. This must be accounted for in the DEIR's GHG impact assessment. CEQA requires the adequate assessment and mitigation of a project's impacts. Destroying and degrading undeveloped desert habitats could release significant amounts of carbon that must be accounted for. The EIR must disclose the carbon emissions associated with the loss of currently stored carbon as well as the loss of future carbon that would have been sequestered by these habitats over the Project lifetime. The DEIR fails to adequately disclose, assess, and mitigate the Project's GHG impacts. 41

C. The DEIR fails to adopt all feasible mitigation measures.

Even despite the emissions it ignores, the DEIR admits that the Project will result in enormous GHG impacts. It says that total mitigated emissions will be 22,969 MT CO_2e per year, 20,000 MT above the threshold of significance. (DEIR at 4.7-20.) The mitigation measures managed to reduce emissions by only 4,000 MT. (*Ibid.*). The City must adopt additional mitigation, such as requiring on-site solar and electric truck infrastructure on site, unless it can demonstrate with substantial evidence and analysis that these measures are infeasible. (*Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) Because the DEIR does not contain that evidence, its inadequate mitigation does not comply with CEQA. (See Pub. Resources Code, § 21002 [It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects."], CEQA Guidelines, §§ 15092(b), 15043, 15126.4, subd. (a)(1).) 42

i. Electrical Truck Infrastructure on Site

Emissions from heavy-duty diesel trucks are one of the most significant harmful effects related to warehouse developments. (Betancourt 2012.) The only way to fully mitigate this harm is through a rapid transition to all-electric fleets. Considering that warehouse projects are the sites of concentrated, severe diesel impacts, it is crucial that they are readily able to accommodate the transition to all-electric fleets.

The overwhelming majority of GHG emissions associated with the Project (approximately 86 percent) are associated with non-construction-related mobile sources. (DEIR at 4.7-20.) The DEIR states that there are no additional feasible measures available because the Project has no control over these emissions, relying on the fact that emissions from motor vehicles are controlled by State and federal standards. (DEIR at 4.7-21-22.) The DEIR therefore includes minimal to no mitigation measures that could effectively reduce vehicle emissions. This argument ignores what CEQA is meant to do – namely, ensure that a lead agency does whatever it can to mitigate a project's significant environmental effects, beyond what other environmental laws might already require. (Pub. Resources Code, §21004.) The existence of State and federal standards does not absolve the City from the duty to do everything that is within its power to mitigate the impacts of this Project. (See *Save Our Capitol! v Department of Gen. Servs*. (2023) 87 CA5th 655, 696 (agency could not rely on compliance with LEED and CAL-Green building standards to mitigate light and glare impacts in absence of project-specific analysis of impacts 43

and effect of compliance); *Californians for Alternatives to Toxics v Department of Food & Agric*. (2005) 136 CA4th 1 (EIR failed to analyze environmental and health risks of crop disease control program and instead presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation). See also *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 C4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain registered herbicides in general did not excuse its failure to assess effects of their use for specific timber harvesting project).) Addressing the harms from heavy-duty trucks on individual land-use projects is manifestly within the power of lead agencies. The California Attorney General is clear that compliance with laws and regulations is a "baseline expectation" and that lead agencies must adopt mitigation measures that go further. (AGO 2021.) Specifically, the Attorney General recommends mitigation like requiring participation in the EPA's SmartWay program, requiring tenants to use trucks from certain model years, and requiring electric truck charging. (AGO 2021.) And warehouse projects commonly do. For just one recent example, the Airport South Industrial Project requires 4.5% of heavy-duty vehicles to be zero emission by full buildout of the project. (Airport South Industrial Project DEIR at 2-14.)

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The DEIR must require concrete, enforceable measures that prepare the Project to operate with an all-electric fleet, as it will soon be required to do. CARB has developed strategies to achieve 100% zero-emissions from medium and heavy-duty on-road vehicles in the State by 2045 everywhere feasible, and specifically to achieve 100% zero-emissions drayage trucks by 2035. (CARB 2022b.) The DEIR makes a start by requiring a sufficiently-sized electrical room and conduit to facilitate future installation of electrical hookups, but it does not require any actual truck charging stations to be installed when the project starts operation in 2026. (DEIR at 4.7-25.) Preparing for a fully electric drayage fleet in 2035 will require at least some charging infrastructure in place in 2026. Otherwise, the Project will lag behind the much-needed transition. To do this, the Project must include electric truck charging stations sufficient to allow every truck that serves the Project to be charged. Additionally, since the expected use of the warehouse could include refrigeration, the Project must have electric plugs for electric transport refrigeration units at every dock door. In order to account for the increased energy demand associated with these charging stations, the projected energy use of an all-electric fleet must be added to the Project's projected electricity use and the energy must be supplied by on-site solar panels.

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ii. 100% Rooftop Solar

In order to meet its decarbonization targets, California needs to double its clean energy generation in the next decade, which will require a "record breaking" expansion of clean energy infrastructure. (Cart 2022, California Energy Commission 2021.) The Joint Agency SB 100 Report calls for building 2.8 GW/year of solar every year for 25 years, which is higher than the previous maximum annual build. (Joint Agency at 116.) The main issue with increasing solar energy infrastructure and capacity at the rate needed to meet these goals is the large quantity of sunny, flat land needed for solar farms to operate. (Groom 2022.) Building solar infrastructure across undeveloped land is an imperfect solution that puts ecosystems at risk, eliminates

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opportunities for natural carbon sinks, and is often opposed by local residents. (Groom 2022, Cart 2022, Courage 2021.)

Installing solar infrastructure on the roofs of California's warehouses is an excellent opportunity to use miles of flat, sunny space that would otherwise be wasted. A recent study found that California's 674 million square feet of big box stores could generate almost 10,000 gigawatt hours of energy from rooftop solar. (Huxley-Reicher 2023.) Warehouses cover an estimated 1 billion square feet in the Inland Empire. (Calma 2022.) The untapped potential for solar energy production is significant.

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Each warehouse that is built with the capacity to meet 100% of its own energy demands via rooftop solar brings California closer to the clean energy targets we must meet in order to avoid the most devastating effects of the climate crisis. The DEIR requires that the Project *either* meet its energy need with onsite solar or acquire renewable energy elsewhere. (DEIR at 1-16.) Allowing the Project to merely consume renewable energy—when it has the potential to reduce its impacts even further by producing that energy—is a lost opportunity. The California Attorney General recommends that new warehouses are built to produce their own solar energy, and companies and municipalities are following suit. (AGO 2021.) The City of Fontana already requires that every warehouse over 400,000 square feet meet all of its energy needs from on-site rooftop solar, supporting the feasibility of this requirement. (City of Fontana at 9-73.4) This is a feasible mitigation measure, and the DEIR must require rooftop solar to meet 100 percent of the Project's energy needs.

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III. THE DEIR FAILS TO PROPERLY ANALYZE OR ADEQUATELY MITIGATE AIR QUALITY IMPACTS.

The Project will have significant air quality impacts because it will result in exceedances of the regional emissions thresholds for NO_x. (DEIR at 4.2-16.) NO_x is a precursor to ozone, for which the region is in extreme nonattainment. (DEIR at 4.2-10.) Ozone (commonly referred to as smog) is created by the atmospheric mixing of chemicals released from fossil fuel combustion – such as NO_x – and sunlight. Exposure to ozone poses significant health risks, and has been linked to an increased incidence and risk of cancer, birth defects, low birth weights and premature death, in addition to a variety of cardiac and lung diseases such as asthma, COPD, stroke, and heart attack. (Laurent 2016; ALA 2024.)

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Air quality is a significant environmental and public health concern in California. Unhealthy, polluted air contributes to and exacerbates many diseases and increases mortality rates. The U.S. government has estimated that between 10 to 12 percent of total health costs can be attributed to air pollution. (VCAPCD 2003.) Air pollution and its impacts are felt most heavily by young children, the elderly, pregnant women and people with existing heart and lung disease. People living in poverty are also more susceptible to air pollution as they are less able to relocate to less polluted areas, and their homes and places of work are more likely to be located near sources of pollution, such as freeways or ports, as these areas are more affordable. (ALA 2024.) Warehouse projects are well-documented sources of air quality degradation that can create serious, negative health outcomes for surrounding communities. (Betancourt 2012, pp. 4-5.)

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The DEIR fails to adopt commonsense, available mitigation measures, or explain why adopting such measures would be infeasible. By proposing inadequate mitigation and then concluding that the Project's air quality impacts are significant and unavoidable, the City has fallen short of CEQA's requirement that lead agencies consider all feasible mitigation to reduce or avoid the Project's significant impacts. (See Pub. Resources Code, § 21002 [It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects."], CEQA Guidelines, §§ 15092(b), 15043, 15126.4, subd. (a)(1).) cont'd 48

A. The DEIR fails to fully consider the project's impacts on sensitive receptors.

The DEIR concludes that the Project would not expose sensitive receptors to substantial pollutant concentrations and impacts would be less than significant. (DEIR at 4.3-39.) There are many residences within half a mile of the proposed site, and the nearest is four hundred feet away. (DEIR at Figure 4.2-1). Both the California Air Resources Board and the California Attorney General recommend siting warehouses so that their property lines are at least 1,000 ft from the property lines of the nearest sensitive receptors. (AGO 2021.) In ignoring the guidance of these agencies, the City is neglecting its duty to protect residents from the noise, traffic, and health risks that come from living next door to a warehouse. Furthermore, in reaching the conclusion of no significant impacts, the DEIR explains that the localized impacts analysis only includes on-site sources of pollution. (DEIR at 4.2-25.) This analysis completely ignores the off-site effects that will occur from increased vehicle traffic through the neighboring areas. The DEIR must explain what routes trucks will take to access the site and consider the impacts on sensitive receptors along the route. Without a proper analysis and quantification of the effects on the surrounding community, the DEIR's conclusion of no significant impact is improper. 49

B. The DEIR fails to adopt all feasible mitigation measures.

The EIR admits that NOx emissions during operations will exceed regional emissions thresholds. (DEIR at 4.2-16.) Because the impact is significant, the DEIR has an obligation to adopt all feasible mitigation measures. (*Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) 50

i. 2-Minute Idling Restrictions

The DEIR adopts a so-called mitigation measure that allows trucks to idle for up to five minutes—more than twice as long as the California Attorney General's recommendation of a two-minute limit. (DEIR at 1-9, AGO 2021.) Further, a five-minute idling restriction is required by the California Airborne Toxics Control Measure. (DEIR at 4.2-6.) Therefore, it is not truly mitigation measure, it is a promise to follow the law. As the California Attorney General notes, compliance with regulations is a baseline expectation and should not be labeled a mitigation measure. (AGO 2021.) Again the DEIR replaces a recommended, feasible mitigation measure with a much weaker substitute that does not properly mitigate a significant impact. The Project must revise MM AQ-4 to require idling times to be kept under two minutes. The DEIR does not discuss nor provide substantial evidence that limiting idling to two minutes is not feasible. 51

ii. Measures to Protect Sensitive Receptors

As discussed above, the DEIR fails to adequately consider impacts to sensitive receptors, and the determination of a less than significant impact is improper. The City must perform an adequate analysis of these impacts, and if it is determined that the impacts are significant, to mitigate accordingly. The California Attorney General recommends specific mitigation measures to protect sensitive receptors from trucking impacts. These include:

- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevents trucks and other vehicles from parking or idling on public streets
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors (AGO 2021.)

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IV. CONCLUSION

Thank you for the opportunity to submit comments on the Draft Environmental Impact Report for the Banning Commerce Center Project. We urge the City to revise the DEIR to adequately analyze, disclose, and mitigate significant impacts to greenhouse gas emissions, air pollution, and biological resources.

Given the possibility that the Center will be required to pursue legal remedies in order to ensure that the City complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 762-65.) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA…" (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City's representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the Applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

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Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact us with any questions at the number or email listed below. cont'd 53

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Exhibit 1



October 3, 2022

Sent via email

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RE: Comments on Notice of Preparation of an Environment Impact Report for the Banning Commerce Center Project, SCH # 2022090102

Mr. Rush,

These comments are submitted on behalf of the Center for Biological Diversity ("the Center") regarding the Notice of Preparation of an Environmental Impact Report ("EIR") for the Banning Commerce Center Project ("the Project"). The Center urges the City to undertake a thorough and comprehensive environmental review of the Project as required under the California Environmental Quality Act ("CEQA"), prior to considering approval. By replacing open space and riparian habitat with 1.3 million square feet of warehouses, the Project will increase traffic and criteria pollutant and greenhouse gas emissions, as well as harm riparian habitat that likely supports many wetlands species. (*See* Notice of Preparation (hereinafter "NOP") at 1, Initial Study ("IS") at 24-25.) The EIR must fully disclose and analyze the Project's potential impacts to sensitive species and habitat, air quality, greenhouse gas emissions, traffic, and water quality while thoroughly analyzing all reasonable alternatives, and then must provide effective and enforceable mitigation measures for impacts found to be significant.

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The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Banning and Riverside County.

Under CEQA, an EIR must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, list ways in which the significant effects of a project might be minimized, and indicate alternatives to the project. (Pub. Res. Code § 21002.2.) The proposed Project will build a high-traffic warehouse facility on 130 undeveloped acres that contain a creek and surrounding wetlands. (NOP at 1-2.)

The EIR must fully disclose the impacts of this land use change, so that the public can fully understand the publicly born costs associated with the Project.

I. The EIR Must Adequately Assess and Mitigate the Project's Impact on Biological Resources.

A. The proposed Project will have significant impacts on special-status species and species covered by the Western Riverside County Multiple Species Habitat Conservation Plan.

CEQA requires that an EIR provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment. (Pub. Res. Code § 21061.)

The EIR must adequately assess and mitigate impacts to special-status species that are known to occur, have the potential to occur, or historically occurred in and near the Project area. Although the IS mentions several special-status species that have been documented in the California Natural Diversity Data Base (CNDDB), the IS only looks at occurrences within one mile of the Project site. The search should be expanded to five miles, as is what is commonly provided in EIRs. In addition, occurrence data from other sources should also be consulted, including but not limited to iNaturalist, eBird, and the Global Biodiversity Information Facility (GBIF). CNDDB records are important to consider when assessing existing conditions and a Project's potential impacts; however, the records are limited because they rely on field biologists voluntarily submitting data to the California Department of Fish and Wildlife (CDFW). CDFW must then add such data to the database, which can take time and result in delay. In addition, the database may be biased toward species that receive more survey effort. The lack of occurrence data (in CNDDB or otherwise) does not equate to a species being absent from the area, as the species may be present but evade observation. If suitable habitat is present in or near the Project area, then it must be assumed that the species occurs, has the potential to occur, or historically occurred in the area.

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The IS fails to mention several key special-status species that may occur in the Project area, including but not limited to mountain lions (candidate threatened species under the California Endangered Species Act (CESA) and an MSHCP-covered species), western spadefoot toads (species of special concern (SSC) and an MSHCP-covered species), arroyo toad (SSC and an MSHCP-covered species), American badger (SSC and an MSHCP-covered species), coast range newt (SSC and an MSHCP-covered species), Aguanga kangaroo rat (an MSHCP-covered species), and likely others. The EIR should include analyses of the Project's potential impacts to these species through extensive literature reviews and targeted species and habitat surveys conducted using CDFW and/or US Fish and Wildlife Service (USFWS) guidelines and protocols. Movement studies should also be conducted, particularly for wide-ranging species like mountain lions, coyotes, and American badgers.

Of particular importance are local mountain lions, which are within the Southern California and Central Coast Evolutionarily Significant Unit (ESU) that is currently a candidate threatened species under CESA. There is ample scientific evidence that indicates mountain lion

populations in and around the Project area are struggling to survive and that human activities and land use planning that fail to integrate adequate habitat connectivity can have adverse impacts on mountain lions. Continued habitat loss and fragmentation has led to 10 genetically isolated populations within California. There are six identified mountain lion populations in the ESU, and several are facing an "extinction vortex" due to high levels of inbreeding, low genetic diversity, and high human-caused mortality rates from car strikes on roads, depredation kills, rodenticide poisoning, poaching, disease, and increased human-caused wildfires. (Benson et al., 2016, 2019; Ernest et al., 2003, 2014; Gustafson et al., 2018, 2021; Riley et al., 2014; Vickers et al., 2015). The primary driver of this extinction vortex is lack of connectivity. (Yap et al., 2019).

The Project area is located between the San Gabriel/San Bernardino (SGSB) population and the Eastern Peninsular Range (EPR) population, and the Santa Ana Mountains (SAM) population is nearby to the southwest. Scientists have documented physical and reproductive signs of inbreeding depression in local mountain lions (from the EPR and Santa Ana mountains, as well as the nearby Central Coast South [i.e. Santa Monica Mountains]) due to being boxed in by roads and development (Huffmeyer et al., 2021). Researchers have found that, of the California mountain lion subpopulations, the SGSB population has the smallest effective population size and the smallest area of available habitat (Dellinger et al., 2020; Gustafson et al., 2021). Scientists suggest that the SGSB population "may be approaching levels of genetic drift and inbreeding similar to the well-monitored and genetically depauperate Santa Ana and Central Coast South populations (Ernest et al., 2014; Gustafson et al., 2017; Riley et al., 2014)" (Gustafson et al., 2021), which are predicted to have a 99% chance of becoming locally extinct within 50 years if inbreeding depression continues. (Benson et al., 2019). This emphasizes the importance of protecting the remaining SGSB population, specifically through maintaining and enhancing connectivity among and between the subpopulations.

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The proposed Project has the potential to amplify the barrier effects of I-10, especially given the Project's proximity to a critical riparian corridor (San Gorgonio River) with an undercrossing that has the best vegetation cover to support mountain lion movement between the San Jacinto and San Bernardino mountains. The proposed Project could degrade this important connectivity area and drive the SGSB, EPR, and SAM puma populations towards extinction.

The EIR must consider that the Project's impacts to mountain lions (and other special-status species and sensitive habitats) extend beyond its physical footprint. Ample evidence documents the effects of human activity on mountain lions. One study found that mountain lions are so fearful of humans and noise generated by humans that they will abandon the carcass of a deer and forgo the feeding opportunity just to avoid humans (Smith et al., 2017). The study concluded that even "non-consumptive forms of human disturbance may alter the ecological role of large carnivores by affecting the link between these top predators and their prey" (Smith et al., 2017). In addition, mountain lions have been found to respond fearfully upon hearing human vocalizations, avoiding the area and moving more cautiously when hearing humans (Smith et al., 2017; Suraci et al., 2019). Other studies have demonstrated that mountain lion behavior is negatively affected when exposed to other evidence of human presence, such as lighting or vehicles/traffic (Smith et al., 2015; Wang et al., 2017; Wilmers et al., 2013). Therefore, both physical and behavioral barriers drive genetic isolation, and continued land use that further fragments mountain lion habitat in the region without adequately minimizing impacts to

functional connectivity, will drive pumas in the area to extinction. The Project will result in increased traffic, light, noise, etc. in an important connectivity area between the San Bernardino and San Jacinto mountains, where mountain lions are known to occur and are known to be struggling. The Project will significantly impact how mountain lions navigate the landscape by fortifying existing human-made barriers and decreasing opportunities for them to move between mountain ranges.

Yovovich et al. (2020) further documented the impacts of human activities on local mountain lions, specifically on communication and reproductive behaviors important for their survival. Males use scrapes to delineate territories as well as attract potential mates (Allen et al., 2015, 2016), and the males in the study preferred to use relatively flat areas away from human influence as scrape habitat (Yovovich et al., 2020). Similarly, when nursing females (with kittens less than 8 weeks old) shrank their home ranges to an average of 9 km^2 while their young were most vulnerable, they also selected undeveloped lands away from human disturbance, opting for habitat with protective cover and sufficient water and prey availability (Yovovich et al., 2020). The loss of adequate undisturbed communication and nursery habitat could disrupt important communication and reproductive behaviors that facilitate social structure and overall survival.

In a study that investigated the drivers of fine-scale movement decisions by pumas in fragmented landscapes in the Santa Cruz Mountains, Suraci et al. (2020) identified that mountain lions prefer larger habitat patches that are closer together and further away from buildings, and they preferred shrub over tree patches. However, mountain lions were willing to accept higher densities of anthropogenic features if target habitat patch areas were larger or the distance between patches was shorter (Suraci et al., 2020). In addition, pumas were found to travel longer distances through open habitats to access larger habitat patches, perhaps for more protective cover and/or for better hunting opportunities within the larger habitat patch areas (Suraci et al., 2020). These findings corroborate those of Smith et al. (2019), which found that pumas are able to move through partially developed habitat, though they are less likely to move through parcels with higher densities compared to parcels with less dense housing in and around the parcels. In fact, puma avoidance increased sharply as housing density increased up to 41 houses/km^2, after which avoidance remained high. Although these studies demonstrate that mountain lions have some tolerance of human presence, they mostly highlight the negative impacts of increased human use/density on the movement and survival of mountain lions and the importance of habitat connectivity among large, intact, heterogeneous habitat patches.

In addition, Riley et al. (2021) found that, although pumas had some flexibility to navigate urbanized landscapes, they spent more than 95% of their time away from developed areas and actively avoided open areas like golf courses, cemeteries, and other altered landscaped spaces. Mountain lions consistently selected native vegetation types with dense cover, like chaparral, riparian woodland, and coastal sage scrub, with shrublands being their preferred habitat. This highlights the importance of intact and connected natural heterogeneous landscapes to the long-term health and persistence of constrained mountain lion populations. The authors state, "An important requirement for the effective conservation of at-risk mountain lion populations in southern California is preserving and enhancing connectivity between larger natural areas." (Riley et al., 2021).

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Mountain lions are a key indicator species of wildlife connectivity and healthy ecosystems. As the last remaining wide-ranging top predator in the region, the ability to move through large swaths of interconnected habitat is vital for genetic connectivity and their long-term survival. In addition, impacts to mountain lions in the region could have severe ecological consequences; loss of the ecosystem engineer could have ripple effects on other plant and animal species, potentially leading to a decrease in biodiversity and diminished overall ecosystem function. Many scavengers, including California condors, kit foxes, raptors, and numerous insects, would lose a reliable food source (Barry et al., 2019; Ruth & Elbroch, 2014). Fish, birds, amphibians, reptiles, rare native plants, and butterflies would potentially diminish if this apex predator were lost (Ripple et al., 2014; Ripple & Beschta, 2006, 2008). In fact, a recent literature review found that mountain lions are important ecosystem engineers and have been documented to have ecological interactions with at least 485 plant and animal species (Labarge et al., 2022). Adequate assessment and mitigation of the Project's impacts to mountain lions is necessary to ensure their long-term survival as well as the long-term health of the area's biodiversity and ecosystems.

Wildlife connectivity in this region is paramount for the survival of the Southern California mountain lions. Any project that does not adequately assess and address impacts to mountain lions and wildlife connectivity could lead to the extirpation of local mountain lions and severe loss of biodiversity and ecosystem function in the region. Further destruction of wildlife connectivity in the area will push local mountain lions closer towards extinction. See further discussion below regarding the DEIR's requirement to adequately describe, assess, and mitigate impacts to wildlife movement and connectivity.

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B. The proposed Project will have significant impacts on wildlife movement and habitat connectivity.

To comply with CEQA, the EIR must adequately disclose the existing conditions of the site and adequately assess and mitigate the Project's impacts to wildlife connectivity. The Project is located within an area that has been identified as a "Special linkage area in the MSHCP" (the San Gorgonio River/San Bernardino-San-Jacinto Mountains Linkage)[1], a "Conservation Planning Linkage" by CDFW, [2] and a south coast missing linkage (San Bernardino-San Jacinto Connection) that is critical for connectivity between coastal and desert ecoregions (SC Wildlands, 2008). In addition, the adjacent segment of I-10 has been identified by CDFW as a "Priority Barrier to Habitat Connectivity," particularly for mountain lion, black bear, and bobcat, where financial resources should be focused to improve wildlife movement (CDFW, 2020). It is located within the floodplain of the San Gorgonio River immediately adjacent to an undercrossing that has the best vegetation cover to support mountain lion movement between the San Jacinto and San Bernardino mountains. In fact, it is likely the last-chance connection between the SGSB and EPR puma populations. The proposed Project will result in habitat loss and edge effects due to increased human presence and activities (e.g., traffic, noise, light, etc.)

[1] See Cores and Linkages within the MSHCP Conservation Area. Available at https://rctlma.org/Portals/0/mshcp/volume1/sec3.html#3.2.3 (Accessed September 28, 2022).
[2] See CDFW Areas of Conservation Emphasis Version 3.0. Available at https://apps.wildlife.ca.gov/ace/ (Accessed September 28, 2022).

that will further degrade this last-remaining connectivity and drive local puma populations towards extinction while harming other wildlife.

As detailed in a 2021 Center Report (Yap et al., 2021), roads and development create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Brehme et al., 2013; Ceia-Hasse et al., 2018; Haddad et al., 2015; Marsh & Jaeger, 2015; Mitsch & Wilson, 1996; Trombulak & Frissell, 2000; van der Ree et al., 2011). For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in Southern California and along the Central Coast (Ernest et al., 2014; Gustafson et al., 2018, 2021; Riley et al., 2014; Saremi et al., 2019; Vickers et al., 2015). Habitat fragmentation has also been found to increase local extinction risk in amphibians and reptiles (Brehme et al., 2018; Cushman, 2006; Delaney et al., 2021), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al., 2010; Kantola et al., 2019; Loss et al., 2014), and alter pollinator behavior and degrade habitats (Aguilar et al., 2008; Goverde et al., 2002; Trombulak & Frissell, 2000).

Habitat fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al., 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al., 2019). In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Cushman et al., 2013; Heller & Zavaleta, 2009; Krosby et al., 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems while reducing climate change resilience.

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Edge effects of development in and adjacent to critical linkage areas, like the proposed Project, will likely impact key, wide-ranging predators, such as mountain lions and bobcats (Crooks, 2002; Delaney et al., 2010; Lee et al., 2012; Riley et al., 2006; Smith et al., 2015, 2017; Vickers et al., 2015; Wang et al., 2017), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Benítez-López et al., 2010; Cushman, 2006; Delaney et al., 2010; Gray, 2017; Kociolek et al., 2011; Slabbekoorn & Ripmeester, 2008). Limiting movement and dispersal can affect species' ability to find food, shelter, mates, and refugia after disturbances like fires or floods. Individuals can die off, populations can become isolated, sensitive species can become locally extinct, and important ecological processes like plant pollination and nutrient cycling can be lost. Negative edge effects from human activity, such as traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency, have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute, 2003).

For example, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al., 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding

behavior and duration, as well as increased vigilance behavior (Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. A recent study also highlighted the detrimental impacts of siting development near open space. The study noted that "Anthropogenic noise 3 and 10 dB above natural sound levels . . . has documented effects on wildlife species richness, abundance, reproductive success, behavior, and physiology" (Buxton et al., 2017). The study further noted that "there is evidence of impacts across a wide range of species [] regardless of hearing sensitivity, including direct effects on invertebrates that lack ears and indirect effects on plants and entire ecological communities (*e.g.*, reduced seedling recruitment due to altered behavior of seed distributors)" (Buxton et al. 2017). Moreover, human transportation networks and development resulted in high noise exceedances in protected areas (Buxton et al. 2017).

In addition, preliminary results from studies underway by researchers at UC Davis and University of Southern California, as well as those by other researchers, suggest that the light, noise, and other aspects of highways can have negative impacts on wildlife numbers and diversity near the highways (Shilling, 2020; Vickers, 2020). The researchers found a significant difference between species richness and species type (mammals), with lower richness and fewer species at crossing structures compared to background areas 1 km away from the roads (Shilling, 2020). They also found that as traffic noises surpassed 60 dBC, the number of visits by small to large mammals decreased, and most of the species in their study avoid traffic noise (Shilling, 2020). The proposed Project would increase human activity and traffic, thereby increasing noise, light, and other edge effects in this important connectivity area. The EIR must adequately assess and mitigate the proposed Project's impacts, including its edge effects, on wildlife connectivity.

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C. The proposed Project will have significant impacts on riparian wetland habitats.

The EIR must adequately assess the Project's impacts to wetland habitats, including perennial and ephemeral riparian habitat that occur in and near the Project area. (CEQA Guidelines, Appendix G(IV)(c).) The Project area is located within the San Gorgonio River's 100-year floodplain, and as mentioned in the IS, "According to the USFWS National Wetlands Inventory, the Project site is transected by Riverine habitat that is intermittent and potentially seasonally flooded" (IS at 24). Although the IS states that "Project development would potentially have significant impacts on sensitive natural communities and/or riparian habitats" (IS at 25), it then immediately contradicts itself, concluding that the Project "does not contain any wetlands" and therefore "would not adversely affect state or federally protected wetlands" (IS at 25).

A strong presumption in favor of studying an environmental impact is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard, under which an agency must study an impact in an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (*Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

There is substantial evidence sufficient to support a fair argument that impacts to ephemeral waterways could occur and thus should be studied in the EIR. USFWS has identified the Project site as riverine habitat, which includes perennial and ephemeral riparian habitat and extends to the outer limits of where any stream braiding occurs. (IS at 24, USFWS 1992.) Development may impact this habitat and thus the effects of such development must be studied in the EIR.

Riparian ecosystems have long been recognized as biodiversity hotspots performing important ecological functions in a transition zone between freshwater systems and upland habitats. Many species that rely on these aquatic habitats also rely on the adjacent upland habitats (*e.g.*, riparian areas along streams, floodplains, and habitat adjacent to wetlands). In fact, 60% of amphibian species, 16% of reptiles, 34% of birds and 12% of mammals in the Pacific Coast ecoregion depend on riparian-stream systems for survival (Kelsey and West 1998). While many species use riparian areas as live-in habitat, wide-ranging species like mountain lions, bears, and bobcats often use riparian areas as migration corridors or foraging habitat (Dickson et al, 2005; Hilty & Merenlender, 2004; Jennings & Lewison, 2013; Jennings & Zeller, 2017).

Recent scientific literature states that "[i]n many intermittent streams, remnant pools persist after flow ceases and provide refuge for aquatic organisms" (Bogan et al., 2019). The researchers found that remnant pools at nearby Coyote Creek "supported a full assemblage of native fishes and numerous imperiled taxa, including California red-legged frogs (CRLF) and California floater mussels," almost all of which were absent from artificially perennial and urbanized reaches of Coyote Creek (Bogan et al., 2019). The researchers concluded: cont'd 55

> Remnant pools in intermittent streams should be a focus of conservation efforts in regions with a Mediterranean climate, especially during extreme droughts. Native fauna adapted to harsh intermittent flow regimes can thrive in these habitats, whereas non-native taxa may fare poorly. Furthermore, remnant pools supported by deep groundwater sources, such as those along geological faults, may provide both ecological refuge and evolutionary refugia for freshwater biota. (Bogan et al., 2019)

Hydroperiod diversity is important for native amphibian population stability. Intermittent and ephemeral habitats are important refugia from invasive fish and American bullfrogs that outcompete and prey upon native amphibians in permanent waterbodies. They may also be important refuge and recovery sites for native amphibian species after extreme drought. Many native amphibian species that occur or have the potential to occur in or near the Project area, like western spadefoot toads, arroyo toads, and coast range newts, are adapted to successfully reproduce in seasonally-drying wetlands, including intermittent streams and vernal pools. But during dry years some species may go to permanent waterbodies to breed while species with long-lived adult forms may be able to recover quickly from a skipped breeding season. Although amphibian population declines due to drought have been observed, these adaptations make them more resilient than invasive species to rebound and recover (Moss et al., 2021). In fact, researchers have found that invasive fish and bullfrogs were extirpated from several permanent ponds that had completely dried out during extreme drought, which, once refilled with water,

opened up new sites for native species to re-colonize (Moss et al., 2021). This suggests that conserving intermittent and ephemeral waterways is vital for native amphibians to persist, particularly in areas where invasive species may occur or have the potential to occur. As climate change intensifies, preservation of connected habitats with diverse hydroperiods is vital for the persistence and metapopulation dynamics of native amphibians. The EIR must adequately assess and mitigate the Project's impacts to perennial and ephemeral waters and the wildlife plants that they support.

With the driest 22-year period in 1,200 years in the western US and drought conditions that will likely continue (Williams et al., 2022) climate change refugia and resilience provided by ecosystems like riparian areas will be ever more critical for species survival and ecosystem health. As discussed in a 2021 Center report (Yap et al., 2021):

> Climate change is worsening ecosystem stress and species extinction risk (Trisos et al., 2020). Increasing variability and extremes in temperature, wind, and precipitation are all products of a warming climate, leaving species struggling to adapt. As a result, species' genes are changing, physiological and physical features such as body size are changing, ranges are shifting as species try to maintain a suitable climate space, and numerous species are expressing new breeding and migration behaviors (Scheffers et al., 2016).
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> For example, some plants are budding and flowering earlier, some marine and freshwater fishes are spawning either earlier or later, and some species with temperature-dependent sex determination are experiencing shifts in sex ratios. ***Climate-related local extinctions have already occurred in hundreds of plant and animal species*** (Wiens, 2016). And one study found that terrestrial bird and mammal populations that are experiencing greater climate warming are more likely to be experiencing greater population declines (Spooner et al., 2018). Reportedly, climate change is already impacting 82% of key ecological processes that form the foundation of healthy ecosystems (Scheffers et al., 2016). If climate change goes unabated, more than one-third of all plant and animal species could become extinct in the next 50 years (Román-Palacios & Wiens, 2020).
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> ***Wildlife connectivity is critical for biodiversity resilience and climate change adaptability***. A permeable landscape that has multiple pathways or linkages between habitat patches allows a wide variety of species to adjust to shifts in resource availability (Mcrae et al., 2012; Olson & Burnett, 2013; Pinto & Keitt, 2008). For smaller species with poor dispersal abilities, like San Francisco garter snakes, CRLF and San Bernardino kangaroo rats, multiple linkages can provide habitat while still allowing for their dispersal.
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> Multiple connections also help populations persist after extreme events worsened by climate change. During floods, landslides or wildfires, these pathways provide escape routes or refugia for animals seeking safety (Cushman et al., 2013; Mcrae et al., 2008; Olson & Burnett, 2013). Such events can cause local extinctions in small, isolated populations.

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Prior to roads and development severely fragmenting and degrading habitats, a species could persist because individuals from neighboring populations would be able to recolonize an area that experiences a local extinction. But without adequate connectivity, recolonization and species persistence are improbable.

California cannot afford to lose more riparian corridors. It is estimated that 90-95% of historic riparian habitat in the state has been lost (Bowler, 1989; Riparian Habitat Joint Venture, 2009). Using 2002 land cover data from CAL FIRE, the Riparian Habitat Joint Venture estimated that riparian vegetation makes up less than 0.5% of California's total land area at about 360,000 acres (Riparian Habitat Joint Venture, 2004). This is alarming because riparian habitats perform a number of biological and physical functions that benefit wildlife, plants, and humans, and loss of what little is left will have severe, harmful impacts on special-status species, overall biodiversity, wildlife connectivity, and ecosystem function.

II. The EIR Should Carefully Assess and Mitigate the Project's Impacts on Air Quality

The EIR must also carefully consider the effects of a project of this scale on air quality for local communities. Warehouse projects are well-documented sources of air quality degradation that can create serious, negative health outcomes for communities. (Betancourt et al. 4-5.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to "cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death." (*Id.* at 5.) Warehouses with refrigeration, called "cold storage" warehouses, produce even more air pollution and greenhouse gas emissions. (CARB 2022.) Refrigerated goods must be kept in cold environments to maintain quality, which requires that cold storage warehouses "continually consume[] energy, contrary to other type of warehouses." (Dimitrov 2022.) With "cold storage" warehouses, trucks and trailers visiting the Project site are typically equipped with transport refrigeration units (TRU), internal refrigeration systems powered by diesel. TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project site. (Wu 2013; Tassou 2009.)[3]

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The surrounding area is a mix of open space, residential, and land belonging to the Morongo Band of Mission Indians. High-density affordable housing projects border the western and eastern boundaries of the Project site, with a large residential neighborhood to the west of the site. (Initial Study at 2, 20-21.) Hoffer Elementary School is within 1,500 feet of the Project site. (*Ibid*.) The Interstate 10 freeway runs along the southern edge of the Project.

A. The Initial Study Omits a Key Threshold of Significance

The Initial Study omits a key threshold of significance from the EIR, which has the potential to obscure project impacts. The Initial Study draws its thresholds of significance from

[3] This Project proposes to construct up to 1.3 million square feet (sf) of "speculative industrial" warehousing uses. The NOP and IS fail to mention whether the Project will include refrigerated uses, which significantly drive up the air quality and greenhouse gas impacts. The EIR must disclose whether the Project will include refrigerated uses and then analyze the full slate of environmental impacts associated with those uses.

"Appendix G"—the checklist of potentially significant environmental impacts included as an appendix to the CEQA Guidelines. (Initial Study at 18.) Appendix G contains five separate checklist questions regarding a proposed project's air quality impacts. The Initial Study considers four air quality-related questions from Appendix G as its thresholds of significance, to define the scope of impacts. (*Ibid*.) But inexplicably, the Initial Study omits checklist question 2 (whether the Project would "[v]iolate any air quality standard or contribute substantially to an existing or projected air quality violation"). (Guidelines, App. G., subd. III(b).) This omission potentially forecloses consideration of the Project's full impacts.

Although lead agencies have discretion in their choice of significance thresholds, they may not choose or apply them in a manner that downplays or overlooks potentially significant impacts. (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 892-894.) Given that the Project will have a potentially significant air quality impact by every metric identified, the EIR should consider whether the Project would violate any air quality standard or contribute substantially to an existing or projected air quality violation.

B. The EIR Must Study Cumulative Impacts and Conduct a Health Risk Assessment.

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This community is already highly burdened by pollution. According to CalEnviroScreen 4.0, CalEPA's screening tool that identifies the California communities most affected by pollution and where people are often especially vulnerable to pollution's effects, the Project's census tract is more polluted than 90% of the state's census tracts, making it among the most polluted areas in the state. (OEHHA 2021.) Residents here suffer from some of the highest exposures statewide to ozone and lead in housing (97th and 91st percentiles, respectively). (*Ibid.*) The community also currently ranks 81st in the prevalence of poor traffic. Living near freeways already subjects residents to higher rates of asthma, heart attacks, strokes, lung cancer, and pre-term births. (Barboza 2017.)[4]

Approving warehouse development here, which carries increased rates of asthma and cancer, would compound the community's existing environmental health problems. (Esquivel 2019.) The EIR must pay careful attention to the cumulative impacts of additional air pollution in an area with a high existing pollution burden when drafting the EIR. An EIR must discuss the "cumulative impacts of a project when the project's incremental effect is cumulatively considerable[.]" (14 CCR § 15130(a).) Even if a project only represents a relatively small contribution to a condition like poor air quality, the EIR must still assess the cumulative impacts of Project completion on unacceptable environmental conditions. (*See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 693, 728.) The Project's effects on air quality should be considered in the context of existing industrial uses and pollution burdens on neighboring properties.

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[4] https://www.latimes.com/projects/la-me-freeway-pollution/

C. The County Must Design the Project to Avoid These Impacts and Adopt Best Practice Mitigation Measures.

This Project will certainly add to and compound the environmental and health problems of people living in the area. The compounded risk of further contributing to air quality degradation in an area already so burdened should be carefully considered in the EIR and stringent mitigation measures should be adopted. (*See* California Office of Environmental Health Hazard Assessment.) Should the Project proceed, the Project should be designed to avoid serious harm to adjacent residents.

The California Office of the Attorney General has published a document entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" to help lead agencies design warehouse projects to minimize and mitigate environmental harms. (AGO 2021.) It contains the following best practices for siting and designing warehouse facilities, along with recommended mitigation measures (not repeated here) that should be incorporated into the Project:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.
- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

The effects the Project will have on the air quality in an area with a sizeable existing pollution burden must be fully and carefully considered in the EIR, and mitigation measures must be clearly described and adopted should this Project move forward.

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III. The EIR Should Assess and Mitigate the Impacts of the Project on Climate Change-Causing Greenhouse Gas Emissions

In addition to assessing the impact on traffic, the EIR should carefully consider the project's effects on statewide goals for reducing greenhouse gas emissions. Where a project will generate greenhouse gas emissions either directly or indirectly, the EIR should describe the expected increase in emissions and discuss mitigation measures. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413, 430-34; Pub. Res. Code §§ 21002; 21083.5.) Major warehouse projects have the documented effect of substantially increasing construction, operation, and vehicle-related emissions, all of which produce climate change-causing greenhouse gases. (Betancourt et al. at 4-5; USEPA 2022.) The EIR must carefully and completely address both the impacts on emissions from construction and operation of the plant, and those from vehicle miles traveled by trucks transporting goods to and from the warehouse and commuting employees.

To mitigate the known environmental harms of warehouse projects, the EIR should identify specific measures that the developers will take to minimize any increase in greenhouse gas emissions caused by the Project. These measures should include sustainability measures, like ensuring roofs are white to minimize the need for air conditioning and including rooftop solar for energy production. (AGO 2021; Betancourt et al. at 6.) Moreover, the Project should incorporate features to minimize greenhouse gas emissions, like zero-emissions off-road vehicles and construction equipment, electric vehicle charging stations, and a plan to adopt zero-emissions heavy trucks. (AGO 2021; *id.*) Mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Mitigation measures should be designed so benefits are realized by the local community and could include funding zero emission public transit, solar installations on residential homes, or providing publicly accessible electric vehicle charging infrastructure.

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Finally, the EIR must fully describe the greenhouse gases the warehouse's construction will produce and outline all feasible mitigation measures that will be taken to address them. Construction of such a large warehouse will require substantial quantities of construction materials, such as concrete. Cement and concrete manufacture is extremely energy intensive and produces a large amount of greenhouse gas emissions. (Masanet et al. at 89.) Concrete manufacturing accounts for roughly 3 percent of California's greenhouse gas emissions. (*Id.*) This and other sources of greenhouse gas and particulate emissions—such as dust and emissions from heavy machinery used during construction—should be thoroughly examined and mitigated in the EIR.

IV. The EIR Must Adequately Assess and Mitigate the Project's Impact on Local Traffic.

CEQA requires that the EIR fully assess the impact the construction of 1.3 million square feet of high cube warehouse facilities will have on transportation and traffic. (Pub. Res. Code §

21099; NOP at 2.) During construction, all the materials, heavy machinery, and construction workers will need to drive through the community daily, potentially creating disruptive and unpredictable traffic patterns during construction. After completion, the Project will bring additional traffic to the area from trucks picking up goods and employees commuting to work in the warehouses. (Betancourt et al. at 4; Initial Study at 19, 61.) Trucks serving facilities often idle on public streets and clog local roads when warehouses are at capacity, creating traffic congestion and hazards to local drivers who depend on these roads. (*See* Betancourt at 5.)

The City must assess how the traffic increases associated with this project will affect the species in the surrounding area. (Pub. Res. Code § 21099.) As discussed in later sections, traffic congestion can hurt air quality and harm habitat through generating waste that is carried into waterways through stormwater runoff. The potential harms of increased runoff should be carefully considered and mitigated in the EIR. Moreover, even if substantial increased congestion would not result from the Project, the EIR should assess the project's impact on Vehicle Miles Traveled. (14 CCR § 15064.3(a).) Should the project substantially increase Vehicle Miles Traveled, the EIR should adopt reasonable mitigation measures, such as requiring the use of highly efficient or electric trucks to transport goods.

After assessing the Project's impact on transportation and traffic, the EIR must fully comply with CEQA's mandates for mitigating the harms associated with increased traffic in the area. Mitigation of a project's environmental impacts is one of the "most important" functions of CEQA and it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; Pub. Res. Code § 21002.) Particular care should be taken to ensure that the traffic impacts of this project are fully assessed and mitigated, because there are already many warehouses drawing trucks to the area.

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The Project should be designed to avoid congestion caused by truck staging on local roads and limit the number of trucks travelling during normal commuting hours to avoid serious harm to locals who rely on nearby roads. Moreover, the City must ensure the EIR includes mitigation for the traffic that construction of such a large project would likely cause.

V. The EIR Should Carefully Assess and Mitigate the Impacts of the Project on Water Quality

The EIR must adequately assess the Project's effects on Hathaway creek, any surrounding wetlands and the riverine habitat located on the property, and connected bodies of water. (Initial Study at 24-25.) The United States Fish and Wildlife Survey National Wetlands Inventory identifies the Project site as transected by riverine habitat that can seasonally flood. (*See* Initial Study at 24.) This inquiry should detail at a minimum the municipal control over activities on privately held land, associated impacts on sensitive biological resources, habitat connectivity, and the efficacy of proposed mitigation measures.

First, mitigation measures for preserving the on-site riverine habitat should include adequate buffer zones between built features (like roads and buildings) and the habitat. The

terrestrial land surrounding riverine habitat is essential for both preserving water quality by serving as a water filter and providing upland habitat for wetland-dwelling species. (Semlitsch & Bodie at 1220.) To ensure that riverine habitat and water quality are preserved, the EIR should ensure there are sufficient buffer zones surrounding Hathaway Creek and its wetlands to maintain the quality of the creek and surrounding wetlands.

Moreover, the EIR must detail long-term management plans for the creek and wetlands, as well as measures that will be taken to protect the creek from the long-term effects of operating warehouses nearby. Notably, there is evidence that roadway runoff produced by the vehicles that will be picking up and dropping off goods significantly contributes to water pollution. (*See* Nixon & Saphores at 1.) Sediments from construction and road erosion, oils from car operation, heavy metals from exhaust, and anti-freeze and other chemicals all can be carried into streams by stormwater runoff. (*See* Nixon & Saphores at 1-2; Shore Stewards.) Additionally, the construction of the warehouses on the property will likely leave behind significant quantities of loose sediment from grading and excavation that can runoff into water and significantly harm wetlands by increasing turbidity, which harms plant growth and destroys habitat for fish species. (*See id.* at 1-2; Shore Stewards.) Spoils from grading must be properly disposed of, and adequate erosion control and spill prevention measures should be implemented to avoid impacts to adjacent wetlands.

The EIR should fully detail the potential risks to water quality operation and construction of the warehouses may cause and adopt binding mitigation measures to minimize these harms.

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VI. The EIR Must Thoroughly Consider Reasonable and Prudent Alternatives

The EIR must present and consider "a range of reasonable alternatives . . . which would feasibly attain most of the basic objectives of the project" in order to facilitate "informed decision-making and public participation." (14 CCR § 15126.6(a).) The EIR's alternative analysis should assess the proposed size and location of the Project. The EIR should also assess whether there is sufficient need for another warehouse in this region. Importantly, even if alternatives are costly or would interfere with achievement of some of the project goals, they should be considered if they can substantially reduce the environmental harms of the project. (14 CCR §15126.6(b).) Moreover, the City should avoid adopting overly narrow project objectives to attempt to avoid a broad analysis of alternative mechanisms for achieving the Project's purpose. (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.4th 647, 669.)

VII. Other Impacts That Must Be Analyzed in the EIR

In addition to those issues raised above, the EIR must also thoroughly address a variety of other related issues. For example, the EIR must fully disclose and analyze the Project's impacts on aesthetics and noise, and discuss alternatives and effective mitigation measures to avoid, reduce, and mitigate these impacts. Additionally, it is essential that the EIR consider the cumulative effects of the Project, such as air quality and traffic, in light of the many existing warehouses nearby. (*See* IS at 9-11.)

VIII. Conclusion

Thank you for the opportunity to submit comments on the Notice of Preparation of an Environmental Impact Report for the Banning Commerce Center. The environmental effects of the Project will include direct and indirect impacts on biological resources, air quality, climate change, traffic, and water quality. Evaluation of each of these impacts as well as analysis of a reasonable range of alternatives and mitigation measures must be included in the EIR.

Given the possibility that the Center will be required to pursue legal remedies to ensure that the City complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the "administrative record" of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 762-65.) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project, and includes "pretty much everything that ever came near a proposed [project] or [] the agency's compliance with CEQA . . . ." (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 8.) The administrative record further includes all correspondence, emails, and text messages sent to or received by the City's representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the Applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

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Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



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Exhibit 2

List of California Natural Diversity Database (CNDDB) records of sensitive plant and animal species in and near the Project area (within the Cabazon quadrant). This is not a comprehensive list of sensitive species that occur, potentially occur, or historically occurred in and/or near the Project area.

Type	Scientific_Name	Common_Name
Animals - Amphibians	Rana muscosa	southern mountain yellow-legged frog
Animals - Amphibians	Spea hammondii	western spadefoot
Animals - Birds	Accipiter cooperii	Coopers hawk
Animals - Birds	Accipiter striatus	sharp-shinned hawk
Animals - Birds	Aquila chrysaetos	golden eagle
Animals - Birds	Buteo regalis	ferruginous hawk
Animals - Birds	Circus hudsonius	northern harrier
Animals - Birds	Elanus leucurus	white-tailed kite
Animals - Birds	Eremophila alpestris actia	California horned lark
Animals - Birds	Chaetura vauxi	Vauxs swift
Animals - Birds	Ardea herodias	great blue heron
Animals - Birds	Botaurus lentiginosus	American bittern
Animals - Birds	Falco mexicanus	prairie falcon
Animals - Birds	Falco peregrinus anatum	American peregrine falcon
Animals - Birds	Spinus lawrencei	Lawrences goldfinch
Animals - Birds	Progne subis	purple martin
Animals - Birds	Xanthocephalus xanthocephalus	yellow-headed blackbird
Animals - Birds	Lanius ludovicianus	loggerhead shrike
Animals - Birds	Toxostoma lecontei	Le Contes thrasher
Animals - Birds	Pandion haliaetus	osprey
Animals - Birds	Setophaga petechia	yellow warbler
Animals - Birds	Aimophila ruficeps canescens	southern California rufous-crowned sparrow
Animals - Birds	Artemisiospiza belli belli	Bells sparrow
Animals - Birds	Passerculus sandwichensis rostratus	large-billed savannah sparrow
Animals - Birds	Spizella breweri	Brewers sparrow
Animals - Birds	Melanerpes lewis	Lewis woodpecker
Animals - Birds	Polioptila californica californica	coastal California gnatcatcher
Animals - Birds	Polioptila melanura	black-tailed gnatcatcher
Animals - Birds	Athene cunicularia	burrowing owl
Animals - Birds	Strix occidentalis occidentalis	California Spotted Owl
Animals - Birds	Calypte costae	Costas hummingbird
Animals - Birds	Selasphorus rufus	rufous hummingbird
Animals - Birds	Contopus cooperi	olive-sided flycatcher
Animals - Birds	Empidonax traillii	willow flycatcher

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Animals - Birds	Empidonax traillii extimus	southwestern willow flycatcher
Animals - Birds	Vireo bellii pusillus	least Bells vireo
Animals - Insects	Bombus crotchii	Crotchs bumble bee
Animals - Insects	Bombus pensylvanicus	American bumble bee
Animals - Insects	Stenopelmatus cahuilaensis	Coachella Valley jerusalem cricket
Animals - Mammals	Neotoma lepida intermedia	San Diego desert woodrat
Animals - Mammals	Lynx rufus pallescens	pallid bobcat
Animals - Mammals	Chaetodipus fallax fallax	northwestern San Diego pocket mouse
Animals - Mammals	Chaetodipus fallax pallidus	pallid San Diego pocket mouse
Animals - Mammals	Dipodomys simulans	Dulzura kangaroo rat
Animals - Mammals	Perognathus longimembris bangsi	Palm Springs pocket mouse
Animals - Mammals	Perognathus longimembris brevinasus	Los Angeles pocket mouse
Animals - Mammals	Lepus californicus bennettii	San Diego black-tailed jackrabbit
Animals - Mammals	Taxidea taxus	American badger
Animals - Mammals	Xerospermophilus tereticaudus chlorus	Palm Springs round-tailed ground squirrel
Animals - Mammals	Antrozous pallidus	pallid bat
Animals - Mammals	Corynorhinus townsendii	Townsends big-eared bat
Animals - Reptiles	Anniella stebbinsi	Southern California legless lizard
Animals - Reptiles	Arizona elegans occidentalis	California glossy snake
Animals - Reptiles	Salvadora hexalepis virgultea	coast patch-nosed snake
Animals - Reptiles	Thamnophis hammondii	two-striped gartersnake
Animals - Reptiles	Phrynosoma blainvillii	coast horned lizard
Animals - Reptiles	Uma inornata	Coachella Valley fringe-toed lizard
Animals - Reptiles	Aspidoscelis tigris stejnegeri	coastal whiptail
Animals - Reptiles	Gopherus agassizii	desert tortoise
Animals - Reptiles	Crotalus ruber	red-diamond rattlesnake
Plants - Vascular	Deinandra mohavensis	Mojave tarplant
Plants - Vascular	Deinandra paniculata	paniculate tarplant
Plants - Vascular	Symphyotrichum defoliatum	San Bernardino aster
Plants - Vascular	Caulanthus simulans	Paysons jewelflower
Plants - Vascular	Astragalus lentiginosus var. borreganus	Borrego milk-vetch
Plants - Vascular	Astragalus lentiginosus var. coachellae	Coachella Valley milk-vetch
Plants - Vascular	Astragalus pachypus var. jaegeri	Jaegers milk-vetch
Plants - Vascular	Juglans californica	southern California black walnut
Plants - Vascular	Calochortus plummerae	Plummers mariposa-lily
Plants - Vascular	Petalonyx linearis	narrow-leaf sandpaper-plant
Plants - Vascular	Abronia villosa var. aurita	chaparral sand-verbena
Plants - Vascular	Chorizanthe parryi var. parryi	Parrys spineflower

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Plants - Vascular	Chorizanthe xanti var. leucotheca	white-bracted spineflower
Plants - Vascular	Delphinium parishii ssp. subglobosum	Colorado Desert larkspur
Plants - Vascular	Delphinium parryi ssp. purpureum	Mt. Pinos larkspur
Plants - Vascular	Horkelia cuneata var. puberula	mesa horkelia

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FP: Fully Protected
SSC: Species of Special Concern
WL: Watch List

Responses to Comment Letter O3 - Center for Biological Diversity

O3.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.2 The Draft EIR analyzes impacts to biological resources including wildlife connectivity, special-status species, and sensitive habitats in Section 4.3 Biological Resources. As demonstrated in the Draft EIR, any potentially significant impacts to biological resources are mitigated to less than significant levels. Refer to the MMRP for the Project. The Project MMRP is available for review at the City of Banning Planning Department, at 99 E Ramsey Street, Banning, CA 92220

O3.3 Refer to **Response O3.2, O3.5,** and **O3.6.** The Draft EIR and BRTR analyzes impacts to special status species and has determined that MM BIO-1 through MM BIO-3 would mitigate impacts to special status species that have the potential to occur within the Project site. Specifically, MM BIO-1 and MM BIO-2 would require the Project to prepare pre-construction nesting bird surveys and burrowing owl surveys. Further, MM BIO-3 would indirectly create culverts that could be used by small mammals, reptiles, and amphibians, such as the Coachella Valley fringe-toed lizard. With the incorporation of MM BIO-1 through MM BIO-3, the Project would adequately address potential impacts to special-status species.

O3.4 Refer to **Response O3.3** and **O3.5**.

O3.5 The commenter states that the DEIR buries most information in its appendices and that analyses need to be provided within the main text of the EIR. Contrary to the commenter's statement, The DEIR fully examines each study area required by CEQA Guidelines Appendix G and analyzes all facets of each, including the environmental and regulatory settings, impact thresholds and significance criteria, direct and cumulative Project impacts and mitigation measures. Accordingly, the DEIR complies with CEQA. The commenter does not provide any specific examples of what information is inappropriately contained in one of the DEIR's appendices versus the DEIR's text, and therefore no further response is warranted. The commenter also states that the special-status species listed in the commenter letter's Exhibit 2 from the CNDDB quadrant in which the Project is located should be analyzed in the DEIR. The initial analysis included a review of the CNDDB Cabazon and surrounding quadrangles (9 total) as well as other sensitive species occurrence databases as referenced in the EIR. The focus of the review was to determine which species had potential to occur on-site based on existing conditions or were recorded within or adjacent to the project site. The CNDDB serves as a reference tool and not a replacement for conducting a detailed habitat suitability assessment for sensitive resources. As stated by CDFW "*Data within the CNDDB and Spotted Owl Database require biological expertise for proper analysis, interpretation, and application. It is the user's responsibility to ensure that the data obtained from DFW are used correctly*." Specifically, the EIR references and analyses habitat suitability for a total of 57 sensitive wildlife species of which 35 are included in the commenter list. A total of 22 additional sensitive wildlife species not listed in the commenters CNDDB list were addressed in the EIR based on the results of the baseline conditions and habitat suitability conducted for sensitive wildlife species not previously recorded in the CNDDB. Respective of

sensitive plants - the EIR references and analyses habitat suitability for a total of 23 sensitive plant species of which 11 are included in the commenters CNDDB list. A total of 12 additional sensitive plant species not listed in the commenters CNDDB list were addressed in the EIR based on the results of the baselines conditions and habitat suitability for sensitive plant species not previously recorded in the CNDDB.

O3.6 Refer to **Response O3.10.** The BRTR states that the MSHCP covered mountain lion is not frequently expected on-site based on a lack of unrestricted movement routes, refugia and restricted access along northern, western and southern boundaries. This is based on the existing site conditions and the fact that the Project Site is bound to the west by residential and commercial development and the south by Interstate (I-) 10. As stated in the BRTR, the majority of mammals exhibit a preference for culverts which provide for a line of sight to habitat on the opposite side. Although small mammals such as rodents, reptiles and amphibians may not require line of sight, an Openness Ratio of >0.75 is generally required for medium to large mammals (Conservation Biology Institute, 2016, *Wildlife Infrastructure Plan for SR-94*). As stated by Conservation Biology Institute: "*The openness ratio of an undercrossing is defined as a structure's (height x width)/length (the distance of an underpass perpendicular to the road). A large openness ratio (i.e., >0.75) provides more natural lighting and is recommended to allow an animal to see all the way through a crossing structure to the other side (e.g., Cain et al. 2003, Clevenger and Waltho 2005). In addition to the openness ratio, however, one must consider brightness, distance to safety from predators, traffic volume and noise, vegetation cover, and similarity to natural environmental conditions. Where undercrossings also support water flow, it is important to have a ledge or shelf that animals can use to stay above the water level*" (Conservation Biology Institute 2016). The Project Site is currently expected to provide for local wildlife foraging and breeding habitat. However, the Project Site does not serve as a regional travel route, wildlife corridor or wildlife crossing for large or medium sized mammals between open space habitats located north and south of I-10 (SLA) based on the Openness Ratios of 0.018 and 0.012, far less than 0.75.

O3.7 Refer to **Responses O3.5** and **O3.6**.

O3.8 Refer to **Response O3.5, O3.6,** and **O3.10**. This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.9 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.10 The BRTR identifies that mountain lions (*Puma concolor*) have a low potential to occur on the Project site given mountain lions use rocky areas, cliffs, and ledges that provide cover within open woodlands and chaparral, as well as riparian areas and that the Project site provides a lack of unrestricted movement routes, refugia and restricted access along northern, western and southern boundaries. The presence of the I-10 freeway to the immediate south, constructed fences to the immediate north, and other developments within the City of Banning prevent the movement of larger vertebrate wildlife through the Project site. Regional wildlife connectivity

includes the San Gorgonio River, which the Project site is not adjacent to, which provide adequate openness and unimpeded crossings of the I-10 freeway. These facts are discussed throughout the BRTR and the Draft EIR. As such, the analysis provided within the Draft EIR is adequate and no revisions are necessary.

O3.11 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.12 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.13 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.14 Refer to **Responses O3.6** and **S1.19**.

O3.15 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.16 Refer to **Responses S1.8** through **S1.11**.

O3.17 Refer to **Responses S1.8** through **S1.11**.

O3.18 Refer to **Responses S1.8** through **S1.11**.

O3.19 Refer to **Responses S1.8** through **S1.11**.

O3.20 Refer to **Responses S1.8** through **S1.11**.

O3.21 Refer to **Responses S1.8** through **S1.11**. The Project completed burrowing owl protocol surveys according to the MSHCP standards. Further, the mitigation measures have been amended according to CDFW's recommendations.

O3.22 Refer to **Response O3.5**.

O3.23 Refer to **Responses S1.12** and **S1.18**.

O3.24 Refer to **Response S1.19**.

O3.25 Refer to **Response S1.19.**

O3.26 Refer to **Response S1.19**.

O3.27 As part of the DBESP and HMMP process with the wildlife agencies, a sediment transport study is being prepared at the request of CDFW and USFWS. However, the RWQCBs have adopted NPDES permits to regulate storm water for municipalities, including the Colorado River Water Board in which the Project is located. The permittees under the MS4 have an obligation to treat storm water discharges, which include the treatment of sediments. Further, it was determined through the analysis of the BRTR that there would be no new or additional downstream impacts to fluvial conditions respective of altering sediment loads. A draft sediment transport study, which would

be used in support of the DBESP and HMMP process is available as **Appendix C** to this Final EIR. The sediment transport study determined that the Project would not result in significant impacts with respect to sediment transport.

O3.28 Refer to **Responses S1.19** and **O3.6.**

O3.29 Refer to **Responses S1.19**, **O3.5**, and **O3.6**.

O3.30 Refer to **Responses S1.19** and **O3.6.**

O3.31 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.32 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.33 Refer to **Response S1.18.**

O3.34 As stated in the BRTR, the temporary direct and/or indirect impacts of the project would not result in cumulative impacts (CEQA Guidelines Section 15310) to environmental resources within the region of the Project Site. Cumulative impacts refer to incremental effects of an individual project when assessed with the effects of past, current, and proposed projects. The Project Site is located completely within the City of Banning, an MSHCP permittee. As stated in the County of Riverside Transportation and Land Management Agency: "*Implementation of the MSHCP and Covered Projects will not result in a cumulative adverse effect, either directly or through habitat modifications, on any of the Covered Species, including the 31 species that are currently listed as threatened or endangered and the one species that is currently proposed for listing. Implementation of the MSHCP will benefit the Covered Species by preserving their habitat in order to address their life cycle needs. Thus, based on the features of the Plan itself, impacts to Covered Species are mitigated below a level of significance.*" (County of Riverside Transportation and Land Management Agency 2003). Although the project would result in the permanent loss of 131.28-acres of primarily desert scrub and non-native grassland habitat, as referenced above, the MSHCP was developed to address the comprehensive regional planning effort and anticipated growth in the City of Banning. As stated in the County of Riverside Transportation and Land Management Agency: "*The Plan will not cause adverse cumulative effects related to the reduction of sensitive vegetation communities within the Plan Area; rather, the Plan is designed to preserve sufficient acreage of the sensitive vegetation communities present in western Riverside County. Similarly, the Plan will not cause adverse cumulative effects related to interference with the movement of any native resident or migratory fish or wildlife species or obstruction of genetic flow for the identified Planning Species. Part of the purpose and goals of the MSHCP is to use regional planning efforts to assemble a reserve that will preserve contiguous blocks of habitat in large enough areas to ensure that the reserve will allow movement of species and flow of genetic information. The MSHCP will not cause adverse cumulative impacts by conflicting with the provisions of any adopted Habitat Conservation Plan, Natural Communities Conservation Plan or other approved local, regional, or State habitat conservation plan either within or outside of the Plan area. Rather,*

the MSHCP has been written specifically to complement existing HCPs, such as the Stephens' kangaroo rat long-term HCP." (County of Riverside Transportation and Land Management Agency 2003)

O3.35 Refer to **Responses S1.19** and **O3.6**.

O3.36 Refer to **Response O3.34**.

O3.37 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O3.38 The commenter notes that the Draft EIR did not include the GHG impacts that would result from the loss of plants on site by developing the Project. The commenter references a document prepared by the commenter which describes shrublands, grasslands, deserts, and riparian corridors as able to store and sequester large amounts of carbon. The referenced document provides a methodology for calculating carbon sequestration of different habitats in California. The commenter notes that Appendix C1 Table 6 of the Draft EIR identifies the existing habitat on-site as 106.36 acres of desert scrub, 17.45 acres of non-native grassland, and 6.26 acres of Riversidean sage scrub. Based on the plants identified in the habitat assessment, the average annual carbon accumulation rates for non-native grasslands and desert shrub were used to estimate carbon sequestration. Based on these calculations approximately 298 $MTCO_2e$ per year of sequestration from natural habitat would be lost while developing the Project.

However, the Project's landscape plan identifies 43.19 acres of shrubs, 1.52 acres of native grasses, and 943 trees that will be planted on-site and will also sequester carbon. To calculate the carbon sequestration associated with the Project's landscaping, sequestration rates identified in Appendix G: Default Data Tables of the CalEEMod 2022 User Guide were used instead of the ones in the commenter's document because these are not naturally occurring habitats. Tree sequestration was calculated using the program i-Tree as identified in the CalEEMod 2022 User Guide. Based on this methodology, the Project landscaping would sequester 151 $MTCO_2e$ per year, which is 147 $MTCO_2e$ per year less than what was sequestered with the existing habitat. An updated landscape plan has been provided as **Appendix D** to this Final EIR.

In order to provide full disclosure, Table 4.7-3: Project-Related GHG Emissions on page 4.7-20 of the Draft EIR has been updated in the Errata. The total unmitigated and mitigated GHG emissions from the Project have been increased from 27,048 and 22,969 $MTCO_2e$ per year to 27,195 and 23,116 $MTCO_2e$ per year respectively. However, no changes in the GHG conclusions would occur as impacts associated with GHG emissions remains significant and unavoidable.

O3.39 Refer to **Response O3.38.**

O3.40 Refer to **Response O3.38.**

O3.41 Refer to **Response O3.38.**

O3.42 The commenter states that the Project must include on-site solar as mitigation. As discussed on Draft EIR page 4.7-24, MM GHG-1 requires the Project to install solar panels or acquire energy

from the local utility that have been generated by renewable sources, sufficient to power the entire Project. As a result, GHG emissions from electricity generation would be reduced to zero. The commenter also states that the Project must include electric truck infrastructure. As discussed on Draft EIR page 4.7-25, MM GHG-5 requires the installation of electrical hookups for electrical trucks. In addition, the 2022 CALGreen establishes mandatory requirements for nonresidential construction with special additional requirements for buildings used as grocery stores, retail, and warehouses. These requirements are mandatory and therefore do not qualify as mitigation. However, these mandatory requirements also help achieve the reductions the commenter seeks. The 2022 CALGreen requires the Project to make a minimum of 20 percent of the required parking spaces EV Capable and a minimum of 25 percent of those EV Capable spaces must be fitted with EV supply equipment (208/240 Volt 40-ampere branch circuit, and the electric vehicle charging connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises and the electric vehicle).

O3.43 The commenter suggests that the truck emissions from Project would result in a concentrated, severe diesel impact. However, a health risk assessment was prepared for the Project and determined that cancer risk and non-carcinogenic hazards to the nearest residential receptors and workers are below SCAQMD's health risk thresholds.

The commenter notes that approximately 86 percent of the Project's GHG emissions are from mobile sources and states their belief that control of mobile source emissions can feasibly be enforced by the Project or City. The commenter then provides several examples of mitigation unrelated to the Project and mobile source emissions.

The commenter later references mitigation measures suggested by the California Attorney General, specifically participating in the EPA's SmartWay Program, requiring tenants to use trucks from certain model years, and requiring electric truck charging. GHG emission reductions from participating in the SmartWay Program are not quantifiable and therefore would not reduce GHG emissions listed on Draft EIR page 4.7-20. The Truck and Bus Regulation requires all trucks to meet or exceed 2010 model year emission standards and the Carl Moyer Program provides funding to replace older vehicles with newer and cleaner ones. As a result, the measure as suggested by the commenter does not qualify as mitigation. And as discussed previously, MM GHG-5 requires the installation of electrical hookups for charging electric trucks.

The commenter then references a mobile source mitigation measure from the Airport South Industrial Project Draft, which requires 4.5 percent of heavy-duty vehicles to be zero emission by full buildout of the Project unless the vehicles are not commercially available. However, this mitigation does not include a method for verification or enforcement and therefore is not an appropriate mitigation measure for CEQA.

O3.44 The commenter suggests requiring mitigation measures that will prepare the Project to operate an all-electric fleet of trucks in the future. Refer to **Response O3.42**, above. MM GHG-5 requires the Project to install electric hookups to charge electric trucks and the CALGreen building code includes requirements for electrical charging infrastructure and charging stations. This mitigation

and compliance with the building code will ensure that the Project is consistent with the State's air quality and GHG goals.

The commenter suggests that the Project will include refrigeration, however the Project does not include cold storage. The commenter also suggests the Project should account for increased electrical demand associated with a future all-electric fleet and powered by on-site solar. CEQA precludes the EIR from speculating as to what the Project's emissions may be 30 years in the future. Therefore, estimating electricity demands for a future fleet of electric trucks is not appropriate due to technological shifts and the unknown parameters of the regulatory framework in the future.

O3.45 The comment provides general information on solar energy infrastructure. The comment does not raise a specific issue with the adequacy of the Draft EIR or raise any other CEQA issue. Therefore, no further response is necessary.

O3.46 The commenter notes that MM GHG-1 gives the project two options, generate all energy needed on-site with solar or purchase all energy needed from renewable sources. The commenter suggests that Project should not be allowed to purchase renewable energy because it is a lost opportunity to generate solar energy. However, neither the City nor the State have requirements that state a warehouse must generate its own power on-site. The intent of MM GHG-1 is to reduce GHG emissions associated with the Project and generating solar power on-site will not result in lower emissions than purchasing them from a renewable energy source. However, MM GHG-1 ensures that GHG emissions associated with energy will not be generated by the Project.

O3.47 Refer to **Response O3.43**. Health risk impacts were analyzed and determined to be below SCAQMD's health risk thresholds; see Draft EIR pages 4.2-29 through 4.2-30.

O3.48 Refer to **Response O3.43**. NO_X and GHG impacts remain significant and unavoidable after mitigation as a result of mobile source emissions, which are beyond the purview of the Project. However, as vehicles transition from combustion engines to ZE vehicles in the future per State regulations, NO_X and GHG emissions will decrease, consistent with the States goals.

O3.49 The commenter is incorrect in suggesting that the warehouse is 400 feet from sensitive receptors. The Project includes an extension of Wilson Street which ends at the intersection of N. Hathaway Street and Morongo Road, 400 feet from existing residential units. The actual warehouse is approximately 3,000 feet from the nearest sensitive receptor which exceeds the California Attorney General's recommendation of siting warehouses at least 1,000 feet from the property line nearest sensitive receptor.

The commenter also has misrepresented the findings of SCAQMD's LSTs. The LST analysis follows SCAQMD's Final Localized Significance Threshold Methodology and represents the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based on the ambient concentrations of that pollutant for each source receptor area and distance to the nearest sensitive receptor. LSTs, as the name implies, only apply to localized emissions from on-

site activities. The LST analysis determined that the Project did not exceed the construction or operation emission thresholds.

Although the LST analysis is focused on localized emissions, a Health Risk Assessment located in Appendix B of the Draft EIR was also prepared for the Project. The Health Risk Assessment analyzes the health risk impacts from diesel emissions generated by the Project, both on-site and along the roadways identified in the Exhibit 4-1: Project (Truck) Trip Distribution on pages 49 and 50 of the Traffic Impact Assessment located in Draft EIR Appendix K. The Health Risk Assessment determined that the Project did not exceed SCAQMD's toxic air contaminant thresholds and resulted in a less than significant impact with mitigation.

O3.50 The commenter notes that the Project exceeds NO_X emissions after mitigation and states that the Project must adopt all feasible mitigation. The commenter provides two suggested mitigation measures which are discussed below.

O3.51 The commenter misinterprets MM AQ-4, stating that it limits truck idling time to 5 minutes which is required by California Airborne Toxics Control Measure and therefore does not qualify as mitigation. However, the purpose of MM AQ-4 is enforce the placement of signs at all truck gates and loading docks within the Project site. These signs are to remind truck drivers to follow regulations and to provide them with a means to report violations. The commenter references the Attorney General's letter Warehouse Projects: Best Practices and Mitigation Measures to Comply with CEQA which includes best practices for site design as well as recommendations for mitigation such as limiting truck idling to two minutes. To be conservative, MM AQ-4 will be updated in the errata to limit truck idling to two minutes.

O3.52 The commenter has misinterpreted the impacts to sensitive receptors and suggests mitigation/design features that are already incorporated into the Project or not needed.

- The commenter suggests creating physical buffers that adequately prevent or substantially reduce pollutant dispersal from the warehouse to sensitive receptors. As discussed previously, the warehouse is located approximately 3,000 feet from the property line of the nearest sensitive receptor. In addition, the health risk modeling has determined that pollution generated both on-site and offsite will not exceed SCAQMD health risk thresholds for toxic air contaminants. Therefore, creating physical, structural, and/or vegetative buffers is not necessary.
- The commenter suggests adequate areas for on-site parking, on site-queuing, and truck check-in. The Project site plan on Draft EIR page 3-16 shows that the Project includes long drive aisles within the property prior to truck check-in locations to ensure that trucks will not be queuing on public roads. In addition, the site plan shows that the Project exceeds the amount of on-site parking required for a project of this size. Therefore, the Project is consistent with the commenters request.
- The commenter suggests locating dock doors and other areas with significant truck traffic away from sensitive receptors. As shown on the site plan, the warehouse is oriented so that the dock doors face the northwest and the southeast, away from any sensitive receptors.

In addition, the warehouse is located approximately 3,000 feet from the nearest sensitive receptor. Therefore, the Project is consistent with the commenters request.

- The commenter suggests screening dock doors and on-site areas with significant truck traffic with physical barriers to reduce pollutant dispersal. As discussed previously, the dock doors are oriented away from sensitive receptors and the warehouse is located approximately 3,000 feet from the nearest sensitive receptor. Also, as discussed previously, a Health Risk Assessment was prepared for the Project and determined that pollution generated both on-site and offsite will not exceed SCAQMD health risk thresholds for toxic air contaminants (refer to **Response O3.43** and Draft EIR pages 4.2-29 through 4.2-30). Therefore, creating physical, structural, and/or vegetative buffers is not necessary.

O3.53 The comment requests the City include the commenter on further updates related to the Project. The comment is noted for the record and no further response is needed.

Comment Letter O4 – Coalition for Californians Allied for a Responsible Economy (CARE CA)

Comment Letter O4

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July 5, 2024

VIA EMAIL AND U.S. MAIL

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VIA EMAIL ONLY

Emery J. Papp, Senior Planner
Email: epapp@banningca.gov

Re: Request for Mailed Notice of Actions and Hearings – Banning Commerce Center Project (SCH No. 2022090102)

Dear Mr. Rush, Ms. Calderon, and Mr. Papp:

We are writing on behalf of Coalition for Californians Allied for a Responsible Economy ("CARE CA") to request mailed notice of the availability of any environmental review document, prepared pursuant to the California Environmental Quality Act, related to the Banning Commerce Center Project (SCH No. 2022090102) ("Project"), proposed by Sansone Group ("Applicant"), as well as a copy of the environmental review document when it is made available for public review.

The Project proposes the development of approximately 1,320,284 square feet of warehouse space (including office space) within one concrete tilt-up building. The approximately total 131.28 net-acre Project site is generally located within the eastern portion of the City of Banning, within the County of Riverside. Regional access to the Project site is available from Interstate 10 (I-10) via Hargrave Street and Ramsey Street. Local access is provided by Hathaway Street, located east of the site; Wilson Street would be extended eastward as part of the Project and would bisect the northerly portion of the Project site. The Project site comprises eight Assessor's Parcel Numbers: 532-030-008, 532-030-009, 532-080-008, 532-080-010, 532-090-026, 532-090-028, 532-090-030, and 532-110-015. 1

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This request is made pursuant to the California Public Records Act (Government Code §§ 7920.000, et seq.). This request is also made pursuant to Article I, section 3(b) of the California Constitution, which provides a Constitutional right of access to information concerning the conduct of government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information shall be narrowly construed.

We also request mailed notice of any and all hearings and/or actions related to the Project. These requests are made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108, 21152, and 21167(f) and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

cont'd
1

Please send the above requested items by email and U.S. Mail to our San Francisco office as follows:

U.S. Mail
Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email
ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,

Sheila M. Sannadan
Legal Assistant

SMS:acp

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Responses to Comment Letter O4 - Coalition for Californians Allied for a Responsible Economy (CARE CA)

O4.1 This comment is informational in nature and the commenter wishes to be included on all future mailed noticing of any and all hearings and/or actions related to the Project. The commenter has been added to this City's distribution list for this Project and as the comment raises no substantive issues regarding the adequacy of the Draft EIR, no further response is necessary.

Comment Letter O5 - Golden State Environmental Justice Alliance

Comment Letter O5

BLUM, COLLINS & HO LLP
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July 31, 2024

Emery J. Papp, Senior Planner
City of Banning
99 E. Ramsey Street
Banning, CA 92220

VIA EMAIL TO:
epapp@banningca.gov

SUBJECT: COMMENTS ON BANNING COMMERCE CENTER EIR (SCH NO. 2022090102)

Dear Mr. Papp,

Thank you for the opportunity to comment on the Environmental Impact Report (EIR) for the proposed Banning Commerce Center. Please accept and consider these comments on behalf of Golden State Environmental Justice Alliance. Also, Golden State Environmental Justice Alliance formally requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877. 1

1.0 Summary

The project proposes the construction and operation of one approximately 1,320,284 square foot (sf) footprint speculative industrial warehouse building that includes up to approximately 39,600 sf of office space and up to approximately 1,312,284 sf of warehouse area on an approximately 131.28 acre site. The building is designed as a cross-dock fulfillment center with approximately 200 truck/trailer loading dock doors (approximately 100 docks on the north side of the building and 100 on the south side of the building; the EIR does not state the precise quantity and location of truck/trailer loading dock doors.). The primary building site provides 805 passenger car parking stalls and 270 truck/trailer parking stalls. The northern portion of the project site is bisected by Wilson Street, and the project proposes 205 truck/trailer parking stalls on this area. The overall project site will provide 475 truck/trailer parking stalls. 2

3.0 Project Description

The EIR does not include a floor plan, detailed site plan, detailed building elevations or a complete conceptual grading plan. The basic components of a Planning Application include a detailed site plan, floor plan, conceptual grading plan, written narrative, and detailed elevations. The site plan provided in Figure 3-4 has been edited for public review to remove meaningful information such as the legend, key notes, floor area ratio, and site coverage. All of these basic items are necessary to conduct any type of analysis, and the EIR is inadequate as an informational document as it is not possible to ascertain any meaningful analysis based upon the information provided. Further, the elevations provided in Figures 3-5 and 3-6 have also been edited for public review as they have removed the height of the building and removed dimension lines from the area depicting the highest point of the building, meaning that the 50' shown above the building does not necessarily correlate to any point of the building. The elevations also do not provide the paint colors or building materials. 3 4 5

The EIR has also excluded the complete grading plan from public review. The EIR states that "The Project is expected to require approximately 250,000 cubic yards (CY) of soil import," yet there is no method for the public to verify this claim. Figure 3-4: Plot Plan lists the earthwork quantity notes but there is no supporting evidence or details to ensure that these quantities are accurate. Providing the complete grading plan to verify the earthwork quantity notes is vital as this directly informs the quantity of necessary truck hauling trips due to soil import/export during the grading phase of construction. A revised EIR must be prepared to include wholly accurate and unedited detailed floor plan, grading plan, site plan, building elevations, and project narrative for public review. 6

4.2 Air Quality, 4.5 Energy, and 4.7 Greenhouse Gas Emissions

Please refer to the attachment from SWAPE for a full technical commentary and analysis. 7

The EIR does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. This is in conflict with CEQA Guidelines Section 15131 (c), which requires that "Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project." This is especially significant as the 8

surrounding community is highly burdened by pollution. According to CalEnviroScreen 4.0[1], CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the proposed project's census tract (6065043813) and surrounding community bears the impact of multiple sources of pollution and is more polluted than average on several pollution indicators measured by CalEnviroScreen.

For example, the census tract ranks in the 97th percentile for ozone burden and the 84th percentile for traffic burdens. Both of these environmental factors are typically attributed to heavy truck activity in the area. Ozone can cause lung irritation, inflammation, and worsening of existing chronic health conditions, even at low levels of exposure[2]. Exhaust fumes contain toxic chemicals that can damage DNA, cause cancer, make breathing difficult, and cause low weight and premature births[3]. Children who live or go to schools near busy roads have higher rates of asthma and other lung diseases than children in areas farther from roads[4].

The census tract also experiences high rates of contaminated drinking water (78th percentile). Poor communities and people in rural areas are exposed to contaminants in their drinking water more often than people in other parts of the state[5].

The census tract ranks in the 87th percentile for hazardous waste facility impacts. Hazardous waste generators and facilities contribute to the contamination of air, water and soil near waste generators and facilities can harm the environment as well as people[6]. The census tracts also rank in the 77th percentile for solid waste impacts. Solid waste facilities can expose people to hazardous chemicals, release toxic gases into the air (even after these facilites are closed), and chemicals can leach into soil around the facility and pose a health risk to nearby populations[7].

Further, the census tract is a diverse community including 36% Hispanic, 19% Native-American and 2% Asian-American residents, whom are especially vulnerable to the impacts of pollution. The community has a high rate of low educational attainment, meaning 73% of the census tract residents over age 25 has not attained a high school diploma. The community also has a high rate of poverty, meaning 86% of the households in the census tract have a total income

cont'd
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[1] CalEnviroScreen 4.0 https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40
[2] OEHHA Ozone https://oehha.ca.gov/calenviroscreen/indicator/air-quality-ozone
[3] OEHHA Traffic Density https://oehha.ca.gov/calenviroscreen/indicator/traffic-density
[4] Ibid.
[5] OEHHA Contaminated Drinking Water https://oehha.ca.gov/calenviroscreen/drinking-water
[6] OEHHA Hazardous Waste Generators and Facilities
https://oehha.ca.gov/calenviroscreen/indicator/hazardous-waste-generators-and-facilities
[7] OEHHA Solid Waste Facilities https://oehha.ca.gov/calenviroscreen/indicator/solid-waste-sites-and-facilities

before taxes that is less than the poverty level. Income can affect health when people cannot afford healthy living and working conditions, nutritious food and necessary medical care[8]. Poor communities are often located in areas with high levels of pollution[9]. Poverty can cause stress that weakens the immune system and causes people to become ill from pollution[10]. Living in poverty and low educational attainment are indications that residents may lack health insurance or access to medical care. Medical care is vital for this census tract as it ranks in the 99th percentile for incidence of cardiovascular disease and 93rd percentile for incidence of asthma.

cont'd 8

Additionally, the project census tract (6065043813) and census tract adjacent to the east (6065044200) are identified as SB 535 Disadvantaged Communities[11]. This indicates that cumulative impacts of development and environmental impacts in the area are disproportionately impacting these communities. The negative environmental, health, and quality of life impacts resulting form a saturation of the industrial, warehousing, and logistics industry in the City have become distinctly inequitable. The severity of significant and unavoidable impacts particularly on the Disadvantaged Communities must be included for analysis as part of a revised EIR. Each section of the revised EIR must include the specific analysis of each environmental impact on the Disadvantaged Community, including cumulative analysis and irreversible environmental effects.

9

The State of California lists three approved compliance modeling softwares[12] for non-residential buildings: CBECC-Com, EnergyPro, and IES VE. CalEEMod is not listed as an approved software. The CalEEMod modeling does not comply with the 2022 Building Energy Efficiency Standards and under-reports the project's significant Energy impacts and fuel consumption to the public and decision makers. Since the EIR did not accurately or adequately model the energy impacts in compliance with Title 24, it cannot conclude the project will generate less than significant impacts and a finding of significance must be made. A revised EIR with modeling using one of the approved software types must be prepared and circulated for public review in order to adequately analyze the project's significant environmental impacts. This is vital as the EIR utilizes CalEEMod as a source in its methodology and analysis, which is clearly not an approved software.

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Table 4.7-4: Regional Transportation Plan/Sustainable Communities Strategy Consistency concludes that the project is consistent with four goals of Connect SoCal, resulting in less than

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[8] OEHHA Poverty https://oehha.ca.gov/calenviroscreen/indicator/poverty
[9] Ibid.
[10] Ibid.
[11] OEHHA SB 535 Census Tracts https://oehha.ca.gov/calenviroscreen/sb535
[12] California Energy Commission 2022 Energy Code Compliance Software https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2022-building-energy-efficiency-1

significant impacts. Due to errors in modeling and modeling without supporting evidence, as noted throughout this comment letter and attachments, and the EIR's own conclusion that the project will result in impacts (Air Quality, GHG) that exceed with the forecasts of the applicable plans (AQMP, 2030/2050 California GHG reduction goals) and significant and unavoidable cumulatively considerable impacts, the proposed project is directly inconsistent with Goal 5 to reduce greenhouse gas emissions and improve air quality, Goal 6 to support healthy and equitable communities, and Goal 7 to adapt to a changing climate. The EIR must be revised to include finding of significance due to inconsistency with the RTP/SCS.

cont'd 11

The EIR states that, the "Project comparison to the RTP/SCS is an appropriate indicator of whether the Project would inhibit the post-2020 GHG reduction goals promulgated by the State," and that, "the Project would be consistent with the stated goals of the RTP/SCS and would not interfere with SCAG's ability to achieve the region's post-2020 mobile source GHG reduction targets." However, this is directly in conflict with the EIR's conclusion that the project will result in significant and unavoidable cumulatively considerable GHG impacts because it will impede statewide plans' long-term GHG reduction goals (e.g., for 2030 and 2050). The EIR must be revised to remove the misleading language regarding the RTP/SCS.

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4.8 Hazards and Hazardous Materials

The Project Description states that:

"The Project is located within Zone D of the Banning Municipal Airport Influence Area. Review by the Riverside County Airport Land Use Commission (ALUC) is required because the City of Banning is not yet consistent with the Banning Municipal Airport Land Use Compatibility Plan (ALUCP). To ensure that the Project is compliant, the Riverside County ALUC will perform a Major Land Use Action Review."

However, the EIR does not provide this information for discussion or analysis within Impact 4.8-5. Here, the EIR states:

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"The closest airport to the Project site is the Banning Municipal Airport located approximately 1,750 feet to the south. Although the Project is within 2.0 miles of a public airport, Exhibit V-7 of the Banning General Plan Noise Element shows that the Project is located outside the 55 dBA CNEL noise contour. Additionally, there are no private airstrips located within the Project vicinity. Therefore, the Project would not expose people working in the Project area to excessive airport- or airstrip-related noise levels and no mitigation is required."

The impact analysis excludes factual information including the project site's location within Zone D of the Banning Municipal Airport Influence Area, the City's noncompliance with the Banning Municipal ALUCP, or the RCALUC required review. The EIR must be revised to include this information and a finding of significance as the project has not completed the required RCALUC review and there is no meaningful evidence to support the conclusion that the proposed project will not result in a safety hazard or excessive noise for people residing or working in the project area. 14

4.12 Transportation

Appendix K concludes the following intersections require improvements and/or fee payments to address the peak hour deficiencies per the applicable thresholds:

1. Intersection #2 Hargrave St. & I-10 WB Ramps Banning, Caltrans

2. Intersection #3 Hargrave St. & I-10 EB Ramps Banning, Caltrans

Table 1-4: Summary of Improvements by Analysis Scenario within Appendix K provides a list of fair-share calculations for improvements that will allegedly mitigate significant and unavoidable impacts to the intersections to less than significant levels. It must be noted that Intersections #2 and #3 are Caltrans facilities. Any improvements planned/constructed or in-lieu fees/fair share fees paid for Caltrans facilities are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not planned to occur at all or by any certain date, whether by the City of Banning or Caltrans. The improvements listed are not part of any existing TUMF program. Any improvements recommended or fees paid to mitigate impacts for Caltrans facilities are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Banning or Caltrans has not been provided. A revised EIR must be prepared to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold 4.17-1 and Land Use and Planning Impact Threshold 4.11-2 because it is not consistent with the following General Plan Policy: 15

1. Circulation Element Policy 6: The City shall maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 interchanges, where Level of Service D or better shall be maintained.

cont'd 15

Further, the EIR has underreported the quantity VMT generated by the proposed project operations. The operational nature of industrial/warehouse uses involves high rates of truck/trailer/delivery van VMT due to traveling from large import hubs to regional distribution centers to smaller industrial parks and then to their final delivery destinations. Once employees arrive at work at the proposed project, they will conduct their jobs by driving delivery vans across the region as part of the daily operations as a fulfillment center, which will drastically increase project-generated VMT. The project's truck/trailer and delivery van activity is unable to utilize public transit or active transportation and it is misleading to the public and decision makers to exclude this activity from VMT analysis. The project's total operational VMT generated is further inconsistent with the significance threshold and legislative intent of SB 743 to reduce greenhouse gas emissions by reducing VMT. A revised EIR must be prepared to reflect a quantified VMT analysis that includes all truck/trailer and delivery van activity.

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The EIR has not adequately analyzed the project's potential to substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses; or the project's potential to result in inadequate emergency access. The EIR states that, "The Project's roadways, ingress and egress, interior circulation elements, and improvements would be designed in conformance with the development and design standards of the Banning General Plan and Banning MC design standards," but has not listed those requirements nor provided evidence that the project meets these requirements. The EIR also states that, "Additionally, implementation of the TA Recommendations 1 through 7 listed above, and compliance with the City's Traffic Impact Analysis Guidelines, would ensure large trucks have adequate access to and from the Project site and adjacent intersections. Implementation of the identified recommendations would ensure that impacts would be less than significant, and the Project would not substantially increase hazards due to heavy truck maneuvers." However, relying upon the TIA Guidelines and TA Recommendations 1 through 7 does not provide any meaningful evidence to support a less than significant finding. Notably, the EIR's narrative regarding the Traffic Analysis (TA) Recommendations 1 through 7 states, "It should be noted that these recommendations were provided to address LOS…..These recommendations are provided for informational purposes only; however, they could be included as conditions of approval of the Project, in which case, the Project would implement these recommendations." It is clear that TA Recommendations 1 through 7 are not required to be implemented by the proposed project at the time of the EIR's analysis, they are intended to only address LOS (not hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections), incompatible uses, or the project's potential to

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result in inadequate emergency access), and they are not intended to mitigate any potential impacts. The EIR's logic is flawed and the document is internally inconsistent, which is misleading to the public and decision makers. The EIR must be revised to remove these misleading and erroneous statements from the document and include a finding of significance due to the significant and unavoidable impacts under Impact 4.12-3 and Impact 4.12-4.

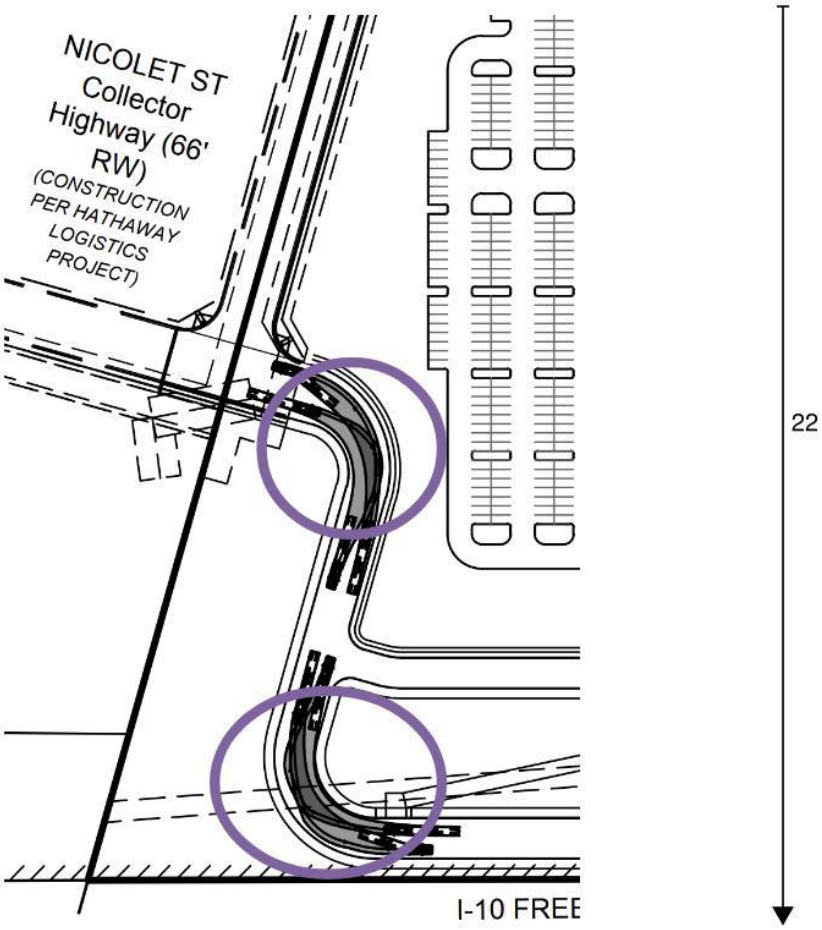
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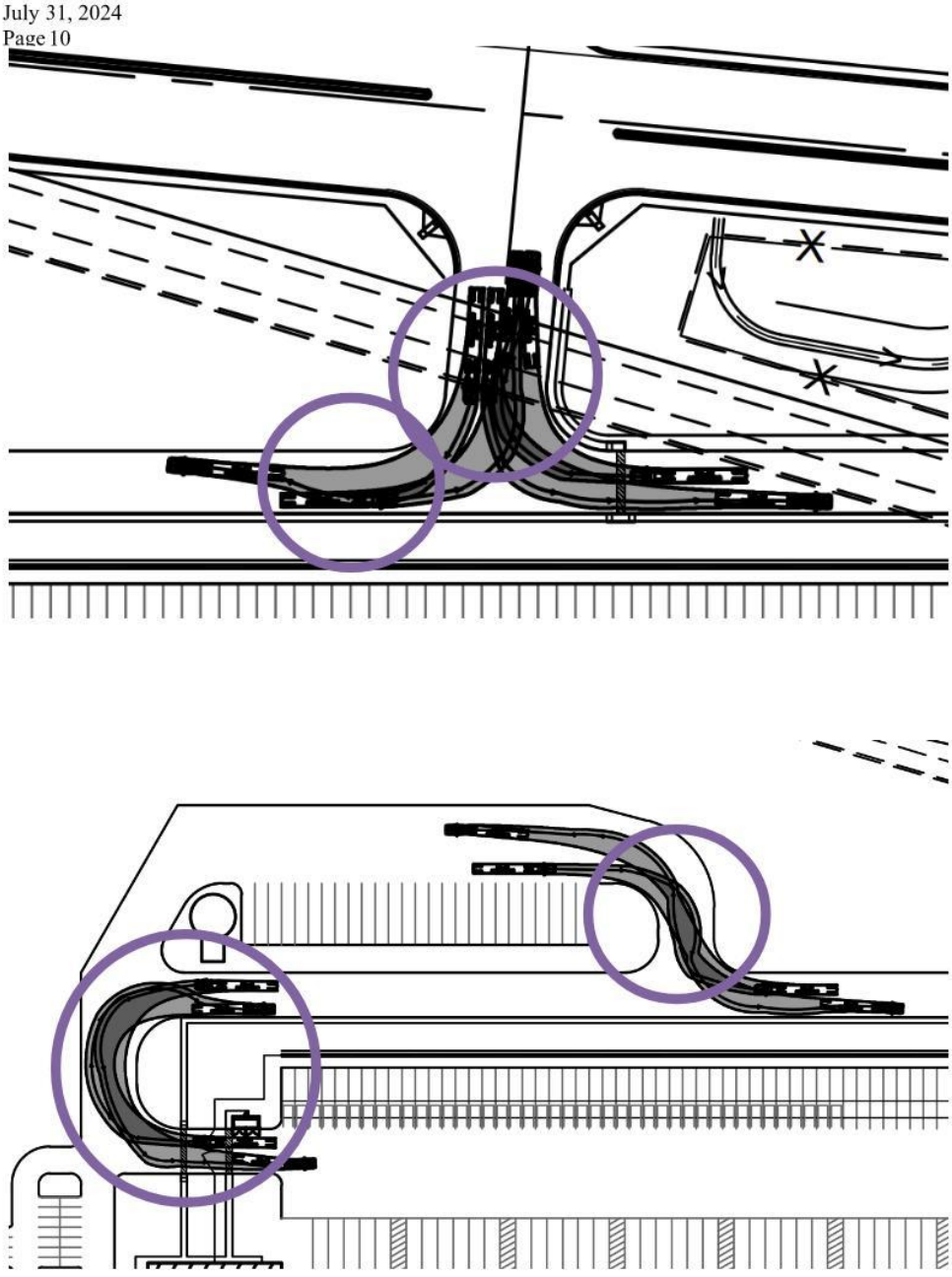
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The EIR states that, "As the Project would develop a speculative warehouse facility, it would be designed to accommodate truck traffic throughout the Project site. As such, truck turning templates are completed to ensure that there would be adequate circulation and movement throughout the Project site. Refer to Figure 4.12-1, Truck Turning Exhibit." However, Figure 4.12-1 is not a complete tuck turning movement analysis and depicts several areas of conflict. For example, Figure 4.12-1 does not depict the available truck turning radius at the intersection of the project driveways and adjacent streets; it only provides internal turning movement analysis. Further, Figure 4.12-1 does not indicate the length of the truck/trailer analyzed (WB-57 is the industry standard). Notably, the "modeling" depicted for all internal project driveways depicts the trucks utilizing these areas overlapping one another, indicating there is not suitable available space to accommodate truck maneuvering in this area. Trucks will need to wait for other trucks to pass in order to continue traveling throughout the site, which will also result in increased queuing duration and associated need for increased queuing area for trucks/trailers. Increased queuing means that engine idling times will increase and result in increased associated Air Quality pollutants and GHG emissions.

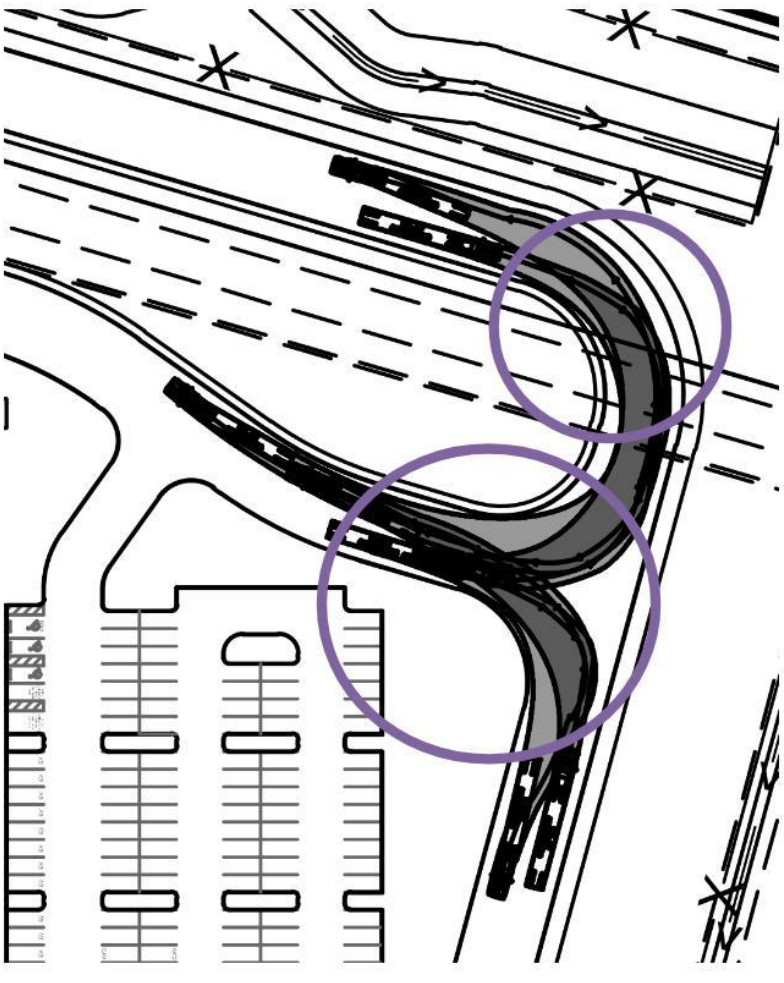
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Figure 4.12-1 does not provide any analysis of the truck/trailer parking lots located to the north of the primary building site. Additionally, the EIR has not provided any analysis of the available horizontal and vertical sight distance at the intersection of the project driveways and adjacent streets. Sight distance is the continuous length of street ahead visible to the driver. At unsignalized intersections, corner sight distance must provide a substantially clear line of sight between the driver of the vehicle waiting on the minor road (driveway) and the driver of an approaching vehicle. All of the above items do not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). Deferring this environmental analysis required by CEQA to the construction permitting phase is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and adequate informational documents. A revised EIR must be prepared to include a finding of significance as the EIR has not provided any meaningful evidence to support a less than significant finding under Impact 4.12-3 and Impact 4.12-4.

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The EIR states regarding emergency access that, "design of any needed roadway improvements and subsequent construction due to increased traffic volumes on local roadways would comply with the applicable federal, state, and local requirements related to emergency access and evacuation plans. The proposed design and construction plans for any future construction and roadway improvements, including potential mitigation (road widening or intersection improvements) to accommodate any future increase in traffic volume would be reviewed and approved by the City engineering department and fire marshal (if needed) during the plan review and prior to Project approval." This does not comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121 and 21003(b)). The EIR has not provided any details regarding the requirements for emergency access or meaningful analysis of the project's compliance or noncompliance with these requirements. Deferring this environmental analysis required by CEQA to the construction permitting phase is improper mitigation and does not comply with CEQA's requirement for meaningful disclosure and adequate informational documents. A revised EIR must be prepared to include a finding of significance as the EIR has not provided any meaningful evidence to support a less than significant finding under Impact 4.12-3 and Impact 4.12-4.

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5.1 Significant and Irreversible Environmental Changes and 5.2 Growth Inducing Impacts

A revised EIR must be prepared to include an accurate cumulative analysis discussion here to demonstrate the impact of the proposed project in a cumulative setting. The EIR does not include any information regarding the buildout conditions of the City's General Plan in order to provide an adequate and accurate environmental analysis. The EIR must be revised to provide the horizon

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year of the City's current adopted General Plan, the total developable building floor area analyzed within the Business Park land use designation, and cumulative development since adoption of the General Plan to ensure that the proposed project is within the General Plan EIR's analysis, particularly since the EIR tiers from the General Plan EIR. For example, Table III-3 Commercial and Industrial Buildout Statistical Summary of the General Plan[13] indicates that the entirety of the Business Park land use designation will accommodate 4,178,493 square feet of building area. The proposed project's 1,320,284 square feet of industrial building area represents 31.5% of the buildout for the entire Business Park land use designation attributed to a single project, which is a significant amount of growth. Combined with the adjacent proposed First Hathaway Logistics Center (1,420,722 sf), the two projects total 2,741,006 sf and represent 65.6% of the Business Park land use designation buildout attributed to only two current projects. A revised EIR must be prepared to include this analysis to comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121). cont'd 25

The EIR also cites the City's labor force stating that, "700 persons were unemployed representing an unemployment rate of approximately 5.9 percent." The entire unemployed workforce within the City does not even provide enough employees to cover a single 947 employee shift at the proposed project. This means that the proposed project requires a workforce three times the local unemployed population (notably the entire unemployed population, not only those that are qualified for/interested in work in the industrial sector), further demonstrating that the project will induce growth in the area and impacts to population and housing will be significant and unavoidable. 26

The EIR does not adequately discuss or and analyze the commitment of resources is not consistent with regional and local growth forecasts and does not address the EIR's own conclusion that the project will result in impacts (Air Quality, GHG) that exceed with the forecasts of the applicable plans (AQMP, 2030/2050 California GHG reduction goals). As noted throughout this comment letter, the project represents a significant amount of growth in the City and exceeds the developable Business Park building area anticipated by General Plan buildout and exceeds the City's employment growth forecast for a 29 year period. The EIR has not provided an adequate or accurate cumulative analysis discussion here to demonstrate the impact of the proposed project in a cumulative setting. For example, other recent industrial projects including Sun Lakes North Specific Plan Amendment 5 (1,758 employees), Sunset Crossroads (5,993 employees), First Lincoln Logistics (41 employees), and First Hathaway Logistics Center (1,380 employees) combined with the proposed project will cumulatively generate 12,013 employees, which is a 193% increase above the City's employment growth forecast over 29 years accounted for by only 27 28

[13] https://banningca.gov/DocumentCenter/View/4/General-Plan

five recent industrial projects. This number increases exponentially when the City's other industrial and commercial development activity is added to the calculation. A revised EIR must be prepared to include this information for analysis, and also provide a cumulative analysis discussion of projects approved since 2016 (SCAG), General Plan adoption, and projects "in the pipeline" to determine if the proposed project will exceed the employment/population growth forecasts by SCAG and/or the General Plan. cont'd 28

The EIR has also not addressed or analyzed the full scope of the project, including the onsite sanitary sewer lift station that is required to implement the proposed project. This analysis is especially vital as the EIR states that, "this sanitary lift station would serve all other projects in the vicinity to the Project," and will serve as a catalyst for growth. The EIR must be revised to include this information for analysis and provide a finding of significance. 29

6.0 Alternatives

The EIR is required to evaluate a reasonable range of alternatives to the proposed project which will avoid or substantially lessen any of the significant effects of the project (CEQA § 15126.6.) The alternatives chosen for analysis include the CEQA required "No Project/No Build" alternative and only two others - Reduced Building Intensity Alternative and Two Building Alternative. The EIR does not evaluate a reasonable range of alternatives as only two alternatives beyond the required No Project alternative are analyzed. The EIR does not include an alternative that meets the project objectives and also eliminates all of the project's significant and unavoidable impacts. The EIR must be revised to include analysis of a reasonable range of alternatives and foster informed decision making (CEQA § 15126.6). This could include alternatives such as development of the site with a project that reduces all of the proposed project's significant and unavoidable impacts to less than significant level, and a mixed-use project that provides affordable housing and exclusively local-serving commercial uses that may reduce VMT, GHG emissions, and improve Air Quality. 30

7.3 Effects Found Not to be Significant: Land Use and Planning

The EIR concludes that the proposed project is consistent with the General Plan without considering the EIR's conclusion that the project will result in significant and unavoidable cumulatively considerable impacts to Air Quality, Greenhouse Gas Emissions, and Transportation (VMT). The EIR is inadequate as an informational document and a revised EIR must be prepared with a consistency analysis that considers the project's significant and unavoidable impacts in its analysis, including but not limited to the following goals and policies that were adopted for the purposes of avoiding or mitigating an environmental effect: 31

1. Air Quality Goal: To preserve and enhance local and regional air quality for the protection of the health and welfare of the community.
2. Air Quality Policy 1: The City shall be proactive in regulating local pollutant emitters and shall cooperate with the Southern California Association of Governments and the South Coast Air Quality Management District to assure compliance with air quality standards.
3. Air Quality Policy 2: The City shall continue to coordinate and cooperate with local, regional, and federal efforts to monitor, manage and reduce the levels of major pollutants affecting the City and region, with particular emphasis on PM10 and ozone emissions, as well as other emissions associated with diesel fueled equipment and motor vehicles.
4. Air Quality Policy 3: City land use planning efforts shall assure that sensitive receptors are separated from polluting point sources.
5. Air Quality Policy 4: Development proposals brought before the City shall be reviewed for their potential to adversely impact local and regional air quality and shall be required to mitigate any significant impacts.
6. Circulation Element Policy 6: The City shall maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 interchanges, where Level of Service D or better shall be maintained.

cont'd 31

Appendix K concludes the following intersections require improvements and/or fee payments to address the peak hour deficiencies per the applicable thresholds:

1. Intersection #2 Hargrave St. & I-10 WB Ramps Banning, Caltrans

2. Intersection #3 Hargrave St. & I-10 EB Ramps Banning, Caltrans

Table 1-4: Summary of Improvements by Analysis Scenario within Appendix K provides a list of fair-share calculations for improvements that will allegedly mitigate significant and unavoidable impacts to the intersections to less than significant levels. It must be noted that Intersections #2 and #3 are Caltrans facilities. Any improvements planned/constructed or in-lieu fees/fair share fees paid for Caltrans facilities are beyond the control/scope of the lead agency. An assessment of fees is appropriate when linked to a specific mitigation program. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, *Save our Peninsula Comm. v. Monterey County Bd. Of Supers.* (2001) 87 Cal.App.4th 99, 141.) Payment of fees is not sufficient where there is no evidence mitigation will actually result. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099,1122.) The assessment of fees here is not adequate as there is no evidence mitigation will actually result. The improvements required are not planned to occur at all or by any certain date, whether by the City of Banning or Caltrans. The improvements listed are not part of any existing TUMF program. Any improvements recommended or fees paid to mitigate impacts for Caltrans

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facilities are beyond the control of the lead agency and evidence that these improvements will be completed or approved by Banning or Caltrans has not been provided. A revised EIR must be prepared to include the LOS analysis as cumulatively considerable significant impact as the project conflicts with Transportation Impact Threshold 4.17-1 and Land Use and Planning Impact Threshold 4.11-2 because it is not consistent with the following General Plan Policy:

1. Circulation Element Policy 6: The City shall maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 interchanges, where Level of Service D or better shall be maintained.

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The EIR does not include any information regarding the buildout conditions of the City's General Plan in order to provide an adequate and accurate environmental analysis. The EIR must be revised to provide the horizon year of the City's current adopted General Plan, the total developable building floor area analyzed within the Business Park land use designation, and cumulative development since adoption of the General Plan to ensure that the proposed project is within the General Plan EIR's analysis, particularly since the EIR tiers from the General Plan EIR. For example, Table III-3 Commercial and Industrial Buildout Statistical Summary of the General Plan[14] indicates that the entirety of the Business Park land use designation will accommodate 4,178,493 square feet of building area. The proposed project's 1,320,284 square feet of industrial building area represents 31.5% of the buildout for the entire Business Park land use designation attributed to a single project, which is a significant amount of growth. Combined with the adjacent proposed First Hathaway Logistics Center (1,420,722 sf), the two projects total 2,741,006 sf and represent 65.6% of the Business Park land use designation buildout attributed to only two current projects. A revised EIR must be prepared to include this analysis to comply with CEQA's requirements for adequate informational documents and meaningful disclosure (CEQA § 15121). 33

7.5 Effects Found Not to be Significant: Population and Housing

The EIR utilizes uncertain and misleading language to conclude that impacts to population and housing will not be significant. The EIR states that, "approximately 2,841 employees would be employed on-site across three (3) shifts (947 employees per shift)." The EIR relies upon the regional labor force to fill all of its jobs, stating that, "Given that the current unemployment rate for Riverside County is approximately 4.4 percent (as of May 2023), it is reasonably assured that the jobs would be filled by people living in the City and surrounding communities." The EIR relies upon the unemployment rates for the entire Riverside County area to provide employees for the project, but does not provide evidence that the specific workforce listed is qualified for or interested in work in the industrial sector to substantiate this claim. Relying on the unemployed 34 35

[14] https://banningca.gov/DocumentCenter/View/4/General-Plan

workforce population of the surrounding region will increase project related VMT and emissions during all phases of construction and operations and a revised EIR must be prepared to account for longer worker trip distances. Additionally, an unemployment rate below 5% is considered full employment in economic standards and does not substantiate the EIR's claims that impacts will be less than significant.

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The EIR also cites the City's labor force stating that, "700 persons were unemployed representing an unemployment rate of approximately 5.9 percent." The entire unemployed workforce within the City does not even provide enough employees to cover a single 947 employee shift at the proposed project. This means that the proposed project requires a workforce three times the local unemployed population (notably the entire unemployed population, not only those that are qualified for/interested in work in the industrial sector), further demonstrating that the project will induce growth in the area and impacts to population and housing will be significant and unavoidable.

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The planned growth for the City is developed by the Southern California Association of Governments (SCAG). SCAG's Connect SoCal Demographics and Growth Forecast[15] states that the City will add 4,100 jobs between 2016 - 2045. Utilizing EIR's calculation of 2,841 employees, the project represents 69.2% of the City's employment growth from 2016 - 2045. A single project accounting for this amount of the projected employment growth over 29 years represents a significant amount of growth. A revised EIR must be prepared to include this analysis, and also provide a cumulative analysis discussion of projects approved since General Plan adoption, 2016 (SCAG forecast), and projects "in the pipeline" to determine if the project will exceed the General Plan or SCAG's employment and/or population growth forecast. For example, other recent industrial projects including Sun Lakes North Specific Plan Amendment 5 (1,758 employees), Sunset Crossroads (5,993 employees), First Lincoln Logistics (41 employees), and First Hathaway Logistics Center (1,380 employees) combined with the proposed project will cumulatively generate 12,013 employees, which is a 193% increase above the City's employment growth forecast over 29 years accounted for by only five recent industrial projects. This number increases exponentially when the City's other industrial and commercial development activity is added to the calculation. A revised EIR must be prepared to include this information for analysis, and also provide a cumulative analysis discussion of projects approved since 2016 (SCAG), General Plan adoption, and projects "in the pipeline" to determine if the proposed project will exceed the employment/population growth forecasts by SCAG and/or the General Plan.

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[15] SCAG Connect SoCal Demographics and Growth Forecast adopted September 3, 2020 https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal_demographics-and-growth-forecast.pdf?1606001579

Conclusion

For the foregoing reasons, GSEJA believes the EIR is flawed and a revised EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877. 39

Sincerely,



Gary Ho
Blum, Collins & Ho LLP

Attachment: SWAPE Analysis

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

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July 26, 2024

Gary Ho
Blum, Collins & Ho LLP
707 Wilshire Blvd, Ste. 4880
Los Angeles, CA 90017

Subject: Comments on the Banning Commerce Center Project (SCH No. 2022090102)

Dear Mr. Ho,

We have reviewed the June 2024 Draft Environmental Impact Report ("DEIR") for the Banning Commerce Center Project ("Project") located in the City of Banning ("City"). The Project proposes to construct 1,312,284-square-feet ("SF") of warehouse space, 39,600-SF of office space, and 805 passenger vehicle parking stalls on the 131.28-acre site. 40

Our review concludes that the DEIR fails to adequately evaluate the air quality and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project may be underestimated and inadequately addressed. A revised Environmental Impact Report ("EIR") should be prepared to adequately assess and mitigate the potential air quality and greenhouse gas impacts that the project may have on the environment. 41

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DEIR's air quality analysis relies on emissions calculated with the California Emissions Estimator Model ("CalEEMod") Version 2022.1 (p. 4.5-9). CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated and "output files" are generated. 42

When reviewing the Project's CalEEMod output files, provided in the Air Quality Assessment ("AQ Report") as Appendix B1 to the DEIR, we found that several model inputs were not consistent with information disclosed in the DEIR. As a result, the Project's construction emissions may be underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction of the Project will have on local and regional air quality. 43

Failure to Consider Potential Cold Storage Requirements

Review of the CalEEMod output files demonstrates that the "Banning Commerce Center" model includes a total of 1,280,400-SF of the "Unrefrigerated Warehouse-No Rail" land use (see excerpt below) (Appendix B-1, pp. 119; Appendix G, pp. 2680).[1]

1.2. Land Use Types

Land Use Subtype	Size	Unit	Lot Acreage	Building Area (sq ft)	Landscape Area (sq ft)
Unrefrigerated Warehouse-No Rail	640	1000sqft	14.7	640,200	142,223
General Office Building	40.0	1000sqft	0.91	39,600	0.00
Unrefrigerated Warehouse-No Rail	640	1000sqft	14.7	640,200	142,223
Parking Lot	63.0	Acre	63.0	0.00	0.00
Other Non-Asphalt Surfaces	35.0	Acre	35.0	1,524,600	0.00

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The model does not include any refrigerated warehouse space, and the DEIR fails to mention or justify the assumption that the Project would not include any cold storage space. Rather, according to the DEIR:

> "Approximately 330,000 SF of the warehousing would be high-cube cold storage" (Appendix J, p. 1).

The model should therefore have included 330,000-SF of cold storage space. The omission of refrigerated warehouse space is unsubstantiated by the DEIR and its associated documents and, as such, the inclusion of 1,280,400-SF of the "Unrefrigerated Warehouse-No Rail" land use is unsupported.

Refrigerated warehouses release more criteria air pollutant and greenhouse gas ("GHG") emissions when compared to unrefrigerated land uses for three reasons. First, warehouses equipped with cold storage, such as refrigerators and freezers, are known to consume more energy when compared to warehouses without cold storage.[2] Second, warehouses equipped with cold storage typically require refrigerated trucks, which are known to idle for much longer when compared to unrefrigerated hauling 45

[1] Calculated: 640,200-SF + 640,200-SF = 1,280,400-SF of Total "Unrefrigerated Warehouse-No Rail" land use.
[2] "Warehouses." Business Energy Advisor, *available at*: https://ouc.bizenergyadvisor.com/article/warehouses.

trucks.[3] Lastly, according to a July 2014 *Warehouse Truck Trip Study Data Results and Usage* presentation prepared by the SCAQMD hauling trucks that require refrigeration result in greater truck trip rates when compared to non-refrigerated hauling trucks.[4]

cont'd 45

By failing to account for any cold storage space, the model may underestimate the Project's operational emissions and should not be relied upon to determine Project significance. A revised EIR should be prepared to account for the refrigerated warehouse space, as referenced in the DEIR's appendices.

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Unsubstantiated Changes to Individual Construction Phase Lengths

Review of the CalEEMod output files demonstrates that the "Banning Commerce Center" model includes changes to the default construction schedule (see excerpt below) (Appendix B-1, pp. 194; Appendix G, pp. 2755):

8. User Changes to Default Data

Screen	Justification
Construction: Construction Phases	Project Construction Schedule
Construction: Architectural Coatings	SCAQMD Rule 1113
Operations: Vehicle Data	Change in trip rate based on TIA, Trucks = 524/640.2 ksf= 0.8184942205560762 passenger vehicles= 4860/40= 121.5 Passenger cars and trucks separated. all passenger vehicles use the longer trip distance for H-W, All trucks use a longer 33.2 distance based on CARB study. assume all trips are primary, not taking reduction from diversion and pass-by trips
Operations: Fleet Mix	fleet mix changes made to be consistent with TIA
Operations: Architectural Coatings	SCAQMD Rule 1113
Land Use	project details, area corrected after size in 1000sqft rounds to nearest 1000. opens space/detention basins shown as parking-other non-asphalt surfaces, no irrigation needed, Parking includes 4 acres of offsite improvements (half width of O'Donnell and Wilson extension
Construction: Trips and VMT	10 miles one way to borrow site
Construction: Paving	Parking other non-asphalt surface land use used for open space, detention basins, no VOC
Operations: Refrigerants	removed cold storage from warehouse equipment, warehouse is unrefrigerated and has no cold storage

As a result of these changes, the model includes the following construction schedule (see excerpt below) (Appendix B-1, pp. 177; Appendix G, pp. 2737):

Phase Name	Phase Type	Start Date	End Date	Days Per Week	Work Days per Phase
Site Preparation	Site Preparation	3/1/2024	5/15/2024	5.00	54.0
Grading	Grading	5/16/2024	8/31/2024	5.00	77.0
Building Construction	Building Construction	9/1/2024	7/31/2025	5.00	239
Paving	Paving	4/1/2025	6/28/2025	5.00	64.0
Architectural Coating	Architectural Coating	7/1/2025	9/30/2025	5.00	66.0

47

The CalEEMod User's Guide requires any changes to model defaults be justified.[5] As shown in the "User Changes to Default Data" table, the justification provided for this change is:

48

[3] "Estimation of Fuel Use by Idling Commercial Trucks." Transportation Research Record Journal of the Transportation Research Board, January 2006, p. 8, *available at:* https://www.researchgate.net/publication/245561735_Estimation_of_Fuel_Use_by_Idling_Commercial_Trucks.
[4] "Warehouse Truck Trip Study Data Results and Usage" Presentation. SCAQMD Mobile Source Committee, July 2014, *available at:* http://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/finaltrucktripstudymsc072514.pdf?sfvrsn=2, p. 7, 9.
[5] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 1, 14.

"Project Construction Schedule" (Appendix B-1, pp. 194; Appendix G, pp. 2755).

Regarding the Project's construction duration, the DEIR states:

> "Construction is anticipated to occur over the duration of 18 months, beginning in Spring 2024 and ending early Winter 2025." (p. 3-9).

Furthermore, the AQ Report states:

> "Construction was modeled generally according to the following 18-month timeline:
>
> - Site Preparation: Commence in the first quarter of 2024 and conclude in the second quarter of 2024 (an approximate 2-month duration).
> - Grading: Commence in second quarter of 2024 and conclude in the third quarter of 2024 (an approximate 3-month duration).
> - Building Construction and Infrastructure: Commence in third quarter of 2024 and conclude in the third quarter of 2025 (an approximate 11-month duration).
> - Paving: Commence in second quarter of 2025 and conclude in the second quarter of 2025 (an approximate 3-month duration).
> - Architectural Coating: Commence in third quarter of 2025 and conclude in the third quarter of 2025 (an approximate 3-month duration)" (p. 19).

cont'd 48

The changes to the individual construction phase lengths, however, are unsubstantiated. While the DEIR and associated documents justify a total length of Project construction of 18 months, the AQ Report fails to provide a source for its construction schedule assumptions and simply states that construction was modeled "generally" in accordance with a proximate timeline. While the AQ Report mentions how the individual construction lengths were modeled, it does not properly substantiate the changes. Until the *individual* construction phase lengths are substantiated, the model should have included proportionately altered individual phase lengths to match the proposed construction duration of 18 months.[6]

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CalEEMod uses construction phase lengths to calculate the Project's construction emissions. Each construction phase is associated with different emissions activities (see excerpt below).[7]

50

[6] See Attachment A for proportionately altered construction schedule.
[7] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 32.

Demolition involves removing buildings or structures.

Site Preparation involves clearing vegetation (grubbing and tree/stump removal) and removing stones and other unwanted material or debris prior to grading.

Grading involves the cut and fill of land to ensure that the proper base and slope is created for the foundation.

Building Construction involves the construction of the foundation, structures and buildings.

Architectural Coating involves the application of coatings to both the interior and exterior of buildings or structures, the painting of parking lot or parking garage striping, associated signage and curbs, and the painting of the walls or other components such as stair railings inside parking structures.

Paving involves the laying of concrete or asphalt such as in parking lots, roads, driveways, or sidewalks.

cont'd 50

By disproportionately altering and extending some of the individual construction phase lengths without proper justification, the model assumes there are a greater number of days to complete the construction activities required by the prolonged phases. There will be less construction activities required per day and, consequently, less pollutants emitted per day.

Additionally, though the DEIR justifies a total length of 18 months, review of the CalEEMod output files demonstrates that the "Banning Commerce Center" model includes a 19-month total construction period (see excerpt below) (Appendix B-1, pp. 177; Appendix G, pp. 2737):

Phase Name	Phase Type	Start Date	End Date	Days Per Week	Work Days per Phase
Site Preparation	Site Preparation	3/1/2024	5/15/2024	5.00	54.0
Grading	Grading	5/16/2024	8/31/2024	5.00	77.0
Building Construction	Building Construction	9/1/2024	7/31/2025	5.00	239
Paving	Paving	4/1/2025	6/28/2025	5.00	64.0
Architectural Coating	Architectural Coating	7/1/2025	9/30/2025	5.00	66.0

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The model overestimates the total construction duration by one month. Until the total construction length is corrected or substantiated, and we are able to verify the revised construction schedule, the model may underestimate the peak daily emissions associated with some phases of construction and should not be relied upon to determine Project significance.

Unsubstantiated Reduction to Hauling Trip Length

Review of the CalEEMod output files demonstrates that the "Banning Commerce Center" model includes changes to the default hauling trip length (see excerpt below) (Appendix B-1, pp. 194; Appendix G, pp. 2755):

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8. User Changes to Default Data

Screen	Justification
Construction: Construction Phases	Project Construction Schedule
Construction: Architectural Coatings	SCAQMD Rule 1113
Operations: Vehicle Data	Change in trip rate based on TIA, Trucks = 524/640.2 ksf= 0.8184942205560762 passenger vehicles= 4860/40= 121.5 Passenger cars and trucks separated. all passenger vehicles use the longer trip distance for H-W, All trucks use a longer 33.2 distance based on CARB study. assume all trips are primary, not taking reduction from diversion and pass-by trips
Operations: Fleet Mix	fleet mix changes made to be consistent with TIA
Operations: Architectural Coatings	SCAQMD Rule 1113
Land Use	project details, area corrected after size in 1000sqft rounds to nearest 1000. opens space/detention basins shown as parking-other non-asphalt surfaces, no irrigation needed, Parking includes 4 acres of offsite improvements (half width of O'Donnell and Wilson extension
Construction: Trips and VMT	10 miles one way to borrow site
Construction: Paving	Parking other non-asphalt surface land use used for open space, detention basins, no VOC
Operations: Refrigerants	removed cold storage from warehouse equipment, warehouse is unrefrigerated and has no cold storage

cont'd 52

As a result of these changes, the model includes the following hauling trip length (see excerpt below) (Appendix B-1, pp. 179; Appendix G, pp. 2739):

Phase Name	Trip Type	One-Way Trips per Day	Miles per Trip	Vehicle Mix
Site Preparation	—	—	—	—
Site Preparation	Worker	17.5	18.5	LDA,LDT1,LDT2
Site Preparation	Vendor	—	10.2	HHDT,MHDT
Site Preparation	Hauling	0.00	20.0	HHDT
Site Preparation	Onsite truck	—	—	HHDT
Grading	—	—	—	—
Grading	Worker	20.0	18.5	LDA,LDT1,LDT2
Grading	Vendor	—	10.2	HHDT,MHDT
Grading	Hauling	406	10.0	HHDT
Grading	Onsite truck	—	—	HHDT

The hauling trip length is decreased from the default value of 20- to 10-miles. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[8] According to the "User Entered Comments and Non-Default Data" table, the justification provided for this change is:

> "10 miles one way to borrow site" (Appendix B-1, pp. 194; Appendix G, pp. 2755).

However, this reduction remains unsupported as the DEIR and associated documents fail to mention or justify the revised hauling trip length whatsoever. This is incorrect, as according to the CalEEMod User's Guide:

> "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA." [9]

Here, as the DEIR fails to provide substantial evidence to support the revised hauling trip length, we cannot verify the reduction.

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[8] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 1, 14.
[9] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 13, 14.

This unsubstantiated reduction presents an issue, as CalEEMod uses the hauling trips lengths to estimate the construction-related emissions associated with on-road vehicles.[10] By including an unsubstantiated reduction to the default hauling trip length, the model may underestimate the Project's construction-related emissions and should not be relied upon to determine Project significance.

cont'd 53

Unsubstantiated Reduction to Hauling Trip Numbers

As discussed above, review of the CalEEMod output files demonstrates that the "Banning Commerce Center" model includes changes to the default hauling trip values (Appendix B, pp. 26, 45, 67, 89). As a result, the model includes 406 hauling trips per day during the grading construction phase (see excerpt below) (Appendix B-1, pp. 179; Appendix G, pp. 2739):

Phase Name	Trip Type	One-Way Trips per Day	Miles per Trip	Vehicle Mix
Site Preparation	—	—	—	—
Site Preparation	Worker	17.5	18.5	LDA,LDT1,LDT2
Site Preparation	Vendor	—	10.2	HHDT,MHDT
Site Preparation	Hauling	0.00	20.0	HHDT
Site Preparation	Onsite truck	—	—	HHDT
Grading	—	—	—	—
Grading	Worker	20.0	18.5	LDA,LDT1,LDT2
Grading	Vendor	—	10.2	HHDT,MHDT
Grading	Hauling	406	10.0	HHDT
Grading	Onsite truck	—	—	HHDT

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However, this value is unsupported, as the DEIR fails to mention or justify hauling trip numbers whatsoever. According to the CalEEMod User's Guide:

> "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA." [11]

As the DEIR and associated documents fail to provide substantial evidence to support the revised hauling trip numbers, we cannot verify the changes.

CalEEMod uses the hauling trip numbers to estimate the construction-related emissions associated with on-road vehicles. [12] By including unsubstantiated changes to the default hauling trip numbers, the model may underestimate the Project's mobile-source construction-related emissions and should not be relied upon to determine Project significance.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

In an effort to more accurately estimate the Project's construction-related emissions, we prepared an updated construction CalEEMod model, using the Project-specific information provided by the DEIR. In our updated model, we included 330,000-SF of "Unrefrigerated Warehouse-No Rail" land use, omitted

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[10] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 35.
[11] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 13, 14.
[12] "CalEEMod User's Guide." California Air Pollution Control Officers Association (CAPCOA), May 2021, *available at:* https://www.aqmd.gov/caleemod/user's-guide, p. 34.

the unsubstantiated changes to grading hauling trip length and number, and proportionately altered the construction phase lengths to match a total construction duration of 18 months.[13]

Our updated analysis estimates that the Project's construction-related nitrogen oxide ("NO_X") emissions exceed the applicable SCAQMD threshold of 100 pounds per day ("lbs/day"), as referenced by the DEIR (p. 4.2-13, Table 4.2-5) (see table below).

SWAPE Criteria Air Pollutant Emissions

Construction	NO_X (lbs/day)
DEIR	53.3
SWAPE	120
% Increase	125%
SCAQMD Threshold	**100**
Exceeds?	***Yes***

cont'd 55

Construction-related NO_X emissions, as estimated by SWAPE, increase by approximately 125% and exceed the applicable SCAQMD significance threshold. Our model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed by the DEIR. A revised EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the environment.

Failure to Implement All Feasible Mitigation to Reduce Emissions

The AQ Report estimates that the Project's operational NO_x emissions would exceed the applicable SCAQMD thresholds, even after the application of several mitigation measures (see excerpt below) (p. 25, Table 410).

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[13] See Attachment A for construction calculations and Attachment B for SWAPE's updated CalEEMod model.

Table 10: Operational Emissions

Source	Maximum Pounds Per Day					
	ROG	NO_X	CO	SO_2	PM_{10}	$PM_{2.5}$
Unmitigated Operations						
Area Sources	50.6	1.04	123.7	0.01	0.2	0.2
Energy	0.4	6.9	5.8	0.04	0.5	0.5
Mobile Sources – Passenger Vehicles	24.7	22.5	307.9	0.7	26.1	4.9
Mobile Sources – Trucks	1.0	54.1	12.2	0.5	8.7	2.7
Off-Road – Forklifts [1]	3.3	30.9	43.6	0.06	1.6	1.5
Off-Road – Yard Trucks [1]	1.9	16.4	18.4	0.04	0.8	0.7
Emergency Backup Generators	1.7	4.7	4.3	0.01	0.3	0.3
Total Emissions	**83.6**	**140.9**	515.8	1.4	38.2	10.7
SCAQMD Threshold	*55*	*55*	*550*	*150*	*150*	*55*
Threshold Exceeded?	**Yes**	**Yes**	**No**	**No**	**No**	**No**
Mitigated Operations						
Area Sources [2]	26.8	0	0	0	0	0
Energy	0.4	6.9	5.8	0.04	0.5	0.5
Mobile Sources – Passenger Vehicles	24.7	22.5	307.9	0.7	26.1	4.9
Mobile Sources – Trucks	1.0	54.1	12.2	0.5	8.7	2.7
Off-Road – Forklifts [2]	0	0	0	0	0	0
Off-Road – Yard Trucks [2]	0	0	0	0	0	0
Emergency Backup Generators	1.7	4.7	4.3	0.01	0.3	0.3
Total Emissions	54.6	**92.6**	330.2	1.25	35.6	8.3
SCAQMD Threshold	*55*	*55*	*550*	*150*	*150*	*55*
Threshold Exceeded With Mitigation?	**No**	**Yes**	**No**	**No**	**No**	**No**

ROG = Reactive Organic Gases; NO_X = Nitrogen Oxides; CO = Carbon Monoxide; SO_2 = Sulfur Dioxide; PM_{10} = Particulate Matter 10 microns in diameter or less; $PM_{2.5}$ = Particulate Matter 2.5 microns in diameter or less

1. Unmitigated emissions assume diesel off-road equipment (i.e., forklifts and yard trucks).
2. MM AQ-6 requires all outdoor cargo loading equipment be zero emissions/powered by electricity

Source: CalEEMod version 2022.1.1.7. Refer to Appendix A for model outputs.

cont'd 56

The AQ Report concludes that the impacts associated with the Project's operational NO_x emissions would be significant-and-unavoidable, stating:

> "However, operational emissions would exceed the operational standard for NO_X despite the implementation of all feasible mitigation, as shown in Table 10. **MM AQ-2** through **AQ-6** are included to reduce operation emissions to the greatest amount feasible. However, even with mitigation, operational emissions would remain above the SCAQMD threshold" (p. 22).

While we agree that the Project would result in a significant operational NO_x impact, the DEIR's assertion that this impact is significant-and-unavoidable may be unsubstantiated. According to CEQA Guidelines § 15096(g)(2):

> "When an updated EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment."[14]

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[14] "Cal. Code Regs. tit. 14 § 15096." California Legislature, *available at:* https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-7-eir-process/section-15096-process-for-a-responsible-agency.

An impact can only be labeled as significant-and-unavoidable after all available, feasible mitigation is considered. While the DEIR implements Mitigation Measure ("MM") AQ-2 through AQ-6, the DEIR fails to implement *all* feasible mitigation (p. 4.2-18 – 21). To reduce the Project's air quality impacts to the maximum extent possible, additional feasible mitigation measures should be incorporated, such as those suggested in the section of this letter titled "Feasible Mitigation Measures Available to Reduce Emissions." The Project should not be approved until a revised EIR is prepared, incorporating all feasible mitigation to reduce emissions to the maximum extent possible.

cont'd 57

Disproportionate Health Risk Impacts of Warehouses on Surrounding Communities

Upon review of the DEIR and associated documents, we have determined that the development of the proposed Project may contribute to the disproportionate health risk impacts that warehouses pose to community members living, working, and going to school within the immediate area of the Project site. According to SCAQMD:

> "Those living within a half mile of warehouses are more likely to include communities of color, have health impacts such as higher rates of asthma and heart attacks, and a greater environmental burden."[15]

In particular, the SCAQMD found that more than 2.4 million people live within a half mile radius of at least one warehouse, and that those areas not only experience increased rates of asthma and heart attacks, but are also disproportionately Black and Latino communities below the poverty line.[16] Another study similarly indicates that "neighborhoods with lower household income levels and higher percentages of minorities are expected to have higher probabilities of containing warehousing facilities."[17] Additionally, a report authored by the Inland Empire-based People's Collective for Environmental Justice and University of Redlands states:

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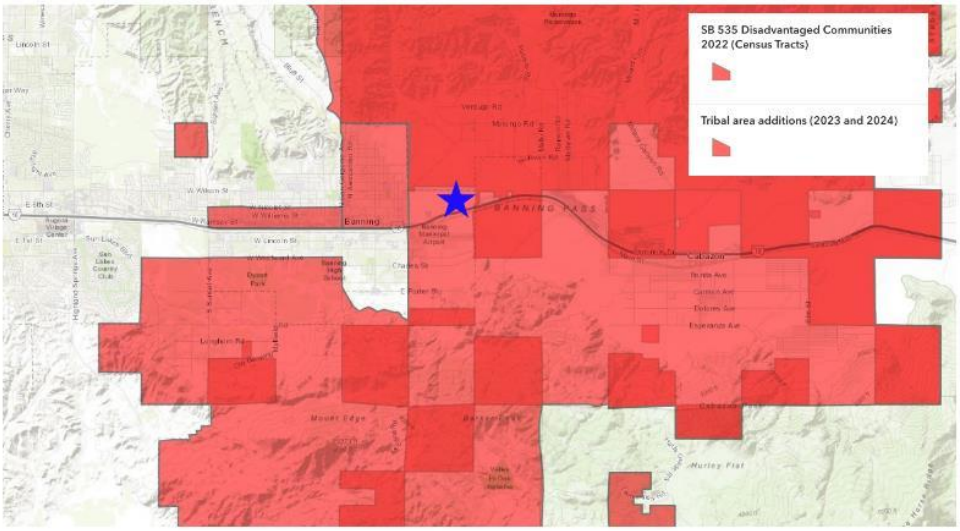
> "As the warehouse and logistics industry continues to grow and net exponential profits at record rates, more warehouse projects are being approved and constructed in low-income communities of color and serving as a massive source of pollution by attracting thousands of polluting truck trips daily. Diesel trucks emit dangerous levels of nitrogen oxide and particulate matter that cause devastating health impacts including asthma, chronic obstructive pulmonary disease (COPD), cancer, and premature death. As a result, physicians consider these pollution-burdened areas 'diesel death zones.'"[18]

[15] "South Coast AQMD Governing Board Adopts Warehouse Indirect Source Rule." SCAQMD, May 2021, *available at:* http://www.aqmd.gov/docs/default-source/news-archive/2021/board-adopts-waisr-may7-2021.pdf?sfvrsn=9.
[16] "Southern California warehouse boom a huge source of pollution. Regulators are fighting back." Los Angeles Times, May 2021, *available at:* https://www.latimes.com/california/story/2021-05-05/air-quality-officials-target-warehouses-bid-to-curb-health-damaging-truck-pollution.
[17] "Location of warehouses and environmental justice: Evidence from four metros in California." Metro Freight Center of Excellence, January 2018, *available at:* https://www.metrans.org/assets/research/MF%201.1g_Location%20of%20warehouses%20and%20environmental%20justice_Final%20Report_021618.pdf, p. 21.
[18] "Warehouses, Pollution, and Social Disparities: An analytical view of the logistics industry's impacts

It is evident that the continued development of industrial warehouses within these communities poses a significant environmental justice challenge. However, the acceleration of warehouse development is only increasing despite the consequences on public health.

cont'd 58

Banning, the setting of the proposed Project, has long borne a disproportionately high pollution burden compared to the rest of California. According to CalEnviroScreen's SB 535 Disadvantaged Communities Map, the Project site is located in a designated disadvantaged community (see excerpt below).[19]



SB 535 provides funding for development projects that provide a benefit to disadvantaged communities. CalEPA has been given the responsibility for identifying those communities based on "geographic, socioeconomic, public health, and environmental hazard criteria."[20] As the Project site is located in a designated disadvantaged community, development of the proposed Project would contribute to the disproportionate impact warehouses are posing to the health conditions of nearby residents.

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on environmental justice communities across Southern California." People's Collective for Environmental Justice, April 2021, *available at:* https://earthjustice.org/sites/default/files/files/warehouse_research_report_4.15.2021.pdf, p. 4.

[19] "SB 535 Disadvantaged Communities (2022 Update)." California Environmental Protection Agency, *available at:* https://experience.arcgis.com/experience/1c21c53da8de48f1b946f3402fbae55c/page/SB-535-Disadvantaged-Communities/

[20] "Final Designation of Disadvantaged Communities." California Environmental Protection Agency, *available at:* https://calepa.ca.gov/wp-content/uploads/sites/6/2022/05/Updated-Disadvantaged-Communities-Designation-DAC-May-2022-Eng.a.hp_-1.pdf?emrc=e05e10.

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In April 2022, the American Lung Association ranked San Bernadino County as the worst for ozone pollution in the nation.[21] This year, the County continues to face the worst ozone pollution, as it has seen the highest recorded Air Quality Index ("AQI") values for ground-level ozone in California.[22] The U.S. Environmental Protection Agency ("EPA") indicates that ozone, the main ingredient in "smog," can cause several health problems, which includes aggravating lung diseases and increasing the frequency of asthma attacks. The U.S. EPA states:

> "Children are at greatest risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors when ozone levels are high, which increases their exposure. Children are also more likely than adults to have asthma."[23]

Furthermore, regarding the increased sensitivity of early-life exposures to inhaled pollutants, the California Air Resources Board ("CARB") states:

> "Children are often at greater risk from inhaled pollutants, due to the following reasons:
>
> - Children have unique activity patterns and behavior. For example, they crawl and play on the ground, amidst dirt and dust that may carry a wide variety of toxicants. They often put their hands, toys, and other items into their mouths, ingesting harmful substances. Compared to adults, children typically spend more time outdoors and are more physically active. Time outdoors coupled with faster breathing during exercise increases children's relative exposure to air pollution.
> - Children are physiologically unique. Relative to body size, children eat, breathe, and drink more than adults, and their natural biological defenses are less developed. The protective barrier surrounding the brain is not fully developed, and children's nasal passages aren't as effective at filtering out pollutants. Developing lungs, immune, and metabolic systems are also at risk.
> - Children are particularly susceptible during development. Environmental exposures during fetal development, the first few years of life, and puberty have the greatest potential to influence later growth and development."[24]

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[21] "State of the Air 2022." American Lung Association, April 2022, *available at:* https://www.lung.org/research/sota/key-findings/most-polluted-places.
[22] "High Ozone Days." American Lung Association, 2022, *available at:* https://www.lung.org/research/sota/city-rankings/states/california.
[23] "Health Effects of Ozone Pollution." U.S. EPA, May 2021, *available at:* https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution.
[24] "Children and Air Pollution." CARB, *available at:* https://ww2.arb.ca.gov/resources/documents/children-and-air-pollution.

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A Stanford-led study also reveals that children exposed to high levels of air pollution are more susceptible to respiratory and cardiovascular diseases in adulthood.[25] Given children's higher propensity to succumb to the negative health impacts of air pollutants, and as warehouses release more smog-forming pollution than any other sector, it is necessary to evaluate the specific health risk that warehouses pose to children in the nearby community.

According to the above-mentioned study by the People's Collective for Environmental Justice and University of Redlands, there are 640 schools in the South Coast Air Basin that are located within half a mile of a large warehouse, most of them in socio-economically disadvantaged areas.[26] Regarding the proposed Project itself, the DEIR states:

> "The nearest schools to the Project area are Hoffer Elementary School, located approximately 0.27 mile west at 1115 E. Hoffer Street, and the Florida Street Discovery Center Preschool, located approximately 1.4 miles to the west at 617 N. Florida Street" (p. 5.2-19).

As discussed, Hoffer Elementary School is located approximately 0.27-miles from the Project site. This may pose a significant threat because, as outlined above, children are a vulnerable population that are more susceptible to the damaging side effects of air pollution. As such, the Project may contribute to the detrimental short-term and long-term health impacts that warehouses pose on local children if approved.

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A revised EIR should be prepared to evaluate the proposed Project's contribution to the disproportionate impacts that warehouses are posing on the community adjacent to the Project site. The revised EIR should include an analysis of the impact on children and people of color who live and attend school in the surrounding area. Finally, to evaluate the cumulative air quality impact from the several warehouse projects proposed or built in a one-mile radius of the Project site, the revised EIR should also prepare a cumulative health risk assessment to quantify the adverse health outcome from the effects of exposure to multiple warehouses in the immediate area in conjunction with the poor ambient air quality in the Project's census tract.

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Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The Greenhouse Gas Assessment ("GHG Assessment"), included as Appendix G to the DEIR, estimates that the Project would result in net annual greenhouse gas ("GHG") mitigated emissions of 22,969-metric tons of carbon dioxide equivalents per year ("MT CO_2e/year") which would exceed the Banning GHG threshold of 3,000 MTCO_2e/year (p. 27, Table 3).

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[25] "Air pollution puts children at higher risk of disease in adulthood, according to Stanford researchers and others." Stanford, February 2021, *available at:* https://news.stanford.edu/2021/02/22/air-pollution-impacts-childrens-health/.

[26] "Warehouses, Pollution, and Social Disparities: An analytical view of the logistics industry's impacts on environmental justice communities across Southern California." People's Collective for Environmental Justice, April 2021, *available at:* https://earthjustice.org/sites/default/files/files/warehouse_research_report_4.15.2021.pdf, p. 4.

Table 3: Project Greenhouse Gas Emissions

Emissions Source	$MTCO_2e$ per Year	
	Unmitigated	Mitigated
Area and Indirect Sources		
Construction Amortized Over 30 Years	156	156
Area Source [1]	58	0
Energy (Electricity and Natural Gas) [2]	3,215	1,358
Off-road (Forklifts and Yard Trucks)[3]	1,792	0
Emergency Backup Generator	20	20
Waste [4]	387	96.8
Water and Wastewater	843	761
Subtotal	**6,471**	**2,392**
Mobile Sources		
Warehouse Trucks	9,203	9,203
Warehouse Passenger Cars	11,374	11,374
Subtotal	**20,577**	**20,577**
TOTAL	**27,048**	**22,969**
Banning GHG Threshold	*3,000*	*3,000*
Exceeds Threshold?	**Yes**	**Yes**

1. Mitigation Measure GHG-4 requires electric landscaping equipment, which would reduce area source emissions.
2. Mitigation Measure GHG-1 requires the installation of photovoltaic solar panels to offset energy emissions or acquire energy from the local utility company that has been generated by renewable sources.
3. Mitigation Measure AQ-6 requires cargo handling equipment (including yard trucks, hostlers, yard goats, pallet jacks, and forklifts) to be powered by electricity. Unmitigated emissions from diesel equipment are disclosed for informational purposes.
4. Mitigation Measure GHG-3 requires Project to divert 75 percent of landfill waste.

Source: CalEEMod version 2022.1.1.7 Refer to Appendix A for model outputs.

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As such, the GHG Assessment concludes that the Project would result in a significant-and-unavoidable GHG impact, stating:

> "Thus, despite the incorporation of all feasible mitigation measures, the remaining mobile emissions cannot feasibly be mitigated because neither the Project nor the City has the regulatory authority to control tailpipe emissions. Since mitigated emissions exceed the3,000 $MTCO_2e$ threshold and no additional feasible mitigation beyond **MM AQ-1** through **MM AQ-6** (refer to the Project Air Quality Assessment) and **MM GHG-1** through **MM GHG-5** are available to further reduce emissions, this impact remains significant and unavoidable" (p. 30).

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As previously discussed, the DEIR is required under CEQA to implement all feasible mitigation to reduce impacts to the maximum extent feasible. The DEIR implements MM AQ-1 through MM AQ-6 and MM GHG-1 through MM GHG-5, however, it again fails to implement *all* feasible mitigation measures. To reduce the Project's GHG impacts to the maximum extent possible, additional feasible mitigation measures should be incorporated, such as those suggested in the section of this letter titled "Feasible Mitigation Measures Available to Reduce Emissions." The Project should not be approved until a revised EIR is prepared, incorporating all feasible mitigation to reduce emissions to less-than-significant levels.

Mitigation

Feasible Mitigation Measures Available to Reduce Emissions

The DEIR is required under CEQA to implement all feasible mitigation to reduce the Project's potential impacts, as referenced above. The Project would result in potentially significant air quality and GHG impacts that should be mitigated further.

First, in order to reduce the NO_x emissions associated with Project construction and operation, we recommend the DEIR consider incorporating several mitigation measures (see list below).

Southern California Association of Governments ("SCAG")'s 2020 *RTP/SCS* Program Environmental Impact Report ("PEIR") recommends the following Air Quality Project Level Mitigation Measures ("PMM-AQ-1"), which are applicable to the Project: [27]

- Minimize unnecessary vehicular and machinery activities;
- Requiring projects within 500 feet of residences, hospitals, or schools to use Tier 4 equipment for all engines above 50 horsepower (hp) unless the individual project can demonstrate that Tier 4 engines would not be required to mitigate emissions below significance thresholds;
- Require contractors to assemble a comprehensive inventory list (i.e., make, model, engine year, horsepower, emission rates) of all heavy-duty off-road (portable and mobile) equipment (50 horsepower and greater) that could be used an aggregate of 40 or more hours for the construction projec; and
- Projects located within the South Coast Air Basin should consider applying for South Coast AQMD "SOON" funds which provides funds to applicable fleets for the purchase of commercially available, low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.

CARB recommends: [28]

- Ensuring the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools;
- Requiring all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved are equal to or exceed that of a Tier 4 engine;

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[27] "4.0 Mitigation Measures." Connect SoCal Program Environmental Impact Report Addendum #1, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_addendum_4_mitigationmeasures.pdf?1606004420, p. 4.0-2 – 4.0-10; 4.0-19 – 4.0-23; See also: "Certified Final Connect SoCal Program Environmental Impact Report." SCAG, May 2020, *available at:* https://scag.ca.gov/peir.

[28] "Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers." CARB, August 2023, *available at*: https://ww2.arb.ca.gov/sites/default/files/2023-08/CARB%20Comments%20-%20NOP%20for%20the%20%20Oak%20Valley%20North%20Project%20DEIR.pdf; Attachment A, p. 5 – 8.

- Requiring all heavy-duty trucks entering the construction site during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NOx) standard starting in the year 2022;
- Require all construction equipment and fleets to be in compliance with all current air quality regulations;
- Requiring all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units;
- Requiring all TRUs entering the project-site be plug-in capable;
- Requiring all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission;
- Requiring future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans;
- Including contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than **two** minutes while on site; and
- Requiring the installing of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.

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The Department of Justice ("DOJ") recommends:[29]

- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications;
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts;
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees;

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SCAQMD staff recommends: [30]

- Zero-emissions (ZE) or near-zero emission (NZE) on-road haul trucks, such as heavy-duty trucks with natural gas engines that meet the CARB's adopted optional NOx emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr), if and when feasible;
- A phase-in schedule to incentivize the use of cleaner operating trucks to reduce any significant adverse air quality impacts; and The use of, at least, a 2010 model year that meets CARB's 2010 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NOx emissions or newer, cleaner trucks.

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[29] "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." State of California Department of Justice, September 2022, *available at*: https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf, p. 8 – 10.
[30] "Draft Environmental Impact Report (EIR) for the Proposed CADO Menifee Industrial Warehouse Project (Proposed Project)." SCAQMD, April 2024, *available at*: https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2024/april-2024/RVC240313-05.pdf?sfvrsn=8, p. 2 - 3.

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Second, in order to reduce the GHG emissions associated with the Project, we recommend several mitigation measures (see list below).

SCAG's 2020 *RTP/SCS* PEIR recommends the following Greenhouse Gas Project Level Mitigation Measures, which are applicable to the Project: [31]

- Incorporate bicycle and pedestrian facilities into project designs, maintaining these facilities, and providing amenities incentivizing their use; and planning for and building local bicycle projects that connect with the regional network;
- Improving transit access to rail and bus routes by incentives for construction and transit facilities within developments, and/or providing dedicated shuttle service to transit stations;
- Designate a percentage of parking spaces for ride-sharing vehicles or high-occupancy vehicles, and provide adequate passenger loading and unloading for those vehicles;
- Require at least five percent of all vehicle parking spaces include electric vehicle charging stations, or at a minimum, require the appropriate infrastructure to facilitate sufficient electric charging for passenger vehicles and trucks to plug-in;
- Encourage telecommuting and alternative work schedules, such as:
  - Staggered starting times,
  - Flexible schedules, and
  - Compressed work weeks;
- Implement commute trip reduction marketing, such as:
  - New employee orientation of trip reduction and alternative mode options,
  - Event promotions, and
  - Publications;
- Price workplace parking, such as:
  - Explicitly charging for parking for its employees,
  - Implementing above market rate pricing,
  - Validating parking only for invited guests,
  - Not providing employee parking and transportation allowances, and
  - Educating employees about available alternatives; and
- Adopting employer trip reduction measures to reduce employee trips such as vanpool and carpool programs, providing end-of-trip facilities, and telecommuting programs including but not limited to measures that:
  - Provide transit passes,
  - Provide employee transportation coordinators at employment sites, and
  - Provide a guaranteed ride home service to users of non-auto modes.

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[31] "4.0 Mitigation Measures." Connect SoCal Program Environmental Impact Report Addendum #1, September 2020, available at: https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_addendum_4_mitigationmeasures.pdf?1606004420, p. 4.0-20 – 4.0-23; See also: "Certified Final Connect SoCal Program Environmental Impact Report." SCAG, May 2020, *available at:* https://scag.ca.gov/peir.

CARB recommends: [32]

- Ensuring the cleanest possible construction practices and equipment are used;
- Requiring all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved are equal to or exceed that of a Tier 4 engine;
- Requiring all heavy-duty trucks entering the construction site during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NOx) standard starting in the year 2022;
- Require all construction equipment and fleets to be in compliance with all current air quality regulations;
- Requiring all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units;
- Requiring all TRUs entering the project-site be plug-in capable;
- Requiring all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission;
- Requiring future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans; and
- Requiring the installing of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.

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The DOJ recommends: [33]

- Requiring all stand-by emergency generators to be powered by a non-diesel fuel;
- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project;
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces;
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;
- Posting signs at every truck exit driveway providing directional information to the truck route;
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request; and

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[32] "Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers." CARB, August 2023, *available at*: https://ww2.arb.ca.gov/sites/default/files/2023-08/CARB%20Comments%20-%20NOP%20for%20the%20%20Oak%20Valley%20North%20Project%20DEIR.pdf; Attachment A, p. 5 – 8.
[33] *Ibid.* p. 9 – 10.

- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers.

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SCAQMD staff recommends: [34]

- Using light-colored paving and roofing materials; and
- Utilizing only Energy Star heating, cooling, and lighting devices and appliances.

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CEQA Guidelines 15126.4 (c)(3) include "[o]ffsite measures, including offsets that are not otherwise required, to mitigate a project's emissions" as an option for GHG mitigation.[35] An example of this was in the case of the Oakland Sports and Mixed-Use Project, where off-site reduction measures in the neighboring communities were recommended.[36] We recommend consideration of local carbon offset programs to reduce the Project's GHG impacts as a measure of last result.

As demonstrated above, we have provided several mitigation measures that would reduce Project-related NO_x and GHG emissions developed from sources including SCAG, the DOJ, and others. These measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Project, which subsequently reduce emissions released during Project construction and operation.

A revised EIR should be prepared that includes *all* feasible mitigation measures, as well as updated air quality and GHG analyses to ensure that the necessary mitigation measures are implemented to reduce emissions to the maximum extent feasible. The revised EIR should also demonstrate a commitment to the implementation of these measures prior to Project approval, to ensure that the Project's potentially significant emissions are reduced to the maximum extent possible.

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Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing

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[34] "Draft Environmental Impact Report (EIR) for the Proposed CADO Menifee Industrial Warehouse Project (Proposed Project)." SCAQMD, April 2024, *available at*: https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2024/april-2024/RVC240313-05.pdf?sfvrsn=8, p. 3.
[35] "Cal. Code Regs. tit. 14 § 15126.4." CEQA Guidelines, May 2024, *available at*: https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-6-resources-agency/chapter-3-guidelines-for-implementation-of-the-california-environmental-quality-act/article-9-contents-of-environmental-impact-reports/section-151264-consideration-and-discussion-of-mitigation-measures-proposed-to-minimize-significant-effects.
[36] "Cal. Pub. Resources Code § 21168.6.7." 2023, *available at*: https://casetext.com/statute/california-codes/california-public-resources-code/division-13-environmental-quality/chapter-6-limitations/section-2116867-oakland-sports-and-mixed-use-project-conditions-for-approval-certification-of-project-for-streamlining.

results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

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Sincerely,

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

Paul E. Rosenfeld, Ph.D.

Attachment A: Construction Calculations
Attachment B: CalEEMod Output Files
Attachment C: Matt Hagemann CV
Attachment D: Paul Rosenfeld CV

Attachment A

Construction Schedule Calculations					
Phase	Default Phase Length	Construction Duration	%	Construction Duration	Revised Phase Length
Site Preparation	321	5823	0.0551	549	30
Grading	310	5823	0.0532	549	29
Construction	3100	5823	0.5324	549	292
Paving	220	5823	0.0378	549	21
Architectural Coating	220	5823	0.0378	549	21

	Total Default Construction Duration	Revised Construction Duration
Start Date	3/1/2024	3/1/2024
End Date	2/9/2040	9/1/2025
Total Days	5823	549

Attachment B

Banning Commerce Center Detailed Report

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1. Basic Project Information

1.1. Basic Project Information

Data Field	Value
Project Name	Banning Commerce Center
Construction Start Date	3/1/2024
Lead Agency	—
Land Use Scale	Project/site
Analysis Level for Defaults	County
Windspeed (m/s)	3.30
Precipitation (days)	19.2
Location	33.93050070747131, -116.84643574236424
County	Riverside-South Coast
City	Banning
Air District	South Coast AQMD
Air Basin	South Coast
TAZ	5626
EDFZ	11
Electric Utility	City of Banning Electric Department
Gas Utility	Southern California Gas
App Version	2022.1.1.26

1.2. Land Use Types

Land Use Subtype	Size	Unit	Lot Acreage	Building Area (sq ft)	Landscape Area (sq ft)	Special Landscape Area (sq ft)	Population	Description
Unrefrigerated Warehouse-No Rail	950	1000sqft	21.8	950,400	105,568	—	—	—

Refrigerated Warehouse-No Rail	330	1000sqft	7.58	330,000	36,655	—	—	—
General Office Building	40.0	1000sqft	0.92	40,000	0.00	—	—	—
Parking Lot	63.0	Acre	63.0	0.00	0.00	—	—	—
Other Non-Asphalt Surfaces	35.0	Acre	35.0	0.00	0.00	—	—	—

1.3. User-Selected Emission Reduction Measures by Emissions Sector

No measures selected

2. Emissions Summary

2.1. Construction Emissions Compared Against Thresholds

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Un/Mit.	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	60.0	59.9	120	61.4	0.56	2.87	29.6	32.5	2.76	10.2	12.0	—	82,358	82,358	1.66	12.2	161	86,204
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	4.66	4.04	36.1	50.3	0.07	1.60	19.9	21.5	1.47	10.2	11.6	—	16,404	16,404	0.59	1.30	1.31	16,809
Average Daily (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	5.49	5.24	22.5	29.7	0.08	0.62	7.87	8.49	0.58	2.52	3.10	—	14,196	14,196	0.41	1.54	15.0	14,681
Annual (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	1.00	0.96	4.11	5.42	0.01	0.11	1.44	1.55	0.11	0.46	0.57	—	2,350	2,350	0.07	0.26	2.48	2,431

2.2. Construction Emissions by Year, Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Year	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily - Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	7.41	4.81	120	61.4	0.56	2.87	29.6	32.5	2.76	10.2	12.0	—	82,358	82,358	1.66	12.2	161	86,204
2025	60.0	59.9	20.1	57.8	0.07	0.53	9.05	9.58	0.49	2.20	2.69	—	16,778	16,778	0.56	1.30	47.3	17,227
Daily - Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	4.66	4.04	36.1	50.3	0.07	1.60	19.9	21.5	1.47	10.2	11.6	—	16,404	16,404	0.59	1.30	1.31	16,809
2025	4.24	3.58	20.7	47.5	0.07	0.53	9.05	9.58	0.49	2.20	2.69	—	16,157	16,157	0.58	1.30	1.23	16,560
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	2.98	2.45	22.5	29.7	0.08	0.62	7.87	8.49	0.58	2.52	3.10	—	14,196	14,196	0.41	1.54	15.0	14,681
2025	5.49	5.24	8.09	18.9	0.03	0.21	3.33	3.54	0.20	0.81	1.01	—	6,070	6,070	0.22	0.47	7.56	6,225
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	0.54	0.45	4.11	5.42	0.01	0.11	1.44	1.55	0.11	0.46	0.57	—	2,350	2,350	0.07	0.26	2.48	2,431
2025	1.00	0.96	1.48	3.45	< 0.005	0.04	0.61	0.65	0.04	0.15	0.18	—	1,005	1,005	0.04	0.08	1.25	1,031

3. Construction Emissions Details

3.1. Site Preparation (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Roa Equipment	4.34	3.65	36.0	32.9	0.05	1.60	—	1.60	1.47	—	1.47	—	5,296	5,296	0.21	0.04	—	5,314
Dust From Material Movement	—	—	—	—	—	—	19.7	19.7	—	10.1	10.1	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Roa d Equipm ent	4.34	3.65	36.0	32.9	0.05	1.60	—	1.60	1.47	—	1.47	—	5,296	5,296	0.21	0.04	—	5,314
Dust From Material Movement	—	—	—	—	—	—	19.7	19.7	—	10.1	10.1	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Roa d Equipm ent	0.36	0.30	2.96	2.71	< 0.005	0.13	—	0.13	0.12	—	0.12	—	435	435	0.02	< 0.005	—	437
Dust From Material Movement	—	—	—	—	—	—	1.62	1.62	—	0.83	0.83	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Roa d Equipm ent	0.07	0.05	0.54	0.49	< 0.005	0.02	—	0.02	0.02	—	0.02	—	72.1	72.1	< 0.005	< 0.005	—	72.3

Dust From Material Movement	—	—	—	—	—	—	0.29	0.29	—	0.15	0.15	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.10	0.09	0.08	1.46	0.00	0.00	0.23	0.23	0.00	0.05	0.05	—	252	252	0.01	0.01	1.00	256
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.09	0.08	0.10	1.10	0.00	0.00	0.23	0.23	0.00	0.05	0.05	—	231	231	0.01	0.01	0.03	234
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.01	0.01	0.01	0.10	0.00	0.00	0.02	0.02	0.00	< 0.005	< 0.005	—	19.3	19.3	< 0.005	< 0.005	0.04	19.5
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	3.19	3.19	< 0.005	< 0.005	0.01	3.24
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.3. Grading (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	4.19	3.52	34.3	30.2	0.06	1.45	—	1.45	1.33	—	1.33	—	6,598	6,598	0.27	0.05	—	6,621
Dust From Material Movement	—	—	—	—	—	—	9.86	9.86	—	3.75	3.75	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.33	0.28	2.72	2.40	< 0.005	0.12	—	0.12	0.11	—	0.11	—	524	524	0.02	< 0.005	—	526
Dust From Material Movement	—	—	—	—	—	—	0.78	0.78	—	0.30	0.30	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.06	0.05	0.50	0.44	< 0.005	0.02	—	0.02	0.02	—	0.02	—	86.8	86.8	< 0.005	< 0.005	—	87.1

Dust From Material Movement	—	—	—	—	—	—	0.14	0.14	—	0.05	0.05	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.11	0.10	0.10	1.67	0.00	0.00	0.26	0.26	0.00	0.06	0.06	—	288	288	0.01	0.01	1.14	292
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	3.11	1.19	85.3	20.5	0.50	1.43	19.5	20.9	1.43	5.47	6.90	—	75,472	75,472	1.38	12.2	160	79,291
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.01	0.01	0.01	0.11	0.00	0.00	0.02	0.02	0.00	< 0.005	< 0.005	—	21.3	21.3	< 0.005	< 0.005	0.04	21.6
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.24	0.09	7.10	1.64	0.04	0.11	1.53	1.65	0.11	0.43	0.54	—	5,998	5,998	0.11	0.97	5.45	6,294
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	3.52	3.52	< 0.005	< 0.005	0.01	3.57
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.04	0.02	1.30	0.30	0.01	0.02	0.28	0.30	0.02	0.08	0.10	—	993	993	0.02	0.16	0.90	1,042

3.5. Building Construction (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.63	0.52	4.90	5.72	0.01	0.22	—	0.22	0.20	—	0.20	—	1,046	1,046	0.04	0.01	—	1,050
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.11	0.10	0.89	1.04	< 0.005	0.04	—	0.04	0.04	—	0.04	—	173	173	0.01	< 0.005	—	174
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Worker	3.10	2.82	2.66	46.0	0.00	0.00	7.20	7.20	0.00	1.69	1.69	—	7,924	7,924	0.33	0.27	31.4	8,046
Vendor	0.30	0.20	7.62	2.37	0.05	0.10	1.85	1.95	0.10	0.51	0.61	—	6,719	6,719	0.15	1.01	18.9	7,042
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	2.94	2.65	3.13	34.8	0.00	0.00	7.20	7.20	0.00	1.69	1.69	—	7,283	7,283	0.35	0.27	0.82	7,374
Vendor	0.29	0.19	7.97	2.42	0.05	0.10	1.85	1.95	0.10	0.51	0.61	—	6,724	6,724	0.15	1.01	0.49	7,029
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	1.28	1.15	1.37	16.0	0.00	0.00	3.10	3.10	0.00	0.73	0.73	—	3,219	3,219	0.15	0.12	5.93	3,264
Vendor	0.13	0.08	3.47	1.05	0.02	0.04	0.80	0.84	0.04	0.22	0.26	—	2,933	2,933	0.06	0.44	3.55	3,069
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.23	0.21	0.25	2.91	0.00	0.00	0.57	0.57	0.00	0.13	0.13	—	533	533	0.02	0.02	0.98	540
Vendor	0.02	0.02	0.63	0.19	< 0.005	0.01	0.15	0.15	0.01	0.04	0.05	—	486	486	0.01	0.07	0.59	508
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.7. Building Construction (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.35	1.13	10.4	13.0	0.02	0.43	—	0.43	0.40	—	0.40	—	2,398	2,398	0.10	0.02	—	2,406

Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.35	1.13	10.4	13.0	0.02	0.43	—	0.43	0.40	—	0.40	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.49	0.41	3.78	4.72	0.01	0.16	—	0.16	0.14	—	0.14	—	868	868	0.04	0.01	—	871
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.09	0.07	0.69	0.86	< 0.005	0.03	—	0.03	0.03	—	0.03	—	144	144	0.01	< 0.005	—	144
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	2.96	2.46	2.41	42.5	0.00	0.00	7.20	7.20	0.00	1.69	1.69	—	7,760	7,760	0.32	0.27	28.5	7,878
Vendor	0.30	0.14	7.27	2.26	0.05	0.10	1.85	1.95	0.10	0.51	0.61	—	6,621	6,621	0.15	1.01	18.8	6,943
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Worker	2.60	2.32	2.66	32.1	0.00	0.00	7.20	7.20	0.00	1.69	1.69	—	7,133	7,133	0.33	0.27	0.74	7,224
Vendor	0.29	0.13	7.61	2.32	0.05	0.10	1.85	1.95	0.10	0.51	0.61	—	6,626	6,626	0.15	1.01	0.49	6,930
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.93	0.83	1.04	12.3	0.00	0.00	2.57	2.57	0.00	0.60	0.60	—	2,615	2,615	0.12	0.10	4.45	2,652
Vendor	0.11	0.05	2.75	0.83	0.02	0.04	0.66	0.70	0.04	0.18	0.22	—	2,398	2,398	0.05	0.36	2.95	2,511
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.17	0.15	0.19	2.24	0.00	0.00	0.47	0.47	0.00	0.11	0.11	—	433	433	0.02	0.02	0.74	439
Vendor	0.02	0.01	0.50	0.15	< 0.005	0.01	0.12	0.13	0.01	0.03	0.04	—	397	397	0.01	0.06	0.49	416
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.9. Paving (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.95	0.80	7.45	9.98	0.01	0.35	—	0.35	0.32	—	0.32	—	1,511	1,511	0.06	0.01	—	1,517
Paving	7.86	7.86	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Roa Equipment	0.05	0.05	0.43	0.57	< 0.005	0.02	—	0.02	0.02	—	0.02	—	87.0	87.0	< 0.005	< 0.005	—	87.3
Paving	0.45	0.45	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Roa d Equipm ent	0.01	0.01	0.08	0.10	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	14.4	14.4	< 0.005	< 0.005	—	14.4
Paving	0.08	0.08	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.08	0.07	0.07	1.16	0.00	0.00	0.20	0.20	0.00	0.05	0.05	—	211	211	0.01	0.01	0.78	215
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.05	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	11.3	11.3	< 0.005	< 0.005	0.02	11.5
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.87	1.87	< 0.005	< 0.005	< 0.005	1.90
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.11. Architectural Coating (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.15	0.13	0.88	1.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	134	134	0.01	< 0.005	—	134
Architectural Coatings	59.3	59.3	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.05	0.07	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	7.68	7.68	< 0.005	< 0.005	—	7.71
Architectural Coatings	3.41	3.41	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Road Equipment	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	1.27	1.27	< 0.005	< 0.005	—	1.28
Architectural Coatings	0.62	0.62	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.59	0.49	0.48	8.50	0.00	0.00	1.44	1.44	0.00	0.34	0.34	—	1,552	1,552	0.06	0.05	5.70	1,576
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.03	0.03	0.03	0.39	0.00	0.00	0.08	0.08	0.00	0.02	0.02	—	83.1	83.1	< 0.005	< 0.005	0.14	84.3
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.01	< 0.005	0.01	0.07	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	13.8	13.8	< 0.005	< 0.005	0.02	14.0
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

4. Operations Emissions Details

4.10. Soil Carbon Accumulation By Vegetation Type

4.10.1. Soil Carbon Accumulation By Vegetation Type - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Vegetation	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

4.10.2. Above and Belowground Carbon Accumulation by Land Use Type - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

4.10.3. Avoided and Sequestered Emissions by Species - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Species	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Avoided	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Sequestered	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Removed	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Avoided	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Sequestered	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Removed	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Avoided	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Sequestered	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Removed	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Subtotal	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

5. Activity Data

5.1. Construction Schedule

Phase Name	Phase Type	Start Date	End Date	Days Per Week	Work Days per Phase	Phase Description
Site Preparation	Site Preparation	3/1/2024	4/11/2024	5.00	30.0	—
Grading	Grading	4/12/2024	5/22/2024	5.00	29.0	—
Building Construction	Building Construction	5/23/2024	7/4/2025	5.00	292	—
Paving	Paving	7/5/2025	8/4/2025	5.00	21.0	—
Architectural Coating	Architectural Coating	8/5/2025	9/2/2025	5.00	21.0	—

5.2. Off-Road Equipment

5.2.1. Unmitigated

Phase Name	Equipment Type	Fuel Type	Engine Tier	Number per Day	Hours Per Day	Horsepower	Load Factor
Site Preparation	Rubber Tired Dozers	Diesel	Average	3.00	8.00	367	0.40
Site Preparation	Tractors/Loaders/Backhoes	Diesel	Average	4.00	8.00	84.0	0.37
Grading	Graders	Diesel	Average	1.00	8.00	148	0.41
Grading	Excavators	Diesel	Average	2.00	8.00	36.0	0.38
Grading	Tractors/Loaders/Backhoes	Diesel	Average	2.00	8.00	84.0	0.37

Grading	Scrapers	Diesel	Average	2.00	8.00	423	0.48
Grading	Rubber Tired Dozers	Diesel	Average	1.00	8.00	367	0.40
Building Construction	Forklifts	Diesel	Average	3.00	8.00	82.0	0.20
Building Construction	Generator Sets	Diesel	Average	1.00	8.00	14.0	0.74
Building Construction	Cranes	Diesel	Average	1.00	7.00	367	0.29
Building Construction	Welders	Diesel	Average	1.00	8.00	46.0	0.45
Building Construction	Tractors/Loaders/Backhoes	Diesel	Average	3.00	7.00	84.0	0.37
Paving	Pavers	Diesel	Average	2.00	8.00	81.0	0.42
Paving	Paving Equipment	Diesel	Average	2.00	8.00	89.0	0.36
Paving	Rollers	Diesel	Average	2.00	8.00	36.0	0.38
Architectural Coating	Air Compressors	Diesel	Average	1.00	6.00	37.0	0.48

5.3. Construction Vehicles

5.3.1. Unmitigated

Phase Name	Trip Type	One-Way Trips per Day	Miles per Trip	Vehicle Mix
Site Preparation	—	—	—	—
Site Preparation	Worker	17.5	18.5	LDA,LDT1,LDT2
Site Preparation	Vendor	—	10.2	HHDT,MHDT
Site Preparation	Hauling	0.00	20.0	HHDT
Site Preparation	Onsite truck	—	—	HHDT
Grading	—	—	—	—
Grading	Worker	20.0	18.5	LDA,LDT1,LDT2
Grading	Vendor	—	10.2	HHDT,MHDT
Grading	Hauling	1,078	20.0	HHDT
Grading	Onsite truck	—	—	HHDT
Building Construction	—	—	—	—
Building Construction	Worker	551	18.5	LDA,LDT1,LDT2

Building Construction	Vendor	216	10.2	HHDT,MHDT
Building Construction	Hauling	0.00	20.0	HHDT
Building Construction	Onsite truck	—	—	HHDT
Paving	—	—	—	—
Paving	Worker	15.0	18.5	LDA,LDT1,LDT2
Paving	Vendor	—	10.2	HHDT,MHDT
Paving	Hauling	0.00	20.0	HHDT
Paving	Onsite truck	—	—	HHDT
Architectural Coating	—	—	—	—
Architectural Coating	Worker	110	18.5	LDA,LDT1,LDT2
Architectural Coating	Vendor	—	10.2	HHDT,MHDT
Architectural Coating	Hauling	0.00	20.0	HHDT
Architectural Coating	Onsite truck	—	—	HHDT

5.4. Vehicles

5.4.1. Construction Vehicle Control Strategies

Non-applicable. No control strategies activated by user.

5.5. Architectural Coatings

Phase Name	Residential Interior Area Coated (sq ft)	Residential Exterior Area Coated (sq ft)	Non-Residential Interior Area Coated (sq ft)	Non-Residential Exterior Area Coated (sq ft)	Parking Area Coated (sq ft)
Architectural Coating	0.00	0.00	1,980,600	660,200	43,117

5.6. Dust Mitigation

5.6.1. Construction Earthmoving Activities

Phase Name	Material Imported (cy)	Material Exported (cy)	Acres Graded (acres)	Material Demolished (sq. ft.)	Acres Paved (acres)
Site Preparation	—	—	81.0	0.00	—

Grading	250,000	—	231	0.00	—
Paving	0.00	0.00	0.00	0.00	98.0

5.6.2. Construction Earthmoving Control Strategies

Non-applicable. No control strategies activated by user.

5.7. Construction Paving

Land Use	Area Paved (acres)	% Asphalt
Unrefrigerated Warehouse-No Rail	0.00	0%
Refrigerated Warehouse-No Rail	0.00	0%
General Office Building	0.00	0%
Parking Lot	63.0	100%
Other Non-Asphalt Surfaces	35.0	0%

5.8. Construction Electricity Consumption and Emissions Factors

kWh per Year and Emission Factor (lb/MWh)

Year	kWh per Year	CO2	CH4	N2O
2024	0.00	453	0.03	< 0.005
2025	0.00	453	0.03	< 0.005

5.18. Vegetation

5.18.1. Land Use Change

5.18.1.1. Unmitigated

Vegetation Land Use Type	Vegetation Soil Type	Initial Acres	Final Acres

5.18.1. Biomass Cover Type

5.18.1.1. Unmitigated

Biomass Cover Type	Initial Acres	Final Acres

5.18.2. Sequestration

5.18.2.1. Unmitigated

Tree Type	Number	Electricity Saved (kWh/year)	Natural Gas Saved (btu/year)

6. Climate Risk Detailed Report

6.1. Climate Risk Summary

Cal-Adapt midcentury 2040–2059 average projections for four hazards are reported below for your project location. These are under Representation Concentration Pathway (RCP) 8.5 which assumes GHG emissions will continue to rise strongly through 2050 and then plateau around 2100.

Climate Hazard	Result for Project Location	Unit
Temperature and Extreme Heat	32.0	annual days of extreme heat
Extreme Precipitation	5.35	annual days with precipitation above 20 mm
Sea Level Rise	—	meters of inundation depth
Wildfire	36.3	annual hectares burned

Temperature and Extreme Heat data are for grid cell in which your project are located. The projection is based on the 98th historical percentile of daily maximum/minimum temperatures from observed historical data (32 climate model ensemble from Cal-Adapt, 2040–2059 average under RCP 8.5). Each grid cell is 6 kilometers (km) by 6 km, or 3.7 miles (mi) by 3.7 mi.
Extreme Precipitation data are for the grid cell in which your project are located. The threshold of 20 mm is equivalent to about ¾ an inch of rain, which would be light to moderate rainfall if received over a full day or heavy rain if received over a period of 2 to 4 hours. Each grid cell is 6 kilometers (km) by 6 km, or 3.7 miles (mi) by 3.7 mi.
Sea Level Rise data are for the grid cell in which your project are located. The projections are from Radke et al. (2017), as reported in Cal-Adapt (Radke et al., 2017, CEC-500-2017-008), and consider inundation location and depth for the San Francisco Bay, the Sacramento-San Joaquin River Delta and California coast resulting different increments of sea level rise coupled with extreme storm events. Users may select from four scenarios to view the range in potential inundation depth for the grid cell. The four scenarios are: No rise, 0.5 meter, 1.0 meter, 1.41 meters
Wildfire data are for the grid cell in which your project are located. The projections are from UC Davis, as reported in Cal-Adapt (2040–2059 average under RCP 8.5), and consider historical data of climate, vegetation, population density, and large (> 400 ha) fire history. Users may select from four model simulations to view the range in potential wildfire probabilities for the grid cell. The four simulations make different assumptions about expected rainfall and temperature are: Warmer/drier (HadGEM2-ES), Cooler/wetter (CNRM-CM5), Average conditions (CanESM2), Range of different rainfall and temperature possibilities (MIROC5). Each grid cell is 6 kilometers (km) by 6 km, or 3.7 miles (mi) by 3.7 mi.

6.2. Initial Climate Risk Scores

Climate Hazard	Exposure Score	Sensitivity Score	Adaptive Capacity Score	Vulnerability Score
Temperature and Extreme Heat	0	0	0	N/A
Extreme Precipitation	N/A	N/A	N/A	N/A
Sea Level Rise	0	0	0	N/A
Wildfire	0	0	0	N/A
Flooding	N/A	N/A	N/A	N/A
Drought	N/A	N/A	N/A	N/A
Snowpack Reduction	N/A	N/A	N/A	N/A
Air Quality Degradation	0	0	0	N/A

The sensitivity score reflects the extent to which a project would be adversely affected by exposure to a climate hazard. Exposure is rated on a scale of 1 to 5, with a score of 5 representing the greatest exposure.
The adaptive capacity of a project refers to its ability to manage and reduce vulnerabilities from projected climate hazards. Adaptive capacity is rated on a scale of 1 to 5, with a score of 5 representing the greatest ability to adapt.
The overall vulnerability scores are calculated based on the potential impacts and adaptive capacity assessments for each hazard. Scores do not include implementation of climate risk reduction measures.

6.3. Adjusted Climate Risk Scores

Climate Hazard	Exposure Score	Sensitivity Score	Adaptive Capacity Score	Vulnerability Score
Temperature and Extreme Heat	1	1	1	2
Extreme Precipitation	N/A	N/A	N/A	N/A
Sea Level Rise	1	1	1	2
Wildfire	1	1	1	2
Flooding	N/A	N/A	N/A	N/A
Drought	N/A	N/A	N/A	N/A
Snowpack Reduction	N/A	N/A	N/A	N/A
Air Quality Degradation	1	1	1	2

The sensitivity score reflects the extent to which a project would be adversely affected by exposure to a climate hazard. Exposure is rated on a scale of 1 to 5, with a score of 5 representing the greatest exposure.
The adaptive capacity of a project refers to its ability to manage and reduce vulnerabilities from projected climate hazards. Adaptive capacity is rated on a scale of 1 to 5, with a score of 5 representing the greatest ability to adapt.

The overall vulnerability scores are calculated based on the potential impacts and adaptive capacity assessments for each hazard. Scores include implementation of climate risk reduction measures.

6.4. Climate Risk Reduction Measures

7. Health and Equity Details

7.1. CalEnviroScreen 4.0 Scores

The maximum CalEnviroScreen score is 100. A high score (i.e., greater than 50) reflects a higher pollution burden compared to other census tracts in the state.

Indicator	Result for Project Census Tract
Exposure Indicators	—
AQ-Ozone	97.1
AQ-PM	14.6
AQ-DPM	7.80
Drinking Water	77.8
Lead Risk Housing	60.1
Pesticides	41.8
Toxic Releases	12.9
Traffic	84.3
Effect Indicators	—
CleanUp Sites	82.4
Groundwater	0.00
Haz Waste Facilities/Generators	86.8
Impaired Water Bodies	23.9
Solid Waste	76.7
Sensitive Population	—
Asthma	93.1
Cardio-vascular	99.4
Low Birth Weights	57.6
Socioeconomic Factor Indicators	—

Education	72.6
Housing	76.3
Linguistic	6.27
Poverty	85.5
Unemployment	66.6

7.2. Healthy Places Index Scores

The maximum Health Places Index score is 100. A high score (i.e., greater than 50) reflects healthier community conditions compared to other census tracts in the state.

Indicator	Result for Project Census Tract
Economic	—
Above Poverty	19.44052355
Employed	1.000898242
Median HI	21.95560118
Education	—
Bachelor's or higher	25.40741691
High school enrollment	100
Preschool enrollment	6.043885538
Transportation	—
Auto Access	31.75927114
Active commuting	3.041190812
Social	—
2-parent households	8.507635057
Voting	21.6091364
Neighborhood	—
Alcohol availability	88.1688695
Park access	8.161170281
Retail density	8.738611574
Supermarket access	16.33517259

Tree canopy	3.015526755
Housing	—
Homeownership	67.1885025
Housing habitability	34.71063775
Low-inc homeowner severe housing cost burden	78.82715257
Low-inc renter severe housing cost burden	29.16720133
Uncrowded housing	25.1764404
Health Outcomes	—
Insured adults	19.196715
Arthritis	0.0
Asthma ER Admissions	1.1
High Blood Pressure	0.0
Cancer (excluding skin)	0.0
Asthma	0.0
Coronary Heart Disease	0.0
Chronic Obstructive Pulmonary Disease	0.0
Diagnosed Diabetes	0.0
Life Expectancy at Birth	1.9
Cognitively Disabled	13.1
Physically Disabled	16.6
Heart Attack ER Admissions	0.2
Mental Health Not Good	0.0
Chronic Kidney Disease	0.0
Obesity	0.0
Pedestrian Injuries	89.4
Physical Health Not Good	0.0
Stroke	0.0
Health Risk Behaviors	—

Binge Drinking	0.0
Current Smoker	0.0
No Leisure Time for Physical Activity	0.0
Climate Change Exposures	—
Wildfire Risk	12.8
SLR Inundation Area	0.0
Children	6.8
Elderly	64.7
English Speaking	74.7
Foreign-born	10.4
Outdoor Workers	11.0
Climate Change Adaptive Capacity	—
Impervious Surface Cover	93.6
Traffic Density	64.4
Traffic Access	23.0
Other Indices	—
Hardship	83.9
Other Decision Support	—
2016 Voting	38.2

7.3. Overall Health & Equity Scores

Metric	Result for Project Census Tract
CalEnviroScreen 4.0 Score for Project Location (a)	84.0
Healthy Places Index Score for Project Location (b)	4.00
Project Located in a Designated Disadvantaged Community (Senate Bill 535)	No
Project Located in a Low-Income Community (Assembly Bill 1550)	Yes
Project Located in a Community Air Protection Program Community (Assembly Bill 617)	No

a: The maximum CalEnviroScreen score is 100. A high score (i.e., greater than 50) reflects a higher pollution burden compared to other census tracts in the state.
b: The maximum Health Places Index score is 100. A high score (i.e., greater than 50) reflects healthier community conditions compared to other census tracts in the state.

7.4. Health & Equity Measures

No Health & Equity Measures selected.

7.5. Evaluation Scorecard

Health & Equity Evaluation Scorecard not completed.

7.6. Health & Equity Custom Measures

No Health & Equity Custom Measures created.

8. User Changes to Default Data

Screen	Justification
Construction: Construction Phases	See SWAPE's comment on "Unsubstantiated Changes to Individual Construction Phase Lengths."
Construction: Dust From Material Movement	Consistent with the DEIR's model.
Construction: Architectural Coatings	Consistent with the DEIR's model.
Construction: Paving	—

Attachment C

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

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

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

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.
B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist
California Certified Hydrogeologist
Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2104, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, perfluorooctanoic acid (PFOA) contamination of groundwater, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

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

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

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public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

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principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Coloradao.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

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Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal repesentatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

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Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F**. 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukanaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

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Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

Attachment D

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

SOIL WATER AIR PROTECTION ENTERPRISE
2656 29th Street, Suite 201
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Office: (310) 452-5555
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Email: prosenfeld@swape.com

Paul Rosenfeld, Ph.D.

Chemical Fate and Transport & Air Dispersion Modeling

Principal Environmental Chemist

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on volatile organic compound filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Focus on wastewater treatment.

Professional Experience

Dr. Rosenfeld has over 25 years of experience conducting environmental investigations and risk assessments for evaluating impacts to human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risk, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, industrial, military and agricultural sources, unconventional oil drilling operations, and locomotive and construction engines. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities. Dr. Rosenfeld has also successfully modeled exposure to contaminants distributed by water systems and via vapor intrusion.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particulate matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, creosote, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants. Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at sites and has testified as an expert witness on numerous cases involving exposure to soil, water and air contaminants from industrial, railroad, agricultural, and military sources.

Professional History:

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H_2O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist

Publications:

Rosenfeld P. E., Spaeth K., Hallman R., Bressler R., Smith, G., (2022) Cancer Risk and Diesel Exhaust Exposure Among Railroad Workers. *Water Air Soil Pollution.* **233,** 171.

Remy, L.L., Clay T., Byers, V., **Rosenfeld P. E.** (2019) Hospital, Health, and Community Burden After Oil Refinery Fires, Richmond, California 2007 and 2012. *Environmental Health.* 18:48

Simons, R.A., Seo, Y. **Rosenfeld, P**., (2015) Modeling the Effect of Refinery Emission On Residential Property Value. Journal of Real Estate Research. 27(3):321-342

Chen, J. A, Zapata A. R., Sutherland A. J., Molmen, D.R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.,** Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermod and Empirical Data. *American Journal of Environmental Science*, 8(6), 622-632.

Rosenfeld, P.E. & Feng, L. (2011). *The Risks of Hazardous Waste.* Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

Gonzalez, J., Feng, L., Sutherland, A., Waller, C., Sok, H., Hesse, R., **Rosenfeld, P.** (2010). PCBs and Dioxins/Furans in Attic Dust Collected Near Former PCB Production and Secondary Copper Facilities in Sauget, IL. *Procedia Environmental Sciences*. 113–125.

Feng, L., Wu, C., Tam, L., Sutherland, A.J., Clark, J.J., **Rosenfeld, P.E.** (2010). Dioxin and Furan Blood Lipid and Attic Dust Concentrations in Populations Living Near Four Wood Treatment Facilities in the United States. *Journal of Environmental Health*. 73(6), 34-46.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2010). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Wood and Paper Industries.* Amsterdam: Elsevier Publishing.

Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2009). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Petroleum Industry*. Amsterdam: Elsevier Publishing.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. *WIT Transactions on Ecology and the Environment, Air Pollution,* 123 (17), 319-327.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, 70, 002252-002255.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, 70, 000527-000530.

Hensley, A.R. A. Scott, J. J. J. Clark, **Rosenfeld, P.E.** (2007). Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility. *Environmental Research*. 105, 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007). The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities. *Water Science & Technology* 55(5), 345-357.

Rosenfeld, P. E., M. Suffet. (2007). The Anatomy Of Odour Wheels For Odours Of Drinking Water, Wastewater, Compost And The Urban Environment. *Water Science & Technology* 55(5), 335-344.

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Rosenfeld, P. E. (1991). How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

Presentations:

Rosenfeld, P.E., "The science for Perfluorinated Chemicals (PFAS): What makes remediation so hard?" Law Seminars International, (May 9-10, 2018) 800 Fifth Avenue, Suite 101 Seattle, WA.

Rosenfeld, P.E., Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society.* Lecture conducted from Santa Clara, CA.

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Atrazine: A Persistent Pesticide in Urban Drinking Water. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

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Rosenfeld, P.E. (April 19-23, 2009). Perfluoroctanoic Acid (PFOA) and Perfluoroactane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

Rosenfeld, P.E. (April 19-23, 2009). Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*. Lecture conducted from Tuscon, AZ.

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Rosenfeld, P. E. (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. The *23rd Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld P. E. (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

Rosenfeld P. E. (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama. *The AEHS Annual Meeting.* Lecture conducted from San Diego, CA.

Hensley A.R., Scott, A., **Rosenfeld P.E.,** Clark, J.J.J. (August 21 – 25, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006*. Lecture conducted from Radisson SAS Scandinavia Hotel in Oslo Norway.

Hensley A.R., Scott, A., **Rosenfeld P.E.,** Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition.* Lecture conducted from Boston Massachusetts.

Paul Rosenfeld Ph.D. (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference.* Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

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Paul Rosenfeld Ph.D. (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference.* Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference.* Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D. (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

Paul Rosenfeld, Ph.D. (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

Rosenfeld, P. E., Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference* Orlando, FL.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants*.. Lecture conducted from Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

Paul Rosenfeld, Ph.D. (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Using High Carbon Wood Ash to Control Compost Odor. *Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Grey, M. A. (September 22-24, 2002). Biocycle Composting For Coastal Sage Restoration. *Northwest Biosolids Management Association*. Lecture conducted from Vancouver Washington..

Rosenfeld, P.E. and Grey, M. A. (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conferenc*e. Lecture conducted from Indianapolis, Maryland.

Rosenfeld. P.E. (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation.* Lecture conducted from Anaheim California.

Rosenfeld. P.E. (October 16, 2000). Wood ash and biofilter control of compost odor. *Biofest.* Lecture conducted from Ocean Shores, California.

Rosenfeld, P.E. (2000). Bioremediation Using Organic Soil Amendments. *California Resource Recovery Association*. Lecture conducted from Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings*. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America*. Lecture conducted from Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell.* Lecture conducted from Seattle Washington.

Rosenfeld, P.E., C.L. Henry. (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest.* Lecture conducted from Lake Chelan, Washington.

Rosenfeld, P.E, C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America*. Lecture conducted from Anaheim California.

Teaching Experience:

UCLA Department of Environmental Health (Summer 2003 through 20010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded:

California Integrated Waste Management Board. $41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: $10,000 grant awarded to San Diego State University.
Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. $100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. $20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: $10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: $15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. $500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993

Deposition and/or Trial Testimony:

In the Superior Court of the State of California, County of San Bernardino
Billy Wildrick, Plaintiff vs. BNSF Railway Company
Case No. CIVDS1711810
Rosenfeld Deposition 10-17-2022

In the State Court of Bibb County, State of Georgia
Richard Hutcherson, Plaintiff vs Norfolk Southern Railway Company
Case No. 10-SCCV-092007
Rosenfeld Deposition 10-6-2022

In the Civil District Court of the Parish of Orleans, State of Louisiana
Millard Clark, Plaintiff vs. Dixie Carriers, Inc. et al.
Case No. 2020-03891
Rosenfeld Deposition 9-15-2022

In The Circuit Court of Livingston County, State of Missouri, Circuit Civil Division
Shirley Ralls, Plaintiff vs. Canadian Pacific Railway and Soo Line Railroad
Case No. 18-LV-CC0020
Rosenfeld Deposition 9-7-2022

In The Circuit Court of the 13th Judicial Circuit Court, Hillsborough County, Florida Civil Division
Jonny C. Daniels, Plaintiff vs. CSX Transportation Inc.
Case No. 20-CA-5502
Rosenfeld Deposition 9-1-2022

In The Circuit Court of St. Louis County, State of Missouri
Kieth Luke et. al. Plaintiff vs. Monsanto Company et. al.
Case No. 19SL-CC03191
Rosenfeld Deposition 8-25-2022

In The Circuit Court of the 13th Judicial Circuit Court, Hillsborough County, Florida Civil Division
Jeffery S. Lamotte, Plaintiff vs. CSX Transportation Inc.
Case No. NO. 20-CA-0049
Rosenfeld Deposition 8-22-2022

In State of Minnesota District Court, County of St. Louis Sixth Judicial District
Greg Bean, Plaintiff vs. Soo Line Railroad Company
Case No. 69-DU-CV-21-760
Rosenfeld Deposition 8-17-2022

In United States District Court Western District of Washington at Tacoma, Washington
John D. Fitzgerald Plaintiff vs. BNSF
Case No. 3:21-cv-05288-RJB
Rosenfeld Deposition 8-11-2022

In Circuit Court of the Sixth Judicial Circuit, Macon Illinois
Rocky Bennyhoff Plaintiff vs. Norfolk Southern
Case No. 20-L-56
Rosenfeld Deposition 8-3-2022

In Court of Common Pleas, Hamilton County Ohio
Joe Briggins Plaintiff vs. CSX
Case No. A2004464
Rosenfeld Deposition 6-17-2022

In the Superior Court of the State of California, County of Kern
George LaFazia vs. BNSF Railway Company.
Case No. BCV-19-103087
Rosenfeld Deposition 5-17-2022

In the Circuit Court of Cook County Illinois
Bobby Earles vs. Penn Central et. al.
Case No. 2020-L-000550
Rosenfeld Deposition 4-16-2022

In United States District Court Easter District of Florida
Albert Hartman Plaintiff vs. Illinois Central
Case No. 2:20-cv-1633
Rosenfeld Deposition 4-4-2022

In the Circuit Court of the 4th Judicial Circuit, in and For Duval County, Florida
Barbara Steele vs. CSX Transportation
Case No.16-219-Ca-008796
Rosenfeld Deposition 3-15-2022

In United States District Court Easter District of New York
Romano et al. vs. Northrup Grumman Corporation
Case No. 16-cv-5760
Rosenfeld Deposition 3-10-2022

In the Circuit Court of Cook County Illinois
Linda Benjamin vs. Illinois Central
Case No. No. 2019 L 007599
Rosenfeld Deposition 1-26-2022

In the Circuit Court of Cook County Illinois
Donald Smith vs. Illinois Central
Case No. No. 2019 L 003426
Rosenfeld Deposition 1-24-2022

In the Circuit Court of Cook County Illinois
Jan Holeman vs. BNSF
Case No. 2019 L 000675
Rosenfeld Deposition 1-18-2022

In the State Court of Bibb County State of Georgia
Dwayne B. Garrett vs. Norfolk Southern
Case No. 20-SCCV-091232
Rosenfeld Deposition 11-10-2021

In the Circuit Court of Cook County Illinois
Joseph Ruepke vs. BNSF
Case No. 2019 L 007730
Rosenfeld Deposition 11-5-2021

In the United States District Court For the District of Nebraska
Steven Gillett vs. BNSF
Case No. 4:20-cv-03120
Rosenfeld Deposition 10-28-2021

In the Montana Thirteenth District Court of Yellowstone County
James Eadus vs. Soo Line Railroad and BNSF
Case No. DV 19-1056
Rosenfeld Deposition 10-21-2021

In the Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al.cvs. Cerro Flow Products, Inc.
Case No. 0i9-L-2295
Rosenfeld Deposition 5-14-2021
Trial October 8-4-2021

In the Circuit Court of Cook County Illinois
Joseph Rafferty vs. Consolidated Rail Corporation and National Railroad Passenger Corporation d/b/a AMTRAK,
Case No. 18-L-6845
Rosenfeld Deposition 6-28-2021

In the United States District Court For the Northern District of Illinois
Theresa Romcoe vs. Northeast Illinois Regional Commuter Railroad Corporation d/b/a METRA Rail
Case No. 17-cv-8517
Rosenfeld Deposition 5-25-2021

In the Superior Court of the State of Arizona In and For the Cunty of Maricopa
Mary Tryon et al. vs. The City of Pheonix v. Cox Cactus Farm, L.L.C., Utah Shelter Systems, Inc.
Case No. CV20127-094749
Rosenfeld Deposition 5-7-2021

In the United States District Court for the Eastern District of Texas Beaumont Division
Robinson, Jeremy et al vs. CNA Insurance Company et al.
Case No. 1:17-cv-000508
Rosenfeld Deposition 3-25-2021

In the Superior Court of the State of California, County of San Bernardino
Gary Garner, Personal Representative for the Estate of Melvin Garner vs. BNSF Railway Company.
Case No. 1720288
Rosenfeld Deposition 2-23-2021

In the Superior Court of the State of California, County of Los Angeles, Spring Street Courthouse
Benny M Rodriguez vs. Union Pacific Railroad, A Corporation, et al.
Case No. 18STCV01162
Rosenfeld Deposition 12-23-2020

In the Circuit Court of Jackson County, Missouri
Karen Cornwell, Plaintiff, vs. Marathon Petroleum, LP, Defendant.
Case No. 1716-CV10006
Rosenfeld Deposition 8-30-2019

In the United States District Court For The District of New Jersey
Duarte et al, Plaintiffs, vs. United States Metals Refining Company et. al. Defendant.
Case No. 2:17-cv-01624-ES-SCM
Rosenfeld Deposition 6-7-2019

In the United States District Court of Southern District of Texas Galveston Division
M/T Carla Maersk vs. Conti 168., Schiffahrts-GMBH & Co. Bulker KG MS "Conti Perdido" Defendant.
Case No. 3:15-CV-00106 consolidated with 3:15-CV-00237
Rosenfeld Deposition 5-9-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
Carole-Taddeo-Bates et al., vs. Ifran Khan et al., Defendants
Case No. BC615636
Rosenfeld Deposition 1-26-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
The San Gabriel Valley Council of Governments et al. vs El Adobe Apts. Inc. et al., Defendants
Case No. BC646857
Rosenfeld Deposition 10-6-2018; Trial 3-7-19

In United States District Court For The District of Colorado
Bells et al. Plaintiffs vs. The 3M Company et al., Defendants
Case No. 1:16-cv-02531-RBJ
Rosenfeld Deposition 3-15-2018 and 4-3-2018

In The District Court Of Regan County, Texas, 112th Judicial District
Phillip Bales et al., Plaintiff vs. Dow Agrosciences, LLC, et al., Defendants
Cause No. 1923
Rosenfeld Deposition 11-17-2017

In The Superior Court of the State of California In And For The County Of Contra Costa
Simons et al., Plaintifs vs. Chevron Corporation, et al., Defendants
Cause No. C12-01481
Rosenfeld Deposition 11-20-2017

In The Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition 8-23-2017

In United States District Court For The Southern District of Mississippi
Guy Manuel vs. The BP Exploration et al., Defendants
Case No. 1:19-cv-00315-RHW
Rosenfeld Deposition 4-22-2020

In The Superior Court of the State of California, For The County of Los Angeles
Warrn Gilbert and Penny Gilber, Plaintiff vs. BMW of North America LLC
Case No. LC102019 (c/w BC582154)
Rosenfeld Deposition 8-16-2017, Trail 8-28-2018

In the Northern District Court of Mississippi, Greenville Division
Brenda J. Cooper, et al., Plaintiffs, vs. Meritor Inc., et al., Defendants
Case No. 4:16-cv-52-DMB-JVM
Rosenfeld Deposition July 2017

In The Superior Court of the State of Washington, County of Snohomish
Michael Davis and Julie Davis et al., Plaintiff vs. Cedar Grove Composting Inc., Defendants
Case No. 13-2-03987-5
Rosenfeld Deposition, February 2017
Trial March 2017

In The Superior Court of the State of California, County of Alameda
Charles Spain., Plaintiff vs. Thermo Fisher Scientific, et al., Defendants
Case No. RG14711115
Rosenfeld Deposition September 2015

In The Iowa District Court In And For Poweshiek County
Russell D. Winburn, et al., Plaintiffs vs. Doug Hoksbergen, et al., Defendants
Case No. LALA002187
Rosenfeld Deposition August 2015

In The Circuit Court of Ohio County, West Virginia
Robert Andrews, et al. v. Antero, et al.
Civil Action No. 14-C-30000
Rosenfeld Deposition June 2015

In The Iowa District Court for Muscatine County
Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant
Case No. 4980
Rosenfeld Deposition May 2015

In the Circuit Court of the 17th Judicial Circuit, in and For Broward County, Florida
Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.
Case No. CACE07030358 (26)
Rosenfeld Deposition December 2014

In the County Court of Dallas County Texas
Lisa Parr et al, Plaintiff, vs. Aruba et al, Defendant.
Case No. cc-11-01650-E
Rosenfeld Deposition: March and September 2013
Rosenfeld Trial April 2014

In the Court of Common Pleas of Tuscarawas County Ohio
John Michael Abicht, et al., Plaintiffs, vs. Republic Services, Inc., et al., Defendants
Case No. 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)
Rosenfeld Deposition October 2012

In the United States District Court for the Middle District of Alabama, Northern Division
James K. Benefield, et al., Plaintiffs, vs. International Paper Company, Defendant.
Civil Action No. 2:09-cv-232-WHA-TFM
Rosenfeld Deposition July 2010, June 2011

In the Circuit Court of Jefferson County Alabama
Jaeanette Moss Anthony, et al., Plaintiffs, vs. Drummond Company Inc., et al., Defendants
Civil Action No. CV 2008-2076
Rosenfeld Deposition September 2010

In the United States District Court, Western District Lafayette Division
Ackle et al., Plaintiffs, vs. Citgo Petroleum Corporation, et al., Defendants.
Case No. 2:07CV1052
Rosenfeld Deposition July 2009

Responses to Comment Letter O5 - Golden State Environmental Justice Alliance

O5.1 This comment is introductory and does not raise any substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O5.2 This comment is a summary of the Project and does not raise any substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O5.3 A floor plan, detailed elevations, and conceptual grading plan are included in the Project's Planning Application, available at the City of Banning Community Development Department, Planning Division. The colored elevations in the Draft EIR, provided as Draft EIR Figure 3-5: Elevations, depict the conceptual building based on the detailed elevations submitted during the planning application process. A floor plan, grading plan, and detailed elevations were not included in the Draft EIR, nor are they required to be included, since it is not necessary to fulfill the purpose of the Draft EIR to provide information of the Project's environment impacts caused during construction and operations of the Project. Draft EIR pages 3-6 through 3-8 describe the Project's height, floor area, parking spaces, grading, and other detailed Project information, including a Project narrative. In any event, the comment does not state how the EIR's analysis is deficient. Additionally, grading and earthwork information is provided in Draft EIR Figure 3-4: Plot Plan. Accordingly, no further response is needed.

O5.4 Refer to **Response O5.3**. Draft EIR Figure 3-4 depicts the total site coverage of the Project site as parking/paved areas, landscaped areas, and building area. All detailed information is available in the Project's Planning Application, available the City of Banning Community Development Department, Planning Division. Additionally, detailed descriptions of the Project proponents, such as the Project's height, floor area, parking spaces, are included in Draft EIR pages 3-6 through 3-8.

O5.5 Figures are conceptual in nature and are not design or construction documents. Per the City of Banning Municipal Section 17.12.030 the building cannot exceed the maximum allowed height of 50 feet for all commercial and industrial districts, including Business Park land use designation. Desing of the building will be reviewed and approved by the City of Banning Building and Safety department prior to the issuance of building permits, thus ensuring code compliance.

O5.6 The EIR analyzed 250,000 CYs of net import/export of soil for the purpose of air quality and GHG emissions analysis and these quantities are independently verified by the City prior to issuance of grading permit. Further, hauling trips for soil import/export is discussed and analyzed in the Air Quality Assessment and Draft EIR Section 4.2.

O5.7 Refer to **Responses O5.40** through **O5.74.**

O5.8 The commenter first suggests the Draft EIR is flawed because it does not include relevant environmental justice issues and refers to CEQA Section 15131(c), which says economic, social and particularly housing factors shall be considered by public agencies together with technological and environmental factors, implying that an EIR that does not include this information is deficient. The commenter's reference to Section 15131(c) is incomplete. Section 15131(c) states that

economic, social and particularly housing factors shall be considered by public agencies together with technological and environmental factors "in deciding whether changes in a project are feasible to reduce or avoid significant effects on the environment identified in the EIR." Accordingly, this subsection requires that these factors be considered (1) if the EIR identifies significant effects, and (2) if such factors would change whether project features or mitigation would actually reduce or avoid those impacts. In addition, Section 15131(a) states that economic or social effects of a project shall not be treated as significant effects on the environment. Accordingly, the inclusion of economic, social and housing factors in an EIR is highly dependent on the specific project and its impacts, and the presence of such factors are not, in and of themselves, indicative of project impacts.

The commenter then references the CalEnviroScreen 4.0 screening tool. CalEnviroScreen 4.0 results and the relevance to the Project and DEIR's analysis and conclusions are discussed on pages 11 and 12 of the Health Risk Assessment, provided as Draft EIR Appendix B.

The commenter states that the Project's census tract ranks in the 97th percentile for ozone burden and the 84th percentile for traffic burdens, and then refers to potential health effects from ozone and exhaust fumes. The Draft EIR pages 4.2-21 through 4.2-30 discusses the amount of Project emissions and the potential health effects that can result from air and GHG emissions. In addition, a health risk assessment was prepared for the Project and determined that cancer risk and non-carcinogenic hazards to the nearest residential receptors and workers are below SCAQMD's health risk thresholds. The Draft EIR discusses the health risk assessment at Draft EIR pages 4.2-26 and 4.2-30 and attaches it as Appendix B. This portion of the comment does not raise a specific deficiency with the DEIR's analysis or conclusions on these topics, and therefore no further response is warranted.

The commenter states that the census tract experiences high rates of contaminated drinking water (78th percentile) and that poor communities in rural areas are exposed to contaminants in drinking water more often than people in other states. The DEIR evaluates water quality and supply impacts in Sections 4.9 and 4.14 and impacts were determined to be less than significant. The comment does not raise any specific issues with respect to the content and adequacy of the DEIR's analysis on this topic or the Project's environmental effects; therefore, no further response is warranted.

The commenter states that the census tract ranks in the 87th percentile for hazardous waste facility impacts and 77th percentile for solid waste impacts, and that hazardous and solid waste facilities can expose people to hazardous chemicals, release toxic gases, and leach chemicals into soil. The DEIR evaluates hazardous waste and solid waste impacts at Sections 4.8 and 4.14 and impacts were determined to be less than significant. The comment does not raise any specific issues with respect to the content and adequacy of the DEIR's analysis on this topic or the Project's environmental effects; therefore, no further response is warranted.

The commenter states that the census tract is a diverse community of 6 percent Hispanic, 19 percent Native-American and 2 percent Asian-American residents, has a high rate of low

educational attainment, and has a high poverty rate. As noted above, CEQA Section 15131(a) states that economic and social factors are not, in and of themselves, to be considered environmental impacts, and CEQA Section 15131(c) states that such factors are to be considered in deciding whether changes in a project are feasible to reduce or avoid significant effects on the environment identified in the EIR. The commenter has not stated how the community characteristics listed change the DEIR's impact conclusions or the extent to which the Project's proposed design or mitigation reduce the Project's effects. Because the comment does not raise a substantive issue on the content of the DEIR, no further response is warranted.

The commenter states that the census tract adjacent to the Project site is identified as a SB 535 Disadvantaged Community. SB 535 established initial requirements for minimum funding levels to "Disadvantaged Communities" (DACs). The legislation also gives California EPA the responsibility for identifying those communities, stating that the designation of disadvantaged communities must be based on "geographic, socioeconomic, public health, and environmental hazard criteria." These funds must be used for programs that further reduce greenhouse gas emissions. SB 535 does not include project-specific requirements or prohibit developments in proximity to the designated communities. This comment is noted and will be provided to the decision makers for review and consideration. Because the comment does not raise a substantive issue on the content of the DEIR, no further response is warranted.

O5.9 The commenter suggests that the Project would result in significant and unavoidable impacts on the disadvantaged community and must be included in the EIR. However, as discussed previously, an EIR is not required to discuss economic or social information and Section 15131(a) specifically states that economic or social effects of a project shall not be treated as significant effects on the environment.

O5.10 The commenter states that CalEEMod is not listed as an approved Title 24 compliance energy modeling software. With specific regard to the use of CalEEMod for the purposes of modeling energy consumption, the Lead Agency has historically and successfully employed CalEEMod for this purpose. Further, the SCAQMD, the expert commenting agency for air quality considerations, endorses use of CalEEMod to provide a "uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and GHG emissions associated with both construction and operational from a variety of land use projects." Through the use of CalEEMod, SCAQMD integrates air quality and energy impact analyses. To ensure consistency of and accuracy of analyses in support of SCAQMD policies, the Lead Agency has determined that CalEEMod is appropriate for CEQA modeling of both air quality impacts and energy consumption.

The energy modeling protocols cited by the commenter (CBECC-Com, EnergyPro, and IES VE) are used for the performance approach (energy budget) method for demonstrating compliance with the Title 24 Energy Standards. The analysis in Draft EIR Section 4.5 discloses the amount of energy that the Project would require and is not intended or required to demonstrate compliance for Title 24 energy standard performance.

Additionally, the EIR discloses the Project's electricity consumption, natural gas consumption, and transportation fuel consumption and determined that the Project's energy consumption would not be inefficient or wasteful as the Project will be required to comply with the Title 24 Nonresidential Building Energy Efficiency Standards and the CALGreen standards published by the California Energy Commission, which contain stringent mandatory standards for mechanical systems, lighting (indoor and outdoor), and appliances to minimize energy use. Therefore, the Project used the appropriate model to calculate and disclose the Project's energy use, and also demonstrated that the Project would be required to comply with 2022 Title 24 Building Energy Efficiency and CALGreen Standards. The findings and conclusions of the EIR are not affected; no revisions are necessary.

O5.11 The commenter notes that the Draft EIR concludes that the Project is consistent with the goals of Connect SoCal. However, the commenter believes the Project is not consistent with Connect SoCal and suggests that the Draft EIR contains errors in modeling but does not identify them. The commenter suggests that the Project is directly inconsistent with Goal 5 "Reduce greenhouse gas emissions and improve air quality," Goal 6 "Support healthy and equitable communities," and Goal 7 "Adapt to a changing climate" but provides no evidence to support these claims.

O5.12 The analysis clearly states that the Project will comply with all regulations and will not interfere with SCAG's ability to achieve "mobile source GHG reduction targets," meaning the Project will be consistent with SCAG's goals and be part of the State's plan to transition from combustion engine powered vehicles to ZE vehicles. The Draft EIR also determined that the Project would result in a significant and unavoidable cumulative GHG impact because it "could" impede statewide 2030 and 2050 GHG reductions. This determination was conservatively made based on the fact that the Project exceeds the City's 3,000 $MTCO_2e$ threshold for GHG emissions during opening year, however these emissions will decrease as California transitions to ZE vehicles. Although the Project is consistent with all applicable plans and goals, considering the magnitude of the GHG exceedance over the 3,000 $MTCO_2e$ threshold during opening year, it seemed inappropriate to categorize the impact as less than significant. As a result, the Project can be both consistent with SCAG's Connect SoCal (RTP/SCS) and result in a potentially significant and unavoidable cumulative GHG impact.

O5.13 Refer to **Response O5.14**. Changes have been made to the Draft EIR Section 4.8, Hazards and Hazardous Materials. A less than significant impact would occur with respect to compatibility with the Banning Airport Land Use Compatibility Plan. As such, recirculation of the EIR is not required.

O5.14 The analysis of the City's compliance of the Banning Municipal ALUCP is outside of the scope of the Project. Further, the Project is indeed within Zone D, which requires that non-residential uses shall not exceed the intensity criteria of 200 people-per-acre. The Project's employment generation of 2,481 persons is discussed in Draft EIR Section 4.12: Transportation and in Draft EIR Appendix K. As stated on Draft EIR page 3-6, the Project would be developed on 131.28 acres of land. Therefore, the Project would have an approximately 19 persons-per-acre intensity, which is within the intensity criteria of 200 people-per-acre for non-residential uses within Compatibility Zone D of the Banning Municipal ALUCP. The Project filed Obstruction Evaluation / Airport

Airspace Analysis (OE/AAA) requests with the Federal Aviation Administration (FAA) pursuant to the Major Action Review requirements of the Riverside County ALUC. The FAA determined that the Project would have no hazard to air navigation. These determination letters are available as **Appendix E** to the Final EIR. Impacts would be less than significant. Changes to the Draft EIR have occurred, refer to Section 3.0, Errata of this Final EIR.

O5.15 Under CEQA Guidelines Section 15064.3, automobile delay no longer is considered an environmental impact under CEQA, and therefore this comment does not raise concerns within the scope of CEQA. The analysis included in the Draft EIR concerning LOS analysis and the proposed improvements was provided for informational purposes only for the City's use the in evaluation of the Project and considering conditions of approval outside of CEQA framework. The implementation of these improvements would be based on direct discussion between City staff and the Applicant and would be imposed via the Conditions of Approval process, not through CEQA. Further, the Project's land use impacts are based in part upon determining compliance with the City's General Plan. The proposed roadway improvements along the Project's frontage would be in collaboration with developers of adjacent properties and projects as well as with the City. All roadway improvements would be consistent with the City of Banning General Plan Circulation Element.

O5.16 Based on the State of Office of Planning and Research Technical Advisory (page 4), "vehicle miles traveled" refers to the amount of distance of automobile travel attributable to a project,' where automobile refers to passenger vehicles, specifically cars and light trucks. A VMT study was prepared for the Project and is provided as Draft EIR Appendix K2. It was determined that VMT associated with passenger vehicles would exceed the City's VMT threshold and recommended mitigation measures were included to reduce potentially significant impacts in compliance with SB 743 to reduce greenhouse gas emissions. Additionally, the RIVCOM model was used to calculate trips generated by the Project and was determined by the City Guidelines to be the best and highest use for calculating Project trips.

O5.17 The City respectfully disagrees with the assertion that the Draft EIR has not adequately analyzed the Project's potential to substantially increase hazards due to a geometric design feature, incompatible use, or the Project's potential to result in inadequate emergency access. In Draft EIR Section 4.12 page 4.12-22, the Draft EIR identifies the section of the City's Municipal Code and a direct quote of which design standard that the Project would be required to adhere to with respect to ingress and egress design. Additionally, a copy of the Project site plan applicable truck-turning templates was included in the Draft EIR.

As noted in Impact 4.12-4 of the Draft EIR, adequate emergency access would be provided by the Project. It should be noted that the roadways serving the Project site are generally straight and flat. Based on the items noted in this response and Draft EIR Section 4.12-4, the Project would provide adequate emergency access to the Project site and would not create hazards due to geometric design features.

O5.18 Refer to **Response O5.15**. The analysis included in the Draft EIR concerning LOS analysis and the proposed improvements was provided for informational purposes only for the City's use in evaluation the Project and considering conditions of approval outside of CEQA framework. The implementation of these improvements would be based on direct discussion between City staff and the Applicant and would be imposed via the Conditions of Approval process, not through CEQA. Further, the Project's land use impacts are based in part upon determining compliance with the City's General Plan.

O5.19 The Project would implement the recommendations provided within the Traffic Impact Analysis. The City would require these recommendations as conditions of approval. Implementation of these improvements, which include roadway improvements, signalization of intersections, road/lane striping, and others, would all be done in accordance with City of Banning Municipal Code, standards, and design guidelines. Adherence with these measures would ensure that geometric features provide for the safe operation of motor vehicles and would limit conflict with other vehicles. Further, all design of these improvements would be reviewed by the City and appropriate emergency services, such as the Fire Department. This would ensure code compliance and adequate maneuverability space for emergency vehicles. While the text of the Draft EIR says these improvements "could" be implemented, this was completed prior to the availability of the conditions of approval of the Project. As noted in the staff packet for the Project, the Project would be conditioned to construct these improvements.

O5.20 The truck turning exhibit provided in the Draft EIR is not a design or construction document and need not provide all information required for the purposes of construction. Horizontal geometric design of proposed roadways and internal circulations would be required to comply with the City's Municipal Code. Additionally, all proposed roadways and internal circulations would be reviewed by the Building and Safety Department and the Fire Department. Additionally, the internal circulation has been designed in accordance with industry standards for buildings with similar uses. These codes have been developed by the City of Banning to ensure safe operation of motor vehicles along roadways in the City, including sight lines, turn radii, and gradation/sloping. Internal circulation designed in accordance with industry standards for buildings with similar uses would allow for the safe and efficient operation of trucks on the Project site. Further, while it is feasible that two-way traffic would occur on the Project site, operations of transload warehouse buildings typically have a general one-way "flow" of trucks through the site to prevent conflict and improve efficiencies in operations.

O5.21 Refer to **Response O5.20**. The modeling performed to determine potential Project impacts to air quality and GHG emissions is addressed in Draft EIR Section 4.2 Air Quality, Section 4.7 Greenhouse Gas Emissions, Appendix B, and Appendix G. Based on the assumptions of the AQ and GHG models, truck idling time has already been captured. Further, MM AQ-4 would require trucks to limit idle time.

O5.22 The Project plans will be reviewed by the City of Banning Building and Safety Department and Fire Department before the issuance of building permits to ensure code compliance. Refer to **Response O5.20**.

O5.23 The Draft EIR address the CEQA thresholds for Impact 4.12-3 and Impact 4.12-4 in Draft EIR Section 4.12 Transportation, and therefore need not be revised. The analyses include discussion of Project compliance with the City General Plan and City Municipal Code design standards, specifically Section 17.24.040, that addresses internal circulation design. Additionally, the Draft EIR discusses how the Project would implement TA Recommendations in compliance with the City's Traffic Impact Analysis Guidelines, which would ensure large trucks have adequate access to and from the Project site and adjacent intersections. With respect to adequate emergency access, the Draft EIR discusses the Project's adherence to design standards for emergency services and sufficient ingress and egress on the Project site. Lastly, the final design and construction plans for any construction or roadway improvements would be reviewed and approved by the City Engineering Department and Fire Marshal during the plan review and prior to Project approval. Refer to **Response O5.20**.

O5.24 Refer to **Responses O5.22** and **O5.23**. Further, coordination with local police and fire service with respect to Project design components has occurred during the review of Project plans. All comments provided by the relevant emergency services plan check reviewers has been implemented. An example of one such comment is for the provision of a fire water tank on the Project site, which has been provided northwest of the building location. Other items which have been reviewed by fire services include the proposed circulation network.

O5.25 Refer to Section 4.03 of the Draft EIR for methodology regarding the cumulative impacts discussion. At the time of the posting of the NOP for the Project, the cumulative projects list was established. Refer to Draft EIR page 4-5. Pursuant CEQA Guidelines, "a cumulative impact consists of an impact which is created as a result of the combination of the Project evaluated in the EIR together with other projects causing related impacts" (14 California Code of Regulations Section 15130[a][1]). The Draft EIR identifies cumulative impact analyses for each resource topic area (Sections 4.1 Aesthetics through 4.15 Wildfire) in each respective section.

O5.26 Section 15125 of the CEQA Guidelines requires that an EIR address the "growth inducing" effects of the Project. Pursuant to Section 15126.2(d) of the Guidelines, a project would be considered to have a growth-inducing effect if it would:

- Directly or indirectly foster economic or population growth, or the construction of additional housing;
- Remove obstacles to population growth;
- Tax existing community services or facilities, requiring the construction of new facilities that could cause significant environmental effects; or
- Encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.

As discussed in detail in Draft EIR Section 5.0: Other CEQA Considerations, the Project would not induce growth. Although the Project would potentially induce an increase in 2,841 employees within the City, the proposed industrial use is accounted for within the City General Plan, as the

Project would be consistent with the planned Business Park land use. Furthermore, employment growth from the Project would not directly induce population growth by 2,841 persons.

For the reasons discussed in the Draft EIR, the Project's employee base is expected to come from within the City or immediately surrounding region within the County and would not require new housing; would have no effect on stimulating population growth; and provide sufficient infrastructure to meet its needs concurrent with development.

O5.27 Refer to **Response O5.26**. With respect to the commenter's attestation that the EIR does not address the Project's impacts associated with air quality and GHG forecasts, the Draft EIR does include a detailed discussion of the Project's impacts to air quality and GHG in each respective section of the Draft EIR (Section 4.2: Air Quality and Section 4.7: Greenhouse Gas Emissions). Further, regarding the use of energy resources, the Draft EIR analyzed the Project's impacts regarding this and is available in Section 4.5: Energy. The EIR determined that the Project would result in less than significant impacts with respect to the potential waste, inefficient, or unnecessary consumption of energy resources.

O5.28 Refer to **Response O5.26**. As noted in Section 7: Effects Found not to be Significant of the Draft EIR, SCAG forecasts job growth within the City at 11,400 jobs by 2045, the most recent job growth forecasts for the City of Banning (September 3, 2020). The Project would account for 25 percent of the forecast provided by SCAG. Additionally, forecasts are not goals established by the City or SCAG. It is important to note that the analysis of the Draft EIR are based on the conditions at the time of the release of the Notice of Preparation (CEQA Guidelines 15125(a)(1)).

O5.29 The sanitary lift station would not induce population growth. The sanitary lift station would serve other projects within this region of the City, further the lift station would be required for the City to provide sanitary sewer services. Other projects in the vicinity of the lift station include the Banning 25 and First Industrial Warehouse Projects. Growth associated with those projects would have been analyzed in their respective environmental documents. No further response is needed.

O5.30 CEQA Guidelines Section 15126.6 requires that a project provide a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. Section 15126.6 further states that an EIR need not consider every conceivable alternative to a project, but rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. The City determined that having three alternatives for the Project provides a reasonable range of alternatives pursuant to CEQA Guidelines Section 15126.6 because the alternatives selected are exemplary of what was determined to be feasible and achieve most of the basic Project objectives, while concurrently reducing the Project's significant and unavoidable impacts (in air quality, GHG, and transportation). In this case, feasible alternatives that meet most of the Project objectives were not able to eliminate the Project's significant and unavoidable impacts. As noted above, an alternative is not required to eliminate all of the Project's significant and unavoidable impacts as incorrectly stated by the Commenter.

It is also noted that the mixed-use project proposed by the Commenter would not meet any of the Project objectives and therefore is not required to be analyzed per CEQA Guidelines Section 15126.6.

O5.31 The Project's cumulative impacts for Air Quality and Transportation have been accounted for in the City's General Plan EIR. Additionally, the significant and unavoidable impacts associated with Air Quality and Transportation would be mitigated to the greatest extent feasible through mitigation measures **MM AQ-1** through **MM AQ-6** and **MM TRANS-1** (Draft EIR Section 4.2 and Draft EIR Section 4.12). The City respectfully disagrees that the Project is not consistent with the following policies identified by the commenter:

Air Quality Policy 1: The City shall be proactive in regulating local pollutant emitters and shall cooperate with the Southern California Association of Governments and the South Coast Air Quality Management District to assure compliance with air quality standards.

The Draft EIR determined that the Project would have a significant and unavoidable impact on with respect to the SCAQMD AQMP and cumulatively considerable net increase in criteria pollutants. However, the Project would incorporate MM AQ-1 through MM AQ-6 to reduce operational impacts to the greatest extent feasible and would include measures that are consistent with the SCAQMD AQMP and General Plan policies. Specifically, MM AQ-1 would utilize "Super-Compliant" low VOC paints and demonstrate prior to the issuance of a building permit, plans that include specifications on the use low VOC and maintenance VOC of emissions. While incorporated to reduce the Project's air quality impacts, MM AQ-3 through MM AQ-6, would mitigate the Project's mobile source emissions, which would mitigate all mobile source emissions, including GHG emissions. As stated in Draft EIR Section 4.7, additional mitigation measures to reduce the Project's mobile emissions is not feasible considering the City has limited ability to address emissions resulting from trucks, cars, and/or emissions generated by trucks outside of City's limits and other mobile emissions sources. The Project would, however, address Project-generated non-mobile emissions by incorporating MM GHG-1, requiring on-site renewable energy; MM GHG-2, requiring the Project to meet or exceed CALGreen Tier 2 Standards; MM GHG-3, diverting 75 percent landfill waste; MM GHG-4, requiring 100 electric landscape equipment, MM GHG-4; and MM GHG-5, requiring electric hookups for future electric trucks. As such, the Draft EIR has discussed the ways in which the Project would maintain consistency with the SCAQMD AQMP and City General Plan through the implementation of applicable mitigation measures and incorporation of PDFs, despite having a significant and unavoidable air quality and GHG impacts. This General Plan policy does not apply on a project-level and requires City-initiated actions, which is outside of the Project scope.

Air Quality Policy 2: The City shall continue to coordinate and cooperate with local, regional, and federal efforts to monitor, manage, and reduce the levels of major pollutants affecting the City and region, with particular emphasis on PM_{10} and ozone emissions, as well as other emissions associated with diesel fueled equipment and motor vehicles.

This General Plan policy does not apply on a project-level and requires City-initiated actions, which is outside of the Project scope.

Air Quality Policy 3: City land use planning efforts shall assure that sensitive receptors are separated from polluting point sources.

The Draft EIR determined that, with the incorporation of MM AQ-6, which requires the Project to have the necessary charging stations for cargo handling equipment in compliance with the SCAQMD Rule 2305 (Warehouse Indirect Source Rule), the Project would have a less than significant impact on sensitive receptors. This General Plan policy does not apply on a project-level and requires City-initiated actions, which is outside of the Project scope.

Air Quality Policy 4: Development proposals brought before the City shall be reviewed for their potential to adversely impact local and regional air quality and shall be required to mitigate any significant impacts.

The Draft EIR addresses potential adverse impacts to local and regional air quality and has incorporated mitigation measures MM AQ-1 through MM AQ-6 and MM GHG-1 through MM GHG-5, as discussed in Section 4.2 Air Quality and Section 4.7 Greenhouse Gas Emissions.

Circulation Element Policy 6: The City shall maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 interchanges, where Level of Service D or better shall be maintained.

The Draft EIR Section 4.12 Transportation discusses the Project's Traffic Analysis and consistency with the City's LOS policies. While LOS is no longer considered the metric used to determine significant transportation impacts under CEQA pursuant to SB 743, the Draft EIR includes the LOS analysis and recommended improvements for informational purposes.

The City respectfully disagrees with the commenter's attestation that the Draft EIR does not consider the Project's significant and unavoidable impacts in analyzing Project consistency with the City General Plan for the items noted in this response and in Draft EIR Section 4.2 Air Quality, Section 4.7 Greenhouse Gas Emissions, and Section 4.12 Transportation. This General Plan policy does not apply on a project-level and requires City-initiated actions, which is outside of the Project scope.

O5.32 Refer to **Response O5.15.**

O5.33 Refer to **Response O5.25**.

O5.34 Refer to **Response O5.26**.

O5.35 Refer to **Response O5.16.**

O5.36 Refer to **Response O5.26**.

O5.37 Refer to **Response O5.26.**

O5.38 Refer to **Responses O5.25**, **O5.26**, and **O5.28.**

O5.39 This comment includes conclusionary statements, and therefore, no further response is needed.

O5.40 The commentor provides a brief summary of the Project. As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted.

O5.41 The commenter provides their opinion that the Draft EIR fails to adequately evaluate air quality, greenhouse gas, and health risk. However, the commenter provides no evidence to support this opinion. Air quality and health risk impacts are discussed in Draft EIR Section 4.2.5 and GHG are discussed in Draft EIR Section 4.7.5.

O5.42 The commenter summarizes the methodology for inputting data into CalEEMod to calculate construction and operational emissions. As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted.

O5.43 The commenter believes that the CalEEMod inputs are not consistent with Draft EIR and suggests that the EIR be updated to include air quality impacts from construction. However, the commenter does not provide evidence to support this assumption.

O5.44 The commenter shows a screenshot of the CalEEMod output files and notes that the model includes 1,280,400 square feet of unrefrigerated warehouse. The commenter correctly states that the Draft EIR does not include any refrigeration or cold storage. The commenter then refers to the Acoustical Assessment project description in Appendix J. The Acoustical Assessment incorrectly includes the project description of the original Project. However, the original Project, which included cold storage, was determined to not be feasible and the Project was changed to the Project described in the Draft EIR. Refer to **Response S2.5**. Any reference to the Project containing cold storage is an error.

O5.45 The commenter notes that warehouses with cold storage generate more emissions. However, the Project does not include cold storage. Refer to **Response S2.5**. The analysis in the Draft EIR excludes cold storage as shown in the screenshot provided by the commenter. In addition, because the Project does not include cold storage, the Project would not employ refrigerated trucks.

O5.46 As discussed previously; the Project analyzed in the Draft EIR does not include cold storage.

O5.47 The commenter notes that default construction schedule included in CalEEMod has been updated based on the construction schedule provided by contractor.

O5.48 The commenter notes that CalEEMod defaults can be updated if justification is provided. Then has highlighted the justification for the change "project construction schedule." CalEEMod includes default data that can be used when site-specific information is not available, however site-specific data that is supported by substantial evidence should be used if available. In this case, the contractor hired to build the Project provided a construction schedule. The commenter has included a summary of the construction schedule from the air quality report.

O5.49 The commenter claims that changes to the construction schedule are unsubstantiated. However, as previously discussed, the changes are based on the construction schedule provided by the construction contractor and based on their experience as a licensed contractor.

O5.50 Refer to **Response O5.49.**

O5.51 The project description in the Draft EIR anticipated construction taking 18 months to complete. However, the construction schedule provided by the contractor anticipated approximately 19 months. Air quality and greenhouse gas emissions were modeled based on the construction schedule provided by the contractor.

O5.52 The commenter notes that the hauling trip rate has been updated in CalEEMod and includes a screenshot of the model output file, highlighting the note that the change was made because the distance to the borrow site is 10 miles one-way. This comment does not specifically challenge the model inputs.

O5.53 As discussed previously; it is appropriate to update default CalEEMod data with site-specific data when supported by substantial evidence. The contractor and civil engineers determined that the Project would need to import 250,000 CYs of soil and identified the property where the soil would come from. Because the borrow site is located 10 miles from the Project, the distance was updated to reflect that. Hence the note stating, "10 miles one way to borrow site."

O5.54 The commenter suggests that the 406 one-way hauling trips included in the CalEEMod output files is unsupported, however CalEEMod calculated the number of hauling trips necessary to import 250,000 CYs of soil (refer to **Response O5.53**). If the Project didn't need to import or export soil, then the number of haul trips would have remained 0. As a result, the commenter's belief that the number of haul trips was manipulated in some way and requires justification is unsubstantiated and incorrect.

O5.55 The commenter attempted to show that the Project would result in undisclosed construction emissions by modeling their own version of the Project in CalEEMod. However, the commenter did not model the correct land uses described in the Draft EIR and did not follow the construction schedule provided by the contractor. The commenter assumed each phase would be completed sequentially and compressed the construction schedule to fit within an 18-month timeframe. However, the contractor plans to work on multiple phases of construction at the same time, as shown in the construction schedule, resulting in overlapping phases, which is a more cost-effective way to work. As a result, the emissions analysis provided by the commenter is flawed, does not represent the proposed project, and does not match the Project described in the Draft EIR.

O5.56 The commenter notes that Project would exceed SCAQMDs operational threshold for NO_X and includes a screenshot of Table 10 from the Air Quality Assessment in Draft EIR Appendix B. As the comment does not raise any issues with respect to the content and adequacy of the Draft EIR or the Project's environmental effects, no further response is warranted.

O5.57 The commenter agrees that the Project exceeds the SCAQMD NO_X threshold but suggests that additional mitigation could reduce impacts to less than significant and refers the reader to the section of the letter titled "Feasible Mitigation Measures Available to Reduce Emissions."

Draft EIR Table 4.2-9 (same as the Table 10 from the Air Quality Assessment in Draft EIR Appendix B) shows that operational NO_X emissions total 95.6 pounds per day after mitigation, with 22.5 pounds of NO_X coming from passenger vehicles and 54.1 pounds of NO_X coming from trucks. Based on this information it is clear that the majority of NO_X emissions (80 percent) are from mobile sources. As State regulations continue to facilitate the transition from combustion engine powered vehicles to ZE vehicles, these mobile emissions will continue to decrease in the future. The Draft EIR identifies all feasible mitigation, refer to **Response O1.6.**

O5.58 Refer to **Response O5.8**

O5.59 Refer to **Response O5.8**

O5.60 The commenter cites evidence that children are more sensitive to inhaled pollutants. The commenter also notes that the Draft EIR identifies Hoffer Elementary School as the nearest school to the Project, being 0.27 miles (1,425.60 feet) from the Project boundary (the extension of Wilson Street at the intersection of N. Hathaway Street and Morongo Road); however, the school is 0.85 miles (4,488 feet) from the warehouse. Therefore, the Project is located more than the 1,000-foot distance from sensitive receptors recommended in the CARB's Air Quality and Land Use Handbook: A community Health Perspective Community Health. Based on CARB and SCAQMD emissions and modeling analyses, an 80-percent drop-off in pollutant concentrations is expected at approximately 1,000 feet from the warehouse.

Although the commenter suggests that the Project could potentially have detrimental health impacts on children attending the school there is no guidance suggesting that this is the case. However, to be conservative and to model a worst-case scenario, health risk impacts were calculated for students at the elementary school between the ages of two and eleven years old. The cancer risk for students was determined to be 1.38 in one million which is less than SCAQMD's threshold of 10 in one million, therefore impacts to students would be less than significant.

O5.61 The commenter suggests doing cumulative health risk analysis based on all warehouses within 1-mile radius of Project, a more robust cumulative analysis than currently required by SCAQMD but does not indicate the appropriate approach or thresholds based on substantial evidence. SCAQMD has initiated a public process to develop guidance for evaluating cumulative air quality impacts but to date there have been five working group meetings and no final methodologies or thresholds have been adopted.

However, SCAQMD developed thresholds of significance based on the level above which individual project emissions would result in a cumulatively considerable contribution to air basin's existing air quality conditions. Therefore, a project that exceeds the SCAQMD's toxic air contaminant threshold of ten in one million for carcinogenic risk or a one on a chronic hazard index would also result in a cumulatively considerable contribution to a significant cumulative

impact. Inversely, emission volumes below the SCAQMD's thresholds would not result in a cumulatively considerable impact. This analysis follows the approach in SCAQMD's White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution.

As discussed on Draft EIR pages 4.2-29 and 4.2-30 and shown in Table 3: Carcinogenic Risk Assessment and Table 4: Chronic Hazard Assessment of the Health Risk Assessment included in Draft EIR Appendix B, the Project would not exceed the SCAQMD's thresholds for toxic air contaminants. Therefore, the Project's emissions would not result in a cumulatively impact. The comment has been noted for the record and no changes to the document have been made or are required.

O5.62 The commenter notes that the Project exceeds the City's 3,000 $MTCO_2e$ threshold even after mitigating GHG emissions to the maximum extent feasible. As demonstrated in Draft EIR Table 4.7-3: Project-Related GHG Emissions, on-site GHG emissions were reduced to 2,392 $MTCO_2e$ which is below the City's threshold. However mobile sources (trucks and passenger cars) would generate an additional 20,577 $MTCO_2e$. These mobile source emissions are regulated by the federal government and the State of California (refer to Draft EIR Section 4.7.3) and will decrease each year as existing vehicles are replaced with ZE or near ZE vehicles, consistent with the State's goal to achieve carbon neutrality by 2045.

O5.63 The commenter suggests that the Draft EIR fails to include all feasible mitigation. However, CEQA does not require adoption of every imaginable mitigation measure. CEQA's requirement applies only to feasible mitigation that will "substantially lessen" a project's significant effects (Public Resources Code Section 21002). As explained by one court, A lead agency's "duty to condition project approval on incorporation of feasible mitigation measures only exists when such measures would [avoid or] 'substantially lessen' a significant environmental effect." (San Franciscans for Reasonable Growth v. City and County of San Francisco [1989] 209 Cal.App.3d 1502, 1519.) "Thus, the agency need not, under CEQA, adopt every nickel and dime mitigation scheme brought to its attention or proposed in the project EIR." (Ibid.) Rather, an EIR should focus on mitigation measures that are feasible, practical, and effective (Napa Citizens for Honest Government v. Napa County Board of Supervisors [2001] 91 Cal.App.4th 342, 365).

The commenter suggests implementing additional mitigation measures listed in the section of this letter titled "Feasible Mitigation Measures Available to Reduce Emissions." However, the mitigation measures listed by the commenter are either not applicable to the Project or have already been incorporated into the Project.

As disclosed in the EIR and supported by substantial evidence in the record, the Project's EIR includes all feasible mitigation measures that are capable of substantially reducing the Project's GHG emissions and no revisions to the EIR or additional mitigation measures are required.

O5.64 The commenter suggests implementing air quality mitigation measures from the 2020 RTP/SCS Program EIR applicable to the Project. These suggested mitigation measures are listed in **Response O5.65**, below.

O5.65 The commenter lists construction measures from the 2020 RTP/SCS Program EIR "PMM-AQ-1" that they feel are applicable to the Project.

However, Draft EIR Table 4.2-8 shows that incorporating MM AQ-1 reduces construction emissions below SCAQMD thresholds, resulting in a less than significant impact with mitigation. CEQA Guidelines Section 15126.4 requires mitigation measures only for significant environmental effects identified in the EIR. Additionally, CEQA Guidelines Section 15041 and Section 15126.4(a)(4) require mitigation of significant impacts to be consistent with the nexus and rough proportionality standards. CEQA Guidelines Section 15126.4(a)(3) states that mitigation measures are not required for effects which are not found to be significant. As the Project does not exceed thresholds, there is no nexus for additional mitigation. As the Project's construction emissions are mitigated below the SCAQMD's thresholds of significance, additional mitigation is not required under CEQA.

- Minimize unnecessary vehicular and machinery activities.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Requiring projects within 500 feet of residences, hospitals, or schools to use Tier 4 equipment for all engines above 50 horsepower (hp) unless the individual project can demonstrate that Tier 4 engines would not be required to mitigate emissions below significance thresholds.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Require contractors to assemble a comprehensive inventory list (i.e., make, model, engine year, horsepower, emission rates) of all heavy-duty off-road (portable and mobile) equipment (50 horsepower and greater) that could be used an aggregate of 40 or more hours for the construction project.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Projects located within the South Coast Air Basin should consider applying for South Coast AQMD "SOON" funds, which provides funds to applicable fleets for the purchase of commercially available, low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road diesel vehicles.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

O5.66 The commenter lists measures from CARB's Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers that they feel are applicable to the Project. However, the measures suggested by the commenter are either not applicable or have already been incorporated as mitigation.

- Ensuring the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Requiring all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved are equal to or exceed that of a Tier 4 engine.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Requiring all heavy-duty trucks entering the construction site during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NO_x) standard starting in the year 2022.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Require all construction equipment and fleets to be in compliance with all current air quality regulations.

Compliance with current air quality regulations is a requirement and therefore does not qualify as a mitigation measure.

- Requiring all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units.

MM GHG-5 requires the installation of electrical hookups, however the Project does not include cold storage and will not be employing trucks with TRUs

- Requiring all TRUs entering the project-site be plug-in capable.

The Project does not include cold storage and will not be employing trucks with TRUs.

- Requiring all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission.

MM AQ-6 requires all cargo handling equipment to be zero-emission.

- Requiring future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.

The Project proposes the development of a speculative warehouse, and an end user has not been identified. Therefore, the type and quantity of vehicles required by a future tenant is not known. Refer to **Response O1.6.**

- Including contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than two minutes while on-site; and

MM AQ-4 has been updated in the errata to limit idling to two-minutes.

- Requiring the installing of vegetative walls or other effective barriers that separate loading docks and people living or working nearby.

The nearest sensitive receptor is approximately 3,000 feet from the warehouse, vegetative wall or other barriers are not necessary.

O5.67 The commenter lists recommended measures from the California Attorney General's Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act document:

- Keeping on-site and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.

The Project must comply with SCAQMD Rule 2305 (Warehouse Indirect Source Rule), which requires keeping records of all trucks accessing the site. Therefore, this does not qualify as mitigation under CEQA.

- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

- Providing meal options on-site or shuttles between the facility and nearby meal destinations for construction employees.

Construction emissions have been reduced to less than significant levels, therefore additional mitigation is not required under CEQA.

O5.68 The commenter lists typical mitigation measures suggested by SCAQMD:

- Zero-emissions (ZE) or near-zero emission (NZE) on-road haul trucks, such as heavy-duty trucks with natural gas engines that meet the CARB's adopted optional NO_x emissions standard at 0.02 grams per brake horsepower-hour (g/bhp-hr), if and when feasible.

Refer to **Response S2.15.**

- A phase-in schedule to incentivize the use of cleaner operating trucks to reduce any significant adverse air quality impacts; and The use of, at least, a 2010 model year that meets CARB's 2010 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NOx emissions or newer, cleaner trucks.

The CARB Truck and Bus Regulation required trucks to be upgraded to 2010 or newer model year engines. The Truck and Bus regulation has been in effect since December 2008 and the final

deadline for the last replacement phase of the regulation was January 1, 2023. As this regulation is already required, it does not represent CEQA mitigation for the Project.

O5.69 The commenter lists GHG mitigation from the SCAG 2020 RTP/SCS Programmatic EIR. These mitigation measures are from a programmatic EIR and are not project specific. The mitigation measures listed are either not applicable or have already been incorporated into the Project.

- Incorporate bicycle and pedestrian facilities into project designs, maintaining these facilities, and providing amenities incentivizing their use; and planning for and building local bicycle projects that connect with the regional network.

This mitigation measure is not applicable. The proposed Project is not a transportation project; however, the Project will comply with all state building code requirements for bicycle and pedestrian facilities.

- Improving transit access to rail and bus routes by incentives for construction and transit facilities within developments, and/or providing dedicated shuttle service to transit stations.

This mitigation measure is not applicable. The proposed Project is not a transportation project and will not construct rail and bus transit stations. However, MM AQ-2 does require the Project operator to submit a Transportation Demand Management Program, which will support rideshare services and alternative travel modes.

- Designate a percentage of parking spaces for ride-sharing vehicles or high-occupancy vehicles and provide adequate passenger loading and unloading for those vehicles.

MM AQ-2 requires the Project operator to submit a Transportation Demand Management Program, which will support rideshare services and alternative travel modes.

- Require at least five percent of all vehicle parking spaces include electric vehicle charging stations, or at a minimum, require the appropriate infrastructure to facilitate sufficient electric charging for passenger vehicles and trucks to plug-in.

MM AQ-2 require the Project operator to provide preferred parking for ZE and NZE vehicles.

- Encourage telecommuting and alternative work schedules.

Encouraging telecommuting is not applicable for warehouse work because people are needed on-site to do physical labor. Work schedules will be developed by the operator depending on the type of work needed.

- Implement commute trip reduction marketing, such as: new employee orientation of trip reduction and alternative mode options, event promotions, and publications.

These suggested programmatic mitigation measures are not applicable for warehouse workers.

- Price workplace parking, such as: explicitly charging for parking for its employees, implementing above market rate pricing, validating parking only for invited guests, not

providing employee parking and transportation allowances, and educating employees about available alternatives.

These suggested programmatic mitigation measures are not applicable for warehouse workers. However, the MM AQ-2 requires the operator to provide a transportation information center and on-site Transportation Demand Management coordinator to educate employees about surrounding transportation options.

- Adopting employer trip reduction measures to reduce employee trips such as vanpool and carpool programs, providing end-of-trip facilities, and telecommuting programs including but not limited to measures that: provide transit passes, provide employee transportation coordinators at employment sites, and provide a guaranteed ride home service to users of non-auto modes.

MM AQ-2 requires the Project operator to submit a Transportation Demand Management Program, which will support rideshare services and alternative travel modes.

O5.70 Refer to **Response O5.66**. The commenter lists mitigation measures suggested in CARB's Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers.

O5.71 The commenter lists recommended measures from the California Attorney General's Warehouse Projects: Best Practices and Mitigation Measures to Comply with the CEQA document:

- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.

The Project currently does not include emergency generators because the Project is a speculative warehouse, which means that the end user is not known. Not knowing the future use of the warehouse, it is impossible to determine what size generator, if any, might be needed for emergency backup. Therefore, it is not feasible to limit the Project to non-diesel-powered generators without knowing the size of generator needed because high powered non-diesel-powered generators are difficult to procure. However, if a future tenant requires backup generators, they will need to be approved through SCAQMD's permitting process. Therefore, this measure is not applicable to the Project.

- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project.

The Project will comply with the electric vehicle charging requirements in the 2022 CALGreen and includes additional electrical hookups for charging at door docks (refer to MM GHG-5). The Project electrical room also includes additional space for more charging transformers as the need for charging stations increases. Therefore, the intent of this measure is achieved through compliance with the 2022 CALGreen.

- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces.

The 2022 CALGreen requires non-residential projects with more than 200 parking spaces to designate 20 percent of the total parking spaces as EV capable and to install 25 percent of those EV capable spaces with electric vehicle supply equipment. Therefore, the intent of this measure is achieved through compliance with the 2022 CALGreen.

- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.

This mitigation measure is not required because facility operators are financially incentivized to maximize efficiency and reduce downtime. In addition, this mitigation measure would not result in a quantifiable emission reduction as trucks would be required to shut off their engine after idling for 2 minutes.

- Posting signs at every truck exit driveway providing directional information to the truck route.

This mitigation measure is not applicable because it would not result in quantifiable emission reductions. In addition, truck access to the site would be via Hathaway Street, which has been designated by the City for heavy truck traffic.

- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.

This mitigation measure is not applicable because it would not result in quantifiable emission reductions. In addition, SCAQMD Rule 2305 requires substantial reporting and record keeping requirements for both owners and operators.

- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers.

This mitigation measure is not applicable because it would not result in quantifiable emission reductions.

O5.72 Refer to **Response S2.18**. The commenter lists typical mitigation measures suggested by SCAQMD:

- Using light-colored paving and roofing materials; and
- Utilizing only Energy Star heating, cooling, and lighting devices and appliances.

O5.73 Refer to **Response O1.11**. The commenter suggests including offsite measures such as purchasing carbon offsets.

The commenter also gives their opinion that the Project does not incorporate all feasible mitigation and suggests that the Project should incorporate the suggested mitigation measures provided by SCAG and the California Attorney General. However, these suggested mitigation

measures are either not applicable or have already been incorporated into the Draft EIR (refer to **Responses O5.65** through **O5.72**). All feasible mitigation measures have been incorporated into the Draft EIR (refer to **Response O1.6**).

O5.74 This comment is a disclaimer does not raise any substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

Comment Letter O6 - Oswit Land Trust

Comment Letter O6

August 2, 2024

Emery J. Papp, Senior Planner
Community Development Department
99 E. Ramsey Street Banning, CA 92220
(951) 922-3125 / Email: epapp@banningca.gov

Re: SCH: 2022090102

Project Name: Banning Commerce Center Project

Project Description: The Banning Commerce Center Project (Project) proposes the development of an approximately 1,320,284 square foot (SF) footprint speculative industrial warehouse building that includes up to approximately 39,600 SF of office space and up to approximately 1,312,284 SF of warehouse area on approximately 131.28 acres of land.

Public Review Period: The 45-day public review for the Draft Environmental Impact Report (EIR) will begin on June 17, 2024, and end on August 2, 2024.

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To Whom It May Concern:

Oswit Land Trust is a 501C3 non-profit land conservancy dedicated to preserving critical habitat for wildlife corridors and sensitive species. We achieve our goals through the acquisition of land and advocacy. We are a proud member of the Land Trust Alliance and have over 3,000 active members who are residents within the Coachella Valley and beyond.

We thank the City of Banning for your dedication to achieving the delicate balance between development while maintaining access to the beauty and diversity of our natural lands. Our request is for you to protect remaining critical habitat in your jurisdiction needed for the continued survival of sensitive and endangered species in these harsh times.

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The Oswit Land Trust Board and membership are deeply concerned at the statistics of Riverside County warehousing. We again submit the fact that over 1 billion square feet of warehousing has now been approved in the Inland Empire and the industry is saturated; add the fact that the State Attorney General has sent repeated notices to Riverside County jurisdictions that they are profoundly out of compliance with State global warming initiatives and greenhouse gas reduction requirements. Each time a warehouse is approved, CEQA states the project is non-compliant with air quality, greenhouse gases, transportation. What happened to these obligations?

Recently, Oswit Land Trust alerted the City of Banning that over 50,000,000 square feet of warehousing is pending or approved between Beaumont and Coachella on Interstate 10, most of this occurring during COVID when community members were absent. Environmental Justice Communities have petitioned by the thousands, complaining their children are exposed to toxic fumes and untenable living conditions. This is falling on deaf ears. Why? Do our civic leaders no longer care? The City of Ontario lies in the 98 percentile for cancer risk from warehousing, and the City Manager is an award-winning celebrated figure receiving numerous awards for generating jobs, yet we wonder why people of color believe they are not heard.

These conditions should be a clear, ringing bell and a red flag to decisionmakers, but something is amiss, and it is the economy. Banning Commerce is a 1.3 million sf "spec" building -- competing with an unknown industry. Our economies have been built on beauty, pristine living conditions, tourism, connection to nature. Is it being sacrificed to an untried economy that has alarming downsides and an overbearing ugliness when land permits become excessive? General Plan policies are inclusive of the economy, the aesthetic, the balance, the environment. When the balance is sacrificed, it becomes a land use / planning emergency. The California Environmental Quality Act is a good tool when it is written with a fair and impartial balance between developer needs and environmental needs.

Our concern is that this Draft EIR seems prejudiced towards the project and its primary alternative, pre-disposed to being unclear at critical points, remiss in not assessing "Land Use Policy" fairly between economic and environmental goals, and remiss in inadequately assessing the need for full options on mitigation.

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BIOLOGICAL IMPACTS

"The Project site is located within the Western Riverside County MSHCP The Pass Plan Area and is not located within an MSHCP Criteria Area Cell or Cell Group." Draft EIR at 4.3-21. ".... the Project site is located approximately 1,700 feet (0.32 mile) southwest of a regional wildlife movement corridor (San Gorgonio River)." Draft EIR at 4.3-22.

"The Banning Commerce Center project is not located within or adjacent to an existing or proposed MSHCP conservation area. However, the Project Site is located partially within the western region of The Pass-Special Linkage Area. As stated in the MSHCP:

"Special Linkage Area: This Special Linkage Area will contribute to assembly of a portion of the San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage. Tribal coordination regarding American Indian Lands will be necessary in this area. The San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage includes locations within and outside the MSHCP Plan Area. Features of the entire linkage area are described in Missing Linkages: Restoring Connectivity to the California Landscape (Penrod, K., November 2, 2000). A copy of this report is attached as Exhibit 24 to Comment Letter D in Volume V of the MSHCP. Local Permittees will apply the following rebuttable presumption of significance, taken from Appendix G to the 1998 State CEQA Guidelines, in CEQA review of proposed public and private projects within this Special Linkage Area and apply mitigation measures as appropriate: "Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?" Draft and Final CEQA documentation prepared by Local Permittees for projects within this Special Linkage Area will be forwarded to the RCA for informational purposes to provide for MSHCP coordination regarding this area." (MSHCP 2004)"

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Quotation is from the Draft EIR, Appendix C-1 Final Biological Technical Resources Report, at page 50. (June 2024). Note: This description does not appear in the Draft EIR, Biological Section, Section 4.0.

The following information was prepared and distributed by Kristeen Penrod, SC Wildlands Director, on or about July 1, 2024, in an email as part of the educational / collaboration outreach between SC Wildlands and other related organizations that advocate for protection of sensitive and endangered species:

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"The Proposed 130-acre Banning Commerce Project Site:

- Sits in the central branch of the San Bernardino-San Jacinto Linkage, one of 15 South Coast Missing Linkages considered vital to ensuring regional connectivity from the US-Baja California border to the southern Sierra Nevada (SC Wildlands, 2008).

- Sits in a critical transition/contact zone between the South Coast and Mojave Desert ecoregions and is considered a hotspot of genetic diversity and evolution (Vandergast et al 2008).

- The project site and surrounding Pass Area currently serves as the only viable connection between the Transverse and Peninsular ranges subpopulations of mountain lion. [emphasis added] These subpopulations are two of the 5 subpopulations in Southern California being considered for listing under CESA. Collared mountain lions have been documented traversing the project site to approach I-10. Habitat protection and improvements to I-10 are needed to secure this critically important linkage for mountain lions and a host of other species. [emphasis added]

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- This proposed warehouse project sits directly north of I-10 in intact desert scrub habitat adjacent to the San Gorgonio River and Itta Wash and the eastern half of the proposed site is entirely within the 100-year floodplain.

- The San Gorgonio Pass area is expected to serve a critical function as the climate warms and desert species move westward into the Pass to seek cooler, more suitable habitat.

- The project area provides an important role in ecosystem processes including sand transport that is critical for sustaining the habitat of desert species covered by the Coachella Valley Multiple Species Habitat Conservation Plan, such as the Coachella Valley fringed toad lizard and the Coachella Valley Jerusalem cricket.

- Low elevation San Gorgonio Pass sits between the two highest peaks in Southern California (San Gorgonio Mtn, San Jacinto Mtn) and represents one of the most extreme elevational and ecological gradients in the region that requires protection.

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• Due to many of the above points, the project area sits in a designated "Special Linkage" area of the Western Riverside MSHCP, but this designation does not ensure the protection of undeveloped lands in the San Gorgonio Pass, including the project site."

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With this information in mind, the Draft EIR assessment of impacts and proposed mitigation does not make sense or appear to be adequate:

"Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
Level of Significance: Less than Significant" Draft EIR at 4.3-20
The assessment at page 4.3-20 states the project site does not serve as a regional travel route, wildlife corridor, or wildlife crossing for large or medium sized mammals between open space habitats north and south of Interstate 10. According to the authors, small mammals, reptiles, and amphibians may utilize the off-site culverts, but for various (specified) reasons, such as roadways, Interstate 10, and lack of vegetation, the culverts are deemed significantly constrained and of low-quality. Every assessed potential connection received the same outcome.

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Yet, the Biological Report, Appendix C-1 at page 37 states that fourteen (14) sensitive species have the potential to occur on site, and additional species were found on site. It is true this list is comprised of birds or smaller animals but considering that each individual project assessment (EIR) justifies continuing all the barriers because of pre-existing barriers, the fact larger animals are not present is not surprising.

The Draft EIR then states the real wildlife movement is occurring immediately adjacent to the San Gorgonio River, not on the project site. No support for this conclusion is given. No explanation is given how this project site ended up in a designated "Wildlife Linkage" if the linkage function doesn't exist. From here, the assessment jumps to the conclusion that once the Urban/Wildlands Interface guidelines and Best Management Practices are met, the project is consistent with MSHCP goals and objectives for the Pass-Special Linkage Area. No support for this conclusion is given.

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What is disturbing about the Draft EIR assessment is its evaluation of the Pass Special Linkage Area function as a "Linkage" that is not a "Linkage," with proposed mitigation that does not even address linkage function because of that conclusion, followed by citations that address great responsibilities to maintain linkages under the Multi-Species Plan and General Plan (Banning). This is a classic mismatch between obligations and results. The obligation of CEQA is to identify impacts and mitigate. The Draft EIR seems hopelessly enmeshed in justifying impacts to corridors in urban areas and concluding it doesn't work – how can we possibly co-exist with the environmental obligations? By addressing them! 8

As we have suggested to the City of Banning before, the solution may not be feasible at the individual project level, but the design and maintenance of corridors, particularly in rapidly growing urban areas where mega-buildings predominate, must occur through collaboration and meeting outside of the final review period for CEQA. Successful collaboration will take (1) Further MSHCP evaluation; (2) Meetings between the City, environmental community, and developer; (3) Adequate assessment and mitigation under CEQA (which is currently deficient).

CEQA assessment must improve dramatically to meet this challenge. Nature cannot be set aside and excused for other priorities, even what is deemed important economic priorities in the moment, because once wildlife linkages are disrupted, they will not return; the chain of wildlife will collapse. The laws and policies of land use planning demand a true accommodation so that both ends survive and thrive in combination. The community will expect to see these Goals and Policies realized in a tangible way – through the preservation of corridors within all areas designated as corridors! 9

City of Banning General Plan

Goal
A pattern of community development that supports a functional, productive, harmonious and balanced relationship between the built and natural environment.

Policy 1
The City shall continue to participate in the preservation of habitat for endangered, threatened and sensitive species. 10

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Policy 2
As part of the development review process, the City shall evaluate projects based on their impact on existing habitat and wildlife, and for the land's value as viable open space.

Policy 3
The City shall encourage and cooperate with other agencies in establishing multiple use corridors that take advantage of drainage channels and utility easements as wildlife corridors, public access and links between open space areas and the built environment.

Policy 4
Drainage channels, utility corridors and pipeline easements shall be preserved in natural open space to the greatest extent possible.

Policy 5
The City shall promote the protection of biodiversity and encourage an appreciation of the natural environment and biological resources.
Draft EIR at 4.3-10

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The language in the citation below is from the Final Biological Technical Resources Report, page 51, on how assessment and mitigation standards are determined for the Pass-Special Linkage Area. The DEIR assessment begins with an acknowledgement of the legal obligation to assure preservation of the corridor. This is buttressed by the City of Banning General Plan Goals and Policies. The DEIR assessment ends by concluding that the preservation methodology for this critical linkage is to find criteria and standards in the "South Coast Wildlands' Missing Linkages Project" document, and if standards or criteria cannot be found, to conclude it was the intent of the WRC MSHCP and Regional Conservation Authority to ignore the Pass-Special Linkage Area and proceed without criteria, management, or results.

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It is to assume that if this privately generated (but highly competent) report did not cover the Pass (and we don't know), the legal obligation lapses, and the mitigation requirement lapses as well. What is applied to this area in the Report is an informal biological assessment outside the jurisdiction of MSHCP as the trustee agency, and that is not viable!

The legal obligations to assess MSHCP criteria and standards for the management of this linkage still exist and cannot be eliminated. In whatever manner the WRC MSHCP provides for trustee

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jurisdiction, this must be concluded before mitigation is adequate. The current conclusion is deficient and has left the Draft EIR deficient.

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"For special linkage areas, the MSHCP requires local jurisdictions to assure preservation of a wildlife movement corridor in compliance with guidelines set forth in the South Coast Wildlands' Missing Linkages project. [emphasis added] However, the South Coast Wildlands' document makes no reference to the San Gorgonio River linkage. In the absence of other guidance in the MSHCP, the City will apply standards set forth in the CEQA Guidelines for projects within the Special Linkage area. The CEQA Guidelines' threshold of significance for such areas is as follows: "Would the project interfere substantially with the movement of any native resident or migratory species of fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?" (City of Banning 2006) Appendix C-1, Final Biological Technical Resources Report, at page 51.

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CUMULATIVE IMPACT ASSESSMENT

"Cumulative impacts refer to the incremental effects of an individual project when assessed with the effects of past, current, and proposed projects. The temporary direct and/or indirect impacts of the Project would not result in cumulative impacts (CEQA §15310) to environmental resources within the region of the Project site." Draft EIR at 4.3-23

"The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

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(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling

program. Any such document shall be referenced and made available to the public at a location specified by the lead agency."
CEQA Portal Topic Paper (Association of Environmental Professionals – AEP

cont'd 14

Discussion of the Draft EIR: In each section of the Draft EIR, for those sections that have significant, unavoidable impacts (air quality, biology, greenhouse gases, and transportation) neither of the requirements of (A) or (B) as stated above appear in the assessment. Each section is conclusionary.

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For example, under Biology, at 4.3-23, the DEIR review assesses whether the project, as proposed, is consistent with local and regional plans. Consistency with local plans and regional plans and their criteria is not cumulative impact assessment.
Then the DEIR review concludes (at page 4.3-23) that "development of the Project site consistent with the general plan land use designation would have been analyzed within the City's GP Draft EIR document as well as the County of Riverside's GP Draft EIR." [emphasis added]. This is not cumulative impact assessment. Equally important, it also is not impact assessment of any kind. It is a conclusion without support or stated evidence, or assessment, that the General Plan Update analyzed and mitigated all potentially significant environmental impacts of this project, and it concludes this without discussion. This violates CEQA.
No list of warehousing in the region has been included for assessment, particularly with respect to air quality impacts, particularly considering the State of California Department of Justice has published warnings to the County of Riverside and Cities within Riverside County, that they are out of compliance with state law. Published estimates of over 1 billion square feet of warehousing and building (Jan 2023) exist for the Inland Empire. CEQANet State Clearinghouse reveals that over 50,000,000 square feet of warehousing is pending or approved between the cities of Beaumont and Coachella on Interstate 10. Yet, with systematic review of warehousing, we have never seen a published list of warehousing except recently in the Cajalco Commerce Center, Riverside County, and that declined to give square footage figures.

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Not only is the list missing, but as a substitute, a thorough and competent analysis of projections and data from the City's General Plan or any Regional Plan. These assessments cannot be perfunctory or conclusionary but must submit enough analysis to lead to meaningful mitigation and describe the cumulative effect of regional growth on the resources at issue, whether it be air quality, public health and safety, or biology.

19

The Draft EIR fails to give a Cumulative Impact Assessment overview, but details impacts per topic, which tends to segregate the effect. With biological resources, the largest issue is the impact of multiple warehouses and industrial growth along the Interstate 10 corridor, and the pervasive way each project, added to the next, has made corridor development extremely difficult. Without regional assessment, adequate mitigation cannot be accomplished. The Cumulative Impact Assessment should cover not only the watershed (Whitewater River), but also the linkage pattern, with a thorough investigation of the impact of multiple projects impacting linkages. This is particularly sensitive, because a significant break in the linkage at any one point can affect upstream and downstream on the migration route. 20

ALTERNATIVES ASSESSMENT

The California Environmental Quality Act (CEQA) requires that Environmental Impact Reports (EIR) "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives." (State CEQA Guidelines §15126.6).

"The range of alternatives required in an EIR is governed by a 'rule of reason' that requires an EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the Project" (§15126.6(f))." Draft EIR at 6-1. 21

"Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)" (§15126.6(f)(1)).' Draft EIR at 6-1.

The proposed alternatives to the primary proposed project appear deficient to meet the requirements of CEQA, and that is to propose meaningful changes in project design that will effectively mitigate significant and unavoidable impacts. 22

Alternative 2 is a 15% reduction in square footage that has no impact whatsoever on air quality, GHG emissions, biology, or transportation, so why has it been introduced? Its impact on other

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areas of minimal impact anyway is also negligible. This violates the spirit of the law on adequate alternatives.

Alternative 3 is a two-building alternative that is simply a different proposed design, and doesn't even address the issue of mitigation, because the impacts remain the same. This violates the purpose of alternatives assessment.

cont'd 22

What is missing is a true alternative where the developer proposes a project that will significantly mitigate air quality, GHG emissions, transportation impacts, and biology within an important linkage area. Without the introduction of such an alternative, the decisionmakers and public don't truly have an option, nor does it provide a "reasoned choice."

STATEMENTS OF OVERRIDING CONSIDERATION (SOC)

The Statement of Overriding Considerations is a written statement explaining the specific reasons why the social, economic, legal, technical, or other beneficial aspects of the proposed project outweigh the unavoidable adverse environmental impacts and why the Lead Agency is willing to accept such impacts.

The lead agency for a warehousing operation is the city or county that is hosting and approving the project. This decision of whether to approve a project with unavoidable and significant environmental impacts is made after full review of the Final Environmental Impact Report by the local decisionmakers.

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The law requires this decision (the choice between environment and current project design) to be supported by Findings of Fact that address the decision with enough specificity that citizens understand the basis of this choice and its justification. It is a decision not to be made carelessly, particularly if the claim of "environmental effect" has serious public health and safety repercussions, as warehousing does.

What further complicates this choice is when legal standards on health and safety are being violated, and there is a choice to use a Statement of Overriding Consideration to continue violating the law and exposing the public. At this stage, any jurisdiction that exercises the option of a Statement of Overriding Consideration takes a great chance that the state of California may impose a moratorium or citizens may decide to sue. Either is potentially catastrophic to a city if the damage is great enough. Equally devastating is the loss of public

trust. No one wants this result. We are a community, and the intent is to work together, collaborate, and reach mutually satisfactory solutions.

cont'd 23

In this Draft EIR, as in all warehousing assessments Oswit Land Trust has commented upon, the cities or county have used the Statement of Overriding Consideration because mitigation on these massive warehouses cannot meet state and regional standards or adequately mitigate greenhouse gases, air emissions, transportation impacts, and all too often, the biological damage to regional resources in a collapsing eco-structure. All these factors are well-documented in the Draft EIR for Banning Commerce. More tragically, Banning Commerce is a spec building, and is not even a current developer exercising a right to develop its land. This could be developed.

There are conclusions without support that we find in the Draft EIR. However, the main mission of Oswit Land Trust is preservation of wildlife and habitat, and the intent is to keep the focus of this comment letter within that area.

24

A Statement of Overriding Consideration is a planning tool that should only be used occasionally and when well justified. For cities and counties to continue using this method in the face of public health and safety precautions is risky and controversial. Instead, we are asking for your hope, faith, and best judgement in navigating the future, despite economic challenges. We ask that you not sacrifice one important principle to another but continue in your stewardship to both our economy and its supporting environment.

Thank you,

Jane Garrison
Executive Director



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Responses to Comment Letter O6 - Oswit Land Trust

O6.1 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.2 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.3 Comment noted for the record. As discussed in Draft EIR Section 2.0: Introduction, page 2-2, according to the CEQA Guidelines (14 CCR Section 15064[f][1]), preparation of an EIR is required whenever a project may result in a significant effect on the environment. An EIR is an informational document used to inform public agency decision-makers and the general public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project that could feasibly attain most of the basic objectives of the project while substantially lessening or avoiding any of the significant environmental impacts. Public agencies are required to consider the information presented in the EIR when determining whether to approve a project. CEQA requires that state and local government agencies consider the environmental effects of projects over which they have discretionary authority before taking action on those projects. This document analyzes the environmental effects of the Project to the degree of specificity appropriate to the current proposed actions, as required by CEQA Guidelines Section 15146. The analysis considers the activities associated with the Project to determine the short-term and long-term effects associated with their implementation. This EIR discusses both direct and indirect impacts of the Project, as well as cumulative impacts associated with other past, present, and reasonably foreseeable future projects. Based on significance criteria, the effects of the Project have been categorized as either "no impact," "less than significant," "less than significant with mitigation incorporated," or "significant unavoidable" (refer to Section 4.0: Environmental Analysis). Mitigation measures are recommended for potentially significant impacts, to avoid or lessen impacts. In the event the Project results in significant and unavoidable impacts, even with implementation of feasible mitigation measures, the decision-makers may approve the Project based on a "Statement of Overriding Considerations." This determination would require the decision-makers to balance the benefits of the Project to determine if they outweigh identified unavoidable impacts.

Based on analysis conducted for the Initial Study (Appendix A: Notice of Preparation and Scoping Meeting of the Draft EIR), Land Use impacts were determined to be less than significant and are therefore considered in Section 7.0: Effects Found Not To Be Significant. In Section 7.0 of the Draft EIR, page 7-3, the Project site would have a less than significant impact to land use and planning. The Project site land use would be consistent with the City of Banning's General Plan land use designations for the site, which permits light industrial manufacturing and office/warehouse buildings. Additionally, the construction and design of the building would comply with the City of Banning's General Plan Land Use plans, policies, and regulations, and development standards and design guidelines contained in the Banning Municipal Code. Additionally, as stated in Draft EIR Section 7.0, pages 7-4 through 7-5, the Project, consistent with

the City General Plan, would support development of land in an economically productive way that would serve the growing population by providing permanent employment opportunities which are expected to be filled by the local area and surrounding region. Additionally, buildout of the Project would be subject to compliance with all state, regional, and local requirements for minimizing growth-related impacts. Therefore, the Draft EIR has considered economic, legal, social, technological, and other considerations when considering the impacts of the Project. Therefore, implementation of the Project would not conflict with any land use plan, policy, or regulation, and a less than significant impact would occur.

O6.4 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.5 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.6 As discussed in Section 4.3: Biological Resources, pages 4.3-20 through 4.3-21, the Project site is expected to provide for local wildlife foraging and breeding habitat. However, the Project site does not serve as a regional travel route, wildlife corridor, or wildlife crossing for large or medium sized mammals between open space habitats located north and south of I-10. Small mammals, reptiles and amphibians may occasionally utilize the off-site culverts. However, based on the low openness ratios of these features, proximity to I-10, lack of vegetive cover, and lack of perennial/intermittent flows, the culverts are considered significantly constrained and provide low quality for wildlife movement and connectivity. Additionally, as stated in Draft EIR Appendix C1: Final Biological Resources Technical Report, the majority of mammals exhibit a preference for culverts which provide for a line of sight to habitat on the opposite side. Although small mammals such as rodents, reptiles, and amphibians may not require line of sight, an Openness Ratio of >0.75 is generally required for medium to large mammals (Conservation Biology Institute 2016). As stated by Conservation Biology Institute: "The openness ratio of an undercrossing is defined as a structure's (height x width)/length (the distance of an underpass perpendicular to the road). A large openness ratio (i.e., >0.75) provides more natural lighting and is recommended to allow an animal to see all the way through a crossing structure to the other side (e.g., Cain et al. 2003, Clevenger and Waltho 2005). In addition to the openness ratio, however, one must consider brightness, distance to safety from predators, traffic volume and noise, vegetation cover, and similarity to natural environmental conditions. Where undercrossings also support water flow, it is important to have a ledge or shelf that animals can use to stay above the water level" (Conservation Biology Institute 2016). The Project site is currently expected to provide for local wildlife foraging and breeding habitat. However, the Project site does not serve as a regional travel route, wildlife corridor or wildlife crossing for large or medium sized mammals between open space habitats located north and south of I-10 (SLA) based on the Openness Ratios of 0.018 and 0.012, far less than 0.75. Small mammals, reptiles and amphibians may occasionally utilize the offsite culverts. However, based on the low openness ratios of these features, proximity to I-10, lack of vegetive cover, and lack of perennial/intermittent flows, the culverts are considered significantly constrained and provide

low quality for wildlife movement and connectivity. Lastly, while the Project site does not serve as a regional travel route, wildlife corridor, or wildlife crossing, the mitigation areas, as required by MM BIO-3, proposed for the Project may have the effect of creating a movement corridor for small mammals, reptiles, and amphibians. As such, this mitigation area would include a non-hydrologic culvert that would allow small mammals, reptiles, and amphibians to cross the proposed Wilson Street extension. This connection would provide a low-quality connection as existing connections across roadways in the vicinity of the Project are non-existent, significantly constrained, or are similarly low-quality. Such as the culverts underneath I-10 to the southeast of the Project site.

Regional wildlife movement in proximity to the Project site is concentrated within and immediately adjacent to the San Gorgonio River which extends south and under I-10 to the confluence with Smith Creek. A two-kilometer minimum corridor width along the San Gorgonio River is proposed south of I-10. The Project site is located north of I-10 where a minimum of a 0.64-mile corridor width would remain within the Special Linkage Area extending northeast of the property, as shown in Figure 14, Wildlife Movement Corridor Map of the BRTR (Draft EIR Appendix C1).

Following implementation of the MSHCP Urban/Wildlands Interface guidelines and BMPs (refer to Draft EIR Appendix C1), the proposed action would be consistent with MSHCP goals and objectives for The Pass - Special Linkage Area and ensure the proposed action would not result in indirect impacts to the wildlife movement corridor within and adjacent to the San Gorgonio River. Any proposed development within the Project site will be required to comply with all MSHCP urban/wildlands interface guidelines. Therefore, a less than significant impact would occur.

O6.7 As discussed in the updated BRTR, provided as **Appendix B** to this Final EIR, the City of Banning 2006 General Plan states: *"For special linkage areas, the MSHCP requires local jurisdictions to assure preservation of a wildlife movement corridor in compliance with guidelines set forth in the South Coast Wildlands' Missing Linkages project. However, the South Coast Wildlands' document makes no reference to the San Gorgonio River linkage. In the absence of other guidance in the MSHCP, the City will apply standards set forth in the CEQA Guidelines for projects within the Special Linkage area. The CEQA Guidelines' threshold of significance for such areas is as follows: "Would the project interfere substantially with the movement of any native resident or migratory species of fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?"* As discussed on Draft EIR pages 4.3-21 through 4.3-23, following implementation of the MSHCP Urban/Wildlands Interface guidelines and BMPs the proposed action would be consistent with MSHCP goals and objectives for The Pass - Special Linkage Area and ensure the proposed action would not result in indirect impacts to the wildlife movement corridor within and adjacent to the San Gorgonio River. Any proposed development within the Project Site will be required to comply with all MSHCP urban/wildlands interface guidelines presented in MSHCP Section 6.1.4 and the fuels management guidelines presented in MSHCP Section 6.4.

The BRTR includes an analysis of compliance with Special Linkages objectives identified in the MSHCP was conducted; refer to BRTR pages 49 through 76. Regional wildlife movement in proximity to the Project site is concentrated within and immediately adjacent to the San Gorgonio River which extends south and under I-10 to the confluence with Smith Creek. Refer to BRTR Figure 14: Wildlife Movement Corridor Map for a visualization of the distance between the Project site and the San Gorgonio River. The Project site is not located within or immediately adjacent to the San Gorgonio River. A two-kilometer minimum corridor width along the San Gorgonio River is proposed south of I-10 by the South Coast Wildlands' Missing Linkages project; refer to BRTR, provided as **Appendix B** to this Final EIR. The Project site is located north of I-10 where a minimum of a 0.64-mile (approximately 3,380-feet) corridor width would remain within the Special Linkage Area extending northeast of the property. The MSHCP guidelines only require Tribal and the Western Riverside County Regional Conservation Authority coordination, not approval or concurrence. Any proposed development within the Project site will be required to comply with all MSHCP urban/wildlands interface guidelines presented in Section 6.1.4 and the fuels management guidelines presented in Section 6.4.

O6.8 Refer to **Response O6.7**.

O6.9 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.10 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.11 Refer to **Response O6.7**.

O6.12 Refer to **Response O6.7**.

O6.13 Refer to **Response O6.7**.

O6.14 Refer to **Response O6.7**

O6.15 The cumulative impacts analysis ensures that all applicable past, present, and probable future developments are appropriately analyzed for environmental impacts that may not be individually significant but may be cumulatively significant. CEQA Guidelines Section 15130(b)(4) requires a summary of the expected environmental effects to be produced by cumulative projects. CEQA Guidelines Section 15130(b)(5) requires a reasonable analysis of the cumulative impacts of the relevant projects. See Draft EIR Section 4.2: Air Quality, page 4.2-31, Section 4.7: Greenhouse Gas Emissions, page 4.7-29, and Section 4.12: Transportation, page 4.12-26. The Draft EIR states that the Project impacts are cumulatively significant for each resource identified as significant and unavoidable.

O6.16 As discussed in Draft EIR Section 4.3: Biological Resources, page 4.3-23, cumulative impacts refer to the incremental effects of an individual project when assessed with the effects of past, current, and proposed projects. The temporary direct and/or indirect impacts of the Project would not result in cumulative impacts (CEQA Section 15310) to environmental resources within the region

of the Project site. The Project site is located completely within the City of Banning, an MSHCP permittee.

Although the Project would result in the permanent loss of approximately 132 acres of primarily desert scrub and non-native grassland habitat, as referenced above, the MSHCP was developed to address the comprehensive regional planning effort and anticipated growth in the City of Banning.

The MSHCP will not cause adverse cumulative impacts by conflicting with the provisions of any adopted Habitat Conservation Plan, Natural Communities Conservation Plan or other approved local, regional, or State habitat conservation plan either within or outside of the Plan area. Rather, the MSHCP has been written specifically to complement existing HCPs, such as the Stephens' kangaroo rat long-term HCP.

Further, development of the Project site consistent with the general plan land use designation would have been analyzed within the City's GP Draft EIR document as well as the County of Riverside's GP Draft EIR. The Project has been designed and mitigation measures would be implemented to remain in compliance with all MSHCP conservation goals and guidelines and therefore will not result in an adverse cumulative impact.

O6.17 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.18 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.19 Refer to **Response O6.15**.

O6.20 Refer to **Response O3.34**.

O6.21 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.22 Refer to Draft EIR Section 6.0: Alternatives, pages 6-14 through 6-20. Alternative 2 would meet all of the objectives of the Project despite the smaller building size. However, Alternative 2 does not maximize the City's benefits realized or achievement of the Project Objectives when compared to the proposed Project. Implementation of Alternative 2 would achieve the Project objectives, but not to the extent as would be achieved by the proposed Project. Alternative 2 would: develop an industrial project that conforms to the City's General Plan and Municipal Code (Objective 1); provide a new development that will generate a positive fiscal balance for the City moving forward (Objective 2); facilitate the movement of goods and services for the benefit of local and regional economic growth (Objective 5); develop a warehouse project adjacent to transportation corridors, truck routes, local amenities, and the nearby Interstate 10 Freeway for employee convenience and efficiencies of transporting goods (Objective 6); improve public safety and traffic flow in eastern Banning with roadway and infrastructure improvements (Objective 8); provide enhanced landscaping along City designated corridors with the construction of wide streets and

landscaped setbacks (Objective 9); and provide the backbone infrastructure for future growth and prosperity of the surrounding benefit (Objective 10). However, the reduction of 198,000 square feet would lower the City's potential tax revenue (Objective 3) and provide fewer employment opportunities to area residents (Objective 4). Additionally, the Project would not fully or efficiently utilize the entirety of the property in which the Project is situated (Objective 7). Alternative 2 would not meet Objective 3, Objective 4, or Objective 7.

Additionally, Alternative 3 would achieve each of the Project objectives, but not to the fullest extent as would be achieved by the proposed Project. Alternative 3 would: develop an industrial project that conforms to the City's General Plan and Municipal Code (Objective 1); provide a new development that will generate a positive fiscal balance for the City moving forward (Objective 2); design and build a Class-A institutional quality industrial project that will attract high end tenants and increase the City's tax base (Objective 3); generate employment opportunities within the City while improving the local balance of housing to job ratio (Objective 4); facilitate the movement of goods and services for the benefit of local and regional economic growth (Objective 5); develop a warehouse project adjacent to transportation corridors, truck routes, local amenities, and the nearby Interstate 10 Freeway for employee convenience and efficiencies of transporting goods (Objective 6); develop a warehouse project which efficiently uses the property, while conforming to all City regulatory policies (Objective 7); improve public safety and traffic flow in eastern Banning with roadway and infrastructure improvements (Objective 8); provide enhanced landscaping along City designated corridors with the construction of wide streets and landscaped setbacks (Objective 9); and provide the backbone infrastructure for future growth and prosperity of the surrounding benefit (Objective 10). While Alternative 3 would meet all of the Project objectives, developing two cumulatively smaller buildings compared to the one warehouse site would not meet these Project objectives to the fullest extent possible. Refer to **Responses O5.30** and **O9.8**.

O6.23 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O6.24 The Draft EIR provides substantial evidence for the conclusion of each environmental resource topic, provided in Sections 4.1: Aesthetics to 4.15: Wildfire.

Comment Letter O7 – SC Wildlands

Comment Letter O7

Eaton, Miles

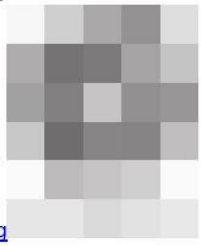
From: Kristeen Penrod <kristeen@scwildlands.org>
Sent: Wednesday, July 3, 2024 6:42 AM
To: Emery Papp
Subject: Banning Commerce Center

Hi there Emery,

It doesn't appear that the DEIR for the Banning Commerce Center is posted on CEQAnet Banning Commerce Center (ca.gov). I can only find the Appendices to the DEIR posted, not the actual DEIR. Due to this significant oversight, the comment period needs to be extended to allow the required time for public review based on when the DEIR is posted. 1

Many thanks in advance for your attention to this matter.

Kristeen
Kristeen Penrod, Director
SC Wildlands
Direct 626-497-6492



www.scwildlands.org

1

Responses to Comment Letter O7 – SC Wildlands

O7.1 This comment asserts that the Draft EIR was not available for public review on CEQAnet. At the time that the letter was provided to the City of Banning, it appeared that there was an error in the uploading of documents to CEQAnet and the Draft EIR was in fact not available. All other files were available. All relevant files for the Draft EIR were available for review on the City of Banning's website and physically at City Hall and the Public Library. The Draft EIR was re-uploaded to CEQAnet and the public review for the EIR was extended to August 19, 2024.

Comment Letter O8 – SC Wildlands

Comment Letter O8

SC Wildlands
Science & Collaboration for Connected Wildlands
P.O. Box 1052, Fair Oaks, CA 95628
www.scwildlands.org

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attention: Emery Papp
Submitted electronically to:
epapp@banningca.gov
CC:
karin_cleary-rose@fws.gov
Carly.Beck@wildlife.ca.gov

August 2, 2024

Re: Banning Commerce Center Draft Environmental Impact Report

Thank you for the opportunity to comment on the Banning Commerce Center Draft Environmental Impact Report (DEIR). SC Wildlands' mission is to protect and restore systems of connected wildlands that support native species and the ecosystems upon which they rely. As such, our comments largely focus on the potential impacts of the proposed project on habitat connectivity and wildlife movement corridors and the need to incorporate mitigation measures to ensure wildlife movement is maintained and improved. 1

The intent of CEQA is to provide full disclosure of the potential environmental impacts of a proposed project for public review. The DEIR did not sufficiently evaluate potential adverse impacts of the proposed project on habitat connectivity and wildlife movement for native resident or migratory wildlife species, including federally and state listed and candidate species, and established wildlife corridors as required by CEQA. 2

Without additional mitigation, the proposed Project would result in significant biological impacts to inter-mountain range wildlife movement. 3 The City of Banning should postpone any action on the Project DEIR and direct the applicant to perform additional analysis on how lighting and noise from the proposed 1.42 million square foot Banning Commerce Warehouse Project, along with the cumulative impacts of the 1.32 million square foot First Hathaway Warehouse Project immediately west and continuous with the proposed project, as well as the Wilson Street extension would adversely affect wildlife presence and movement in the project area, Itta Wash and the San Gorgonio River. 4 Additional impact analyses are also needed on how the proposed project would constrict wildlife movement to less than the 2km minimum viable corridor width. 5 The DEIR shall remain deficient without further analysis for potential impacts to this regionally significant movement corridor and the inclusion of additional mitigation measures. 6

SC WILDLANDS 1

Page 4.3-20 of the DEIR addresses Impact 4.3-4: *Would the Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

The proposed Project is within the Special Linkage Area between the San Bernardino and San Jacinto Mountains described in Section 3.3.10 of the Western Riverside Multiple Species Habitat Conservation Plan (WR-MSHCP). As such, proposed projects within the Special Linkage area must address and analyze consistent with CEQA § 21083.09, not just the WR-MSHCP. As stated in the WR-MSHCP:

> *"Special Linkage Area: This Special Linkage Area will contribute to assembly of a portion of the San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage. Tribal coordination regarding American Indian Lands will be necessary in this area. The San Gorgonio River/San Bernardino-San Jacinto Mountains Linkage includes locations within and outside the MSHCP Plan Area. Features of the entire linkage area are described in Missing Linkages: Restoring Connectivity to the California Landscape (Penrod, K., November 2, 2000). A copy of this report is attached as Exhibit 24 to Comment Letter D in Volume V of the MSHCP. Local Permittees will apply the following rebuttable presumption of significance, taken from Appendix G to the 1998 State CEQA Guidelines, in CEQA review of proposed public and private projects within this Special Linkage Area and apply mitigation measures as appropriate: "Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?" Draft and Final CEQA documentation prepared by Local Permittees for projects within this Special Linkage Area will be forwarded to the RCA for informational purposes to provide for MSHCP coordination regarding this area." (MSHCP 2004)*

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The proposed Project activities and development have the potential to interfere substantially with movement of native species through the Special Linkage Area and the broader San Bernardino-San Jacinto Linkage (Penrod et al. 2005). The San Bernardino-San Jacinto Linkage (Penrod et al. 2005) is one of 15 "Missing Linkages" identified by the South Coast Missing Linkage project that, if protected, would secure an interconnected system of protected wildlands from the U.S. - Mexico border to the Sierra Nevada (www.scwildlands.org). The San Bernardino-San Jacinto Linkage is a critical connection between the South Coast's Transverse ranges (Santa Ynez, Santa Monica, San Gabriel, and San Bernardino Mountains) and Peninsular ranges (San Jacinto, Santa Ana, Palomar, and Laguna Mountains, and the Sierra Juarez of Baja California). Both coastal and desert habitats occur in the lowlands between these mountain masses, with the San Gorgonio River, immediately east of the proposed project, marking the transition between coastal habitats and desert habitats, which is considered a hotspot of genetic diversity and evolution (Vandergast et al 2008). The San Gorgonio Pass area is expected to serve a critical function as the climate warms and desert species move westward into the Pass to seek cooler, more suitable habitat.

8

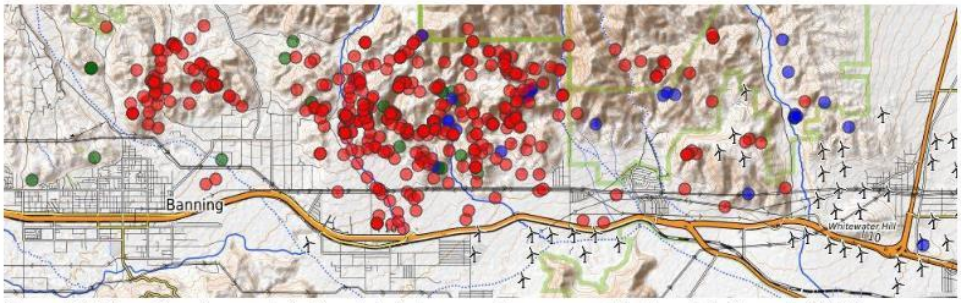
The proposed project site and surrounding Pass Area currently serves as the only viable connection between the Transverse and Peninsular ranges subpopulations of mountain lion. These subpopulations are two of the 5 subpopulations in Southern California being considered

9

SC WILDLANDS 2

for listing under CESA. In April 2020, the California Department of Fish and Wildlife (CDFW) Commission found that listing of the mountain lion may be warranted and designated mountain lion in southern California as a Candidate species. Under CESA, species classified as a Candidate species are afforded the same protection as listed species. This proposed warehouse project sits directly north of I-10 in intact desert scrub habitat and alluvial fan habitat adjacent to the San Gorgonio River and Itta Wash and the eastern half of the proposed site is entirely within the 100-year floodplain. Collared mountain lions have been documented traversing the proposed project site to approach I-10 (see figure below). Conservation of this linkage is essential to ensure the long-term genetic viability of mountain lions in Southern California (Guftason et al. 2022). Because the Transverse Range's mountain lion population is located at the intersection of the Coast Range, Sierra Nevada and Peninsular Ranges mountain lion populations, it is considered critical to sustaining statewide mountain lion gene flow. Habitat protection and improvements to I-10 are needed to secure this critically important linkage for mountain lions and a host of other species. Habitat modifications that could have an adverse effect on wildlife movement, especially listed species, must be mitigated.

cont'd 9



Recent GPS-collared mountain lion habitat use and movement in the vicinity and ON the proposed Banning Commerce project site.

The entirety of the impact assessment for wildlife movement focuses on existing structures on Interstate 10 to come to the conclusion that the proposed project impacts on wildlife movement would be "less than significant". Existing wildlife crossing structures that may facilitate wildlife movement, or the lack thereof, are only choke-points in landscape level connections such as the San Bernardino-San Jacinto Linkage (Penrod et al. 2005). As such, existing structures should not be the sole criteria for determining whether a proposed project would impact wildlife movement. In fact, the California Department of Fish and Wildlife has identified two Priority Wildlife Movement Barriers (W057 I-10 San Gorgonio River and W058 I-10 Banning Pass) for remediation on Interstate 10 that span the entire length of the proposed project site and beyond Restoring California's Wildlife Connectivity 2022 (ca.gov). Furthermore, Caltrans has identified Interstate 10 through the entire San Gorgonio Pass (CDFW Priority Barrier W058), including the proposed project site, for Advanced Mitigation (Thirteen Ecoregion Subsections of the Southern California Coast and Southern California Mountains and Valleys Regional Advance Mitigation Needs Assessment ("RAMNA"). In addition, Caltrans District 8 has proposed improvements to the Itta Wash culvert directly east of the proposed project for improvements to address climate adaptation measures (Caltrans 2020) and wildlife movement, pursuant to AB2344 and Section

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158 of the Street and Highways Code Barriers to Wildlife Movement (California Code, Streets and Highways Code - SHC § 158 | FindLaw). cont'd 10

The DEIR states, "*Regional wildlife movement in proximity to the Project site is concentrated within and immediately adjacent to the San Gorgonio River which extends south and under I-10 to the confluence with Smith Creek. A 2-km minimum corridor width along the San Gorgonio River is proposed south of I-10. The Project site is located north of I-10 where a minimum of a 0.64-mile corridor width would remain within the SLA extending northeast of the property, as shown in Figure 14, Wildlife Movement Corridor Map of the BTR (**Appendix C1**).*" The Special Linkage Area (SLA), in which the proposed project is located, has already been constrained by the First Hathaway 1.32 million square foot spec-warehouse project located immediately west of the proposed Banning Commerce spec-warehouse project. Cumulative impacts to regional wildlife movement must be assessed and disclosed! The 2-km minimum corridor width (Penrod et al. 2005) is expected to provide live-in habitat for all but the most wide-ranging species (e.g., mountain lion) and ensure the ecological integrity of the linkage over time (Penrod et al. 2005). The DEIR did not adequately analyze impacts to wildlife movement for resident and migratory species. For example, how would the proposed project constrain habitat live-in and move-through habitat for the "covered species" or other target species? The proposed project is not consistent with CEQA § 21083.09 and must be denied approval based on the existing DEIR. 11 12 13

Special-status species covered by both the WR-MSHCP and the Coachella Valley MSHCP and sensitive habitats that occur in, near, and downstream of the proposed Project will be significantly impacted by a large warehouse project that will increase traffic, noise and light and further constrict this regionally important wildlife linkage. CDFW's comments on the NOP directed the project proponent to analyze Project-related effects to wildlife movement in the Special Linkage Area of the WR-MSHCP, as well as potential impacts to wildlife movement between the WR-MSHCP and the Coachella Valley MSHCP since the Special Linkage Area serves as a connection between these MSHCPs. CDFW also recommended that studies on sand transport and aeolian processes be conducted to assess potential impacts to species covered by the Coachella Valley MSHCP since the proposed project area provides an important role in ecosystem processes including sand transport that is critical for sustaining the habitat of desert species covered by the Coachella Valley MSHCP, such as the Coachella Valley fringed toad lizard and the Coachella Valley Jerusalem cricket. Yet, neither the DEIR nor the Biological Resource Technical Report addressed the importance of the Special Linkage Area to local and regional wildlife connectivity, or how the project would adversely affect sand transport and aeolian processes. No movement studies were conducted in or near the proposed project area and the DEIR completely failed to address the project downstream impacts on sand transport and aeolian processes. 14 15 16 17 18

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Furthermore, the DEIR seems to confuse the impact assessment on wildlife movement and cumulative impacts to wildlife movement with Threshold Impact 4.3-6: *Would the Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?* The DEIR must assess direct, indirect, and cumulative impacts to wildlife movement irrespective of whether there is a WR-MSHCP criteria cell or Special Linkage Area within the proposed project site. The DEIR completely failed to address cumulative impacts to biological resources or wildlife movement as required under CEQA. 19

Many thanks for the opportunity to provide comments on the proposed Banning Commerce Center. Please add SC Wildlands to your notice list for all future updates to the Project. 20

Respectfully Submitted,

Kristeen Penrod

Kristeen Penrod, Director
SC Wildlands

Literature Cited:

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Gustafson, K.D., R.B. Gagne, M.R. Buchalski, T.W. Vickers, S.P.D. Riley, J.A. Sikich, J.L. Rudd, J.A. Dellinger, M.E.F. LaCava, and H.B. Ernest. 2022. Multi-population puma connectivity could restore genomic diversity to at-risk coastal populations in California. Evolutionary Applications 2022;00:1–14.

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Vandergast, Amy & Bohonak, Andrew & Hathaway, Stacie & Boys, Joshua & Fisher, Robert. (2008). Are hotspots of evolutionary potential adequately protected in southern California?. Biological Conservation. 141. 1648-1664. 10.1016/j.biocon.2008.04.009.

Responses to Comment Letter O8 – SC Wildlands

O8.1 This comment is introductory and does not raise any substantive issue regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O8.2 The City respectfully disagrees with the commenter suggesting that the Draft EIR did not sufficiently evaluate potential adverse impacts of the Project on habitat connectivity and wildlife movement for native resident or migratory wildlife species as required by CEQA. Refer to responses that discuss the commenter's concerns regarding biological resources as summarized in the responses below. Additionally, the comment did not provide evidence to substantiate claims that the Draft EIR did not sufficiently evaluate Project impacts to wildlife corridors. As discussed in Draft EIR Section 4.3 pages 4.3-20 and 4.3-21, the Project would not adversely impact wildlife corridors and no mitigation is needed.

O8.3 The comment did not provide substantial evidence as to why additional mitigation should be included. The commenter is incorrectly states that the Project would result in significant biological impacts. Draft EIR Section 4.3 Biological Resources pages 4.3-20 and 4.3-21 and Draft EIR Appendix C discusses that the Project would have a less than significant impact with respect to wildlife corridors, and no mitigation is required, because the Project site does not serve as a regional travel route, wildlife corridor, or wildlife crossing for large or medium sized mammals between open space habitats located north and south of the I-10. Further, the Project does not conflict with MSHCP goals and objectives for the Pass–Special Linkage Area nor would the Project result in indirect impacts to the wildlife movement corridor within and adjacent to the San Gorgonio River.

O8.4 Refer to **Response O8.3**. Cumulative analysis for Project impacts to biological resources is included in the Draft EIR Section 4.3 on page 4.3-23 and concluded that the Project would not result in adverse cumulative impacts. Additionally, the comment does not provide substantial evidence to warrant additional studies. No further response is needed.

O8.5 The comment does not provide substantial evidence as to why additional studies are required nor does the comment address the "2km minimum viable corridor width." The Draft EIR Section 4.3 page 4.3-20 and Draft EIR Appendix B acknowledged a proposed two-kilometer minimum corridor width along the San Gorgonio River located south of I-10. However, the Project site is not located adjacent to or within the San Gorgonio River.

O8.6 Refer to **Responses O8.2**, **O8.3**, **O8.4**, and **O8.5**.

O8.7 The comment does not raise substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O8.8 Refer to **Response O8.2** and **O8.3**.

O8.9 Refer to **Response O3.10**.

O8.10 The comment does not raise substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O8.11 The comment does not raise substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

O8.12 Refer to **Response O8.4**.

O8.13 Refer to **Responses O8.2, O8.3, O8.4, O8.5**.

O8.14 The Draft EIR Section 4.3, pages 4.3-2 through 4.3-6 and Draft EIR Appendix B state the special-status species existing or likelihood of occurring within the Project site. It was determined that the potential for species-status species, including slender-horned spineflower (*Dodecahema leptoceras*), Parry's spineflower (*Chorizanthe parryi* var. *parryi*), Robinson's pepper-grass (*Lepidium virginicum* var. *robinsonii*), Payson's jewelflower (*Caulanthus simulans*), and chaparral sand-verbena (*Abronia villosa* var. *aurita*), orange-throated whiptail (*Aspidoscelis hyperythra*), coastal western whiptail (*Aspidoscelis tigris stejnegeri*), northern harrier (*Circus cyaneus*), San Diego banded gecko (*Coleonyx variegatus abbotti*), coast horned lizard (*Phrynosoma blainvillii*), grasshopper sparrow (*Ammodramus savannarum*), golden eagle (*Aquila chrysaetos*), ferruginous hawk (*Buteo regalis*), California horned lark (*Eremophila alpestris actia*), prairie falcon (*Falco mexicanus*), coastal California gnatcatcher (*Polioptila californica californica*), northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*), Dulzura kangaroo rat (*Dipodomys simulans*), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii*) would be low. Additionally, the MSHCP has determined that sensitive species potentially occurring within the Project site have been adequately covered, and the Project would not adversely impact these species. The Draft EIR concluded that the Project would not result in a significant impact to wildlife corridors, such that these special-status species would be adversely affected, and no mitigation was required.

O8.15 Refer to **Response O8.2, O8.3, S1.7**, and **S1.19**.

O8.16 Refer to **Response O3.27**.

O8.17 Refer to **Response O4.27, O8.2, O8.3, S1.7**, and **S1.19**.

O8.18 Refer to **Response O3.27**.

O8.19 Refer to **Response O8.2, O8.3, S1.7**, and **S1.19**.

O8.20 The comment does not raise substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is needed.

Comment Letter O9 - Stand Up For Mother Earth

Comment Letter O9

Stand Up For Mother Earth

SENT VIA EMAIL ONLY

August 1, 2024

Emery J. Papp, Senior Planner
Community Development Department
99 E. Ramsey Street Banning, CA 92220
epapp@banningca.gov

RE: Banning Commerce Center - Draft EIR - SCH: 2022090102

Dear Emery J. Papp:

I am submitting comments on the Draft Environmental Impact Report ("DEIR") for the above referenced Project as follows: 1

1. Special Linkage Area

The Banning Commerce Center (the Project) proposes development of an approximately 1,320,284 square feet (SF) industrial warehouse building on 131.28-acres. The City of Banning General Plan and MSHCP place this property within a Special Linkage Area. Per the South Coast Wildlands' Missing Linkage Project (the Wildlands'), this Project is within the Linkage of San Bernardino –San Jacinto connection area.

Under the MSHCP, to assure preservation of wildlife movement in the corridor encompassed by the Project, compliance with the guidelines set forth in the South Coast Wildlands' Missing Linkage Project for the San Bernardino –San Jacinto connection area linkage is required. 2

South Coast Wildlands' Missing Linkage Project specifies that a minimum corridor width of 2km (1.25 miles) along the San Gorgonio River should be maintained. This means that 1km (.62 miles) should be maintained between the river and the Project footprint. 1 km (.62 miles) equals 3,280 feet. Per the Biological Resources Technical Report contained in the DEIR's combined Appendices, there would be a distance of 1,700 feet between the river and Project (see Figure 1 below). This is far short of the 3,280 feet imposed by the Wildlands' guidelines and means that the corridor extends another 1,580 feet into the Project site. 3

Page 4.3-22 of the DEIR states that "the Project site is located approximately 1,700 feet (0.32 miles) southwest of a regional wildlife movement corridor (San Gorgonio River)." This is not true. While the Project site may be located 1,700 feet from the center of the San Gorgonio River, under the Wildland's guidelines, the wildlife life corridor extends 1km (.62 miles) to either side of the San Gorgonio River. This means that the wildlife corridor extends 1,580 feet into the northeast corner of the Project site 4

Ruth Brissenden, J.D.
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ruthbrissenden@gmail.com • www.StandUpForMotherEarth.org

(3,280 feet -1,700 feet). By my calculations, this results in approximately 45 acres of the northeast section of the property sitting within the wildlife corridor Special Linkage Area.

The Project design should be modified accordingly to conserve 45 acres of the northeast corner of the Project site.

cont'd 4

2. City of Banning General Plan - Special Linkage Area

It's difficult to comprehend the rationale contained in the DEIR for failing to set aside open space for wildlife movement as outlined in the Wildland's guidelines. The DEIR seems to attempt to circumvent the Wildlands' guidelines by referencing the City of Banning General Plan which states:

"For special linkage areas, the MSHCP requires local jurisdictions to assure preservation of a wildlife movement corridor in compliance with guidelines set forth in the South Coast Wildlands' Missing Linkages Project. However, the South Coast Wildlands' document makes no reference to the San Gorgonio River linkage. In the absence of other guidance in the MSHCP, the City will apply standards set forth in the CEQA Guidelines for Projects within the Special Linkage area. The CEQA Guidelines' threshold of significance for such areas is as follows: 'Would the Project interfere substantially with the movement of any native resident or migratory species of fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?'(City of Banning 2006)

The General Plan is incorrect in its assertion that "the South Coast Wildlands' document makes no reference to the San Gorgonio River linkage." In fact, the South Coast Wildlands' document *does* make reference to the San Gorgonio River linkage. The linkage is contained with the San Bernardino –San Jacinto Connection area. Therefore, the DEIR is analyzing the corridor under the incorrect criteria and the Wildland's guidelines should be adhered to.

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3. Mitigation Areas 1 and 2

The DEIR provides two small mitigation areas consisting of two non-contiguous parcels totaling 2.67-acres (2.20 acres and 0.547 acres). The 2.20 acres is located in the northeast corner of the Project site and the 0.547 acres to the east (see Figure 2 below). The DEIR posits that the mitigation areas may act as wildlife movement corridors. Since they are fully contained within the development footprint, this is very unlikely. Moreover the conservation of 2.67 unconnected acres out of 131.28 acres is inadequate.

The solution would be to conserve 45 acres the northeast section of the Project site under a conservation easement and incorporate the 2.67 acres into that easement.

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4. Alternatives

Section 15126.6(c) of CEQA Guidelines states that an EIR must "describe a range of reasonable alternatives to the project. which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project..." The DEIR lists 3

7

alternatives, none of which discuss maintaining the wildlife corridor. Therefore, the presentation of alternatives in the DEIR is insufficient in its failing to analyze a reasonable range of Project alternatives. cont'd 7

CEQA Guidelines 15126.6(b) states that "because an EIR must identify ways to mitigate or avoid the significant effects that a Project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the Project...which are capable of avoiding or substantially lessening any significant effects of the Project, *even if these alternatives would impede to some degree the attainment of the Project objectives, or would be more costly.*" [Emphasis added] It may well be that maintaining the wildlife linkage will be more costly or will impede to some degree attainment of all the Project's objectives, however, given the Wildlands' guidelines and the importance of preserving the corridor, such alternatives should be considered and the DEIR revised and recirculated. 8

Conclusion

Based on the foregoing comments, the defects described above should be corrected and the project revised accordingly to conserve the northeast section of the Project site. 9

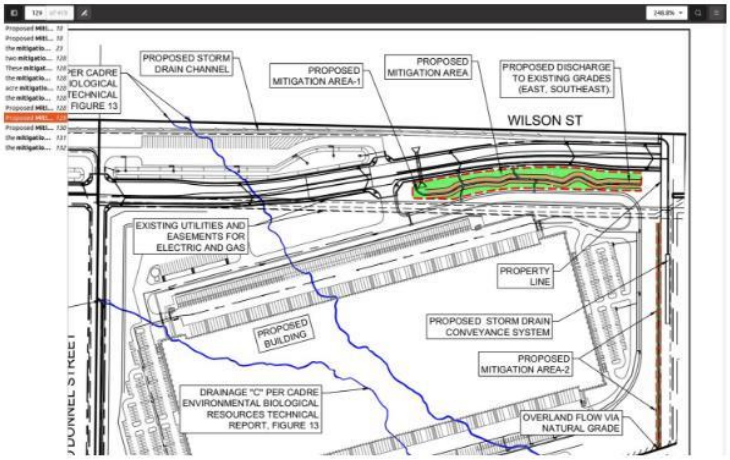
Sincerely,

Ruth Brissenden, J.D.
Stand Up For Mother Earth

Figure 1



Figure 2



Responses to Comment Letter O9 - Stand Up For Mother Earth

O9.1 This comment is introductory in nature and does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O9.2 This comment summarizes the Project and does not raise any substantive issues regarding the adequacy of the Draft EIR. This comment is noted for the record and no further response is needed.

O9.3 Refer to **Response S1.19**.

O9.4 Refer to **Response S1.18** and **S1.19**. The Draft EIR Section 4.3 states that Project site is located within the MSHCP The Pass – Special Linkage Area. As such, the Project would adhere to the MSHCP Urban/Wildlands, Interface guidelines and Best Management Practices (BMPs). With adherence to the MSHCP goals and objectives for The Pass-Special Linkage Area and The Project would not result in indirect impacts to the wildlife movement corridor within and adjacent to the San Gorgonio River.

O9.5 Refer to **Response S.19** and **O9.4**. This comment discusses the inadequacy of the City's General Plan which is outside the scope of the Draft EIR. Additionally, the comment does not include a reference or documentation supporting the claim. This comment has been noted for the record. No further response is warranted.

O9.6 The commenter incorrectly states that the two mitigation areas proposed as MM BIO-3 would act as wildlife movement corridors. As stated in Draft EIR Section 4.3 page 4.3-16, the Project would implement MM BIO-3, which requires the Project to create 2.67-acres of onsite habitat to mitigate potential significant impacts to jurisdictional waters. While not required to mitigate impacts to wildlife corridors, MM BIO-3 may indirectly create a movement corridor for small mammals, reptiles, and amphibians to cross the proposed Wilson Street extension through the creation of non-hydrologic culverts. The potential connect would provide a low-quality connection as existing connections across roadways in the vicinity of the Project are non-existent, constrained, or are of similar low-quality. Additionally, the Draft EIR determined that the Project would have a less than significant impact to wildlife corridors, and no mitigation was required (Draft EIR Section 4.3 page 4.3-20 through 4.3-21).

O9.7 Review of CEQA Guidelines Section 1516.6 requires that an EIR address a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and also to evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to the project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation. The City deemed that having two alternatives for the Project provides an adequate range of alternatives pursuant to CEQA Guidelines Section 15126.6 and feasible for the Project

Applicant. Additionally, an alternative is not required to meet all Project objectives and eliminate all of the Project significant and unavoidable impacts.

Regarding wildlife linkages, refer to **Response S1.18** and **S1.19**.

The Draft EIR determined that Project impacts to wildlife corridors would be less than significant, and no mitigation is needed. Per CEQA Section 15088.5 a new alternative requires recirculation only if it is deemed feasible and could reduce impacts. Considering the Project would not have significant and unavoidable impacts to wildlife corridors, a new alternative addressing maintenance of a wildlife linkage would not substantially reduce Project impacts as no significant impacts would occur. As such, a new alternative would not need to be included and the Draft EIR would not need to be recirculated.

O9.8 Refer to **Response O9.8**.

O9.9 This comment does not raise any substantive issues regarding the adequacy of the Draft EIR. As such, this comment is noted for the record and no further response is need.

Section 3.0 Errata to the Draft EIR

3.1 INTRODUCTION TO THE ERRATA

The Draft EIR for the Banning Commerce Center Project dated June 2024, is hereby incorporated by reference as part of the Final EIR. Changes to the Draft EIR are further detailed below.

The changes to the Draft EIR do not affect the overall conclusions of the environmental document, and instead represent changes to the Draft EIR that provide clarification, amplification and/or insignificant modifications, as needed as a result of public comments on the Draft EIR, or due to additional information received during the public review period. These clarifications and corrections do not warrant Draft EIR recirculation pursuant to CEQA Guidelines Section 15088.5.

None of the changes or information provided in the comments reflect a new significant environmental impact, a substantial increase in the severity of an environmental impact for which mitigation is not proposed, or a new feasible alternative or mitigation measure that would clearly lessen significant environmental impacts but is not adopted. In addition, the changes do not reflect a fundamentally flawed or conclusory Draft EIR.

Changes to the Draft EIR are listed by Section, page, paragraph, etc. to best guide the reader to the revision. Changes are identified as follows:

- Deletions are indicated by ~~strikeout text.~~
- Additions are indicated by <u>double underline text.</u>

3.2 CHANGES TO THE DRAFT EIR

Page 1-1, Fourth Paragraph

Pursuant to CEQA Guidelines §15082, the City circulated a Notice of Preparation (NOP) advising public agencies, special districts, and members of the public who had requested such notice that an EIR for the Project was being prepared. The NOP was distributed on August 29, 2022 to solicit comments related to the proposed construction of the Project. The NOP was circulated with a 30-day public review period ending on September 28, 2022. <u>The NOP was recirculated on September 2, 2022, and the review period was extended to October 3, 2022.</u> This process and the comments submitted in response to the NOP are discussed in Section 1.4: Areas of Controversy, below.

Page 2-4, Third Paragraph

In compliance with the CEQA Guidelines, the City has provided opportunities for various agencies and the public to participate in the environmental review process. During preparation of the Draft EIR, efforts were made to contact various federal, State, regional, and local government agencies and other interested parties to solicit comments on the scope of review in this document. This included the distribution of the Notice of Preparation (NOP) to various responsible agencies, trustee agencies, and interested parties. Pursuant to CEQA Guidelines §15082, the City circulated the NOP directly to public agencies, special

districts, and members of the public who had requested such notice, and property owners. The NOP was distributed on August 29, 2022, with a 30-day public review period ending on September 28, 2022. The NOP was recirculated on September 2, 2022, and the review period was extended to October 3, 2022. The NOP and comment letters received are provided in Appendix A: Notice of Preparation and Scoping Meeting Notice.

Page 3-6, First Paragraph

high-cube fulfillment (sort) uses. Cold storage facilities are not proposed as part of the Project. The Project would include the construction of one concrete tilt-up building on a slab foundation, driveways, parking areas, landscaping, other appurtenant infrastructure, and roadway improvements along Project frontages, including the extension of Wilson Street to the future Cottonwood Avenue alignment (Cottonwood Avenue to be constructed by others). Refer to Figure 3-4: Plot Plan. Please note that the Plot Plan is subject to revision upon City Review and as Final Design and Engineering progresses. The building structure would be built to a maximum height of 50 ft, refer to Figure 3-6: Elevations.

Page 4.2-20, MM AQ-4

MM AQ-4 Prior to the issuance of a tenant occupancy permit, the Planning Department shall confirm that all truck access gates and loading docks within the Project site shall have a sign posted that states:

- Truck drivers shall turn off engines when not in use.
- Truck drivers shall shut down the engine after ~~five~~ two minutes of continuous idling operation (pursuant to Title 13 of the California Code of Regulations, Section 2485). Once the vehicle is stopped, the transmission is set to "neutral" or "park," and the parking brake is engaged.
- Telephone numbers of the building facilities manager and CARB to report violations.
- Signs shall also inform truck drivers about the health effects of diesel particulates, the California Air Resources Board diesel idling regulations, and the importance of being a good neighbor by not parking in residential areas.

This mitigation measure applies only to tenant improvements and not the building shell approvals.

Page 4.2-25, Second to Last Paragraph

Project construction emissions would be below the ~~SCAWMD~~ SCAQMD LST at each nearby sensitive receptor, and no significant impacts would occur during construction concerning LSTs.

Page 4.3-1, Second Paragraph

The purpose of this analysis is to provide a description of existing biological resources on the Project site and to identify potentially significant impacts that could occur to sensitive biological resources due to the implementation of the Project. As discussed in Section 3.0: Project Description, the Project proposes the development of a speculative warehouse building that would consist of ~~cold storage warehouse space,~~

~~traditional~~ warehousing~~,~~ and office space. The Project site is generally undisturbed, and a 300-foot survey buffer was included as part of the biological surveys conducted as part of the Project.

Page 4.3-4, Second to last Paragraph

Low potential for slender-horned spineflower (*Dodecahema leptoceras*), ~~Parry's spineflower (*Chorizanthe parryi* var. *parryi*),~~ Robinson's pepper-grass (*Lepidium virginicum* var. *robinsonii*), Payson's jewelflower (*Caulanthus simulans*), and chaparral sand-verbena (*Abronia villosa* var. *aurita*) was documented onsite. Focused spring surveys for sensitive plants were conducted during the spring of 2023 to determine presence/absence. ~~No sensitive plants including other CNPS special status plants, or species of local concern~~ A total of 100+ Parry's spinelower (*Chorizanthe parryi* var. parryi) were observed ~~or expected~~ onsite. Refer to Table 4 of the BTR (**Appendix C1**) for more details regarding sensitive plant species.

Page 4.3-12, Third to last Paragraph

Although the Project site possesses suitable habitat for three MSHCP covered plant species, including Payson's jewelflower, Parry's spineflower, and slender-horned spineflower. A total of 100+ Parry's spineflower were document onsite in 2024. The ~~, the~~ Project site is not located within a survey area for these species and the MSHCP has determined that all of these sensitive species potentially occurring on-site have been adequately covered and no surveys are required.

Page 4.3-14, MM BIO-1

MM BIO-1 **Burrowing Owl 30-Day Pre-construction Surveys.** In order to avoid Project-related impacts to burrowing owls potentially occurring on or in the vicinity of the Project site and violation of the Burrowing Owl Protocol and the California fish and Game Code 3503, 3503.5, and 3513, a 30-day preconstruction survey presence/absence survey for burrowing owl within the Impact Site (and 500-foot survey buffer) in accordance with the March 2006 Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area shall be conducted by a qualified biologist ~~for burrowing owls is required~~ prior to initial ground disturbing activities (e.g., vegetation clearing, clearing and grubbing, grading, tree removal, site watering, equipment staging) to ensure that no owls have colonized the site in the days or weeks preceding the ground disturbing activities. In addition, a preconstruction survey for burrowing owl shall be conducted within 3 days prior to initiation of Project activities and reported to CDFW.

If no burrowing owls are observed during the survey, site preparation and construction activities may begin. If burrowing owls have colonized the project site prior to the initiation of ground-disturbing activities, the project proponent will immediately stop work and inform the City of Banning and the Wildlife Agencies (California Department of Fish and Wildlife [CDFW] and US Fish and Wildlife Service [USFWS]). In consultation with the Wildlife Agencies additional avoidance and minimization measures shall be undertaken including the possibility of preparing a Burrowing Owl Protecting and Relocation Plan, prior to initiating ground disturbance. CDFW shall be sent written notification within 48 hours of detection of burrowing owls. If active nests are identified

on an implementing Project site during the pre-construction survey, the Project applicant shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described below. If owl presence is difficult to determine, a qualified biologist shall monitor the burrows with motion-activated trail cameras for at least 24 hours to evaluate burrow occupancy. The onsite qualified biologist will verify the nesting effort has finished according to methods identified in the Burrowing Owl Plan.

The qualified biologist and Project Applicant shall coordinate with the City, CDFW, and USFWS to develop a Burrowing Owl Plan to be approved by the City, CDFW, and USFWS prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, relocation, monitoring, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The City will implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

If active burrowing owl burrows are detected within Impact Site(s) during Project implementation and construction, the Project applicant shall notify CDFW immediately in writing within 48 hours of detection. A Burrowing Owl Plan will be submitted to CDFW for review and approval within two weeks of detection and no Project activity will continue within 1000 feet of the burrowing owls until CDFW approves the Burrowing Owl Plan. The City shall be responsible for implementing appropriate avoidance and mitigation measures, including burrow avoidance, passive or active relocation, or other appropriate mitigation measures as identified in the Burrowing Owl Plan.

A final report shall be prepared by a qualified biologist documenting the results of the burrowing owl surveys and detailing avoidance, minimization, and mitigation measures. The final report will be provided to City of Banning and CDFW within 30 days of completion of the survey and burrow monitoring for mitigation monitoring compliance record keeping.

Page 4.3-14, MM BIO-2

MM BIO-2 **Nesting Bird Preconstruction Surveys.** Regulatory requirement for potential direct/indirect impacts to nesting common and sensitive bird species will require compliance with the Migratory Bird Treaty Act and California Fish and Game (CDFG) Code Section 3503, 3503.5, and 3513. Site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) should be conducted, to the greatest extent possible, outside of the peak nesting season. ~~Construction outside the nesting season (between September 1st and January 31st) does not require pre-removal~~

~~nesting bird surveys. If construction is proposed between February 1st and August 31st, a qualified biologist will conduct a preconstruction nesting bird and raptor survey(s) no more than three days prior to initiation of grading to document the presence or absence of nesting birds within or directly adjacent to the Project site.~~ Regardless of the time of year, a qualified biologist shall conduct a nesting bird survey within three days prior to any disturbance of the site, including disking, vegetation grubbing, and grading.

The survey(s) will focus on identifying any bird nests that would be directly or indirectly affected by construction activities. The survey area will include the Project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Within 72 hours of the nesting bird survey, all areas surveyed by the biologist will be cleared by the Contractor or a supplemental nesting bird survey is required. The survey results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following:

1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.

2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.

~~If active nests are documented, species-specific measures will be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. At a minimum, grading in the vicinity of a nest will be postponed until the young birds have fledged. The perimeter of the nest setback zone will be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, will be submitted to the City of Banning for review and approval prior to initiation of grading in the nest-setback zone.~~ If no nesting birds are observed during the survey, site preparation and construction activities may begin. If active nests or nesting birds (including nesting raptors) are identified during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified

biologist and approved by the City of Banning, based on their best professional judgement and experience. The buffer areas shall be avoided until the Project biologist determines the young have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of Project activities, and at the onset of any changes in such Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist will serve as a construction monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are disturbing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a final monitoring report of the findings, prepared by a qualified biologist, will be submitted to the City of Banning documenting compliance with the CDFG Code. ~~Any nest permanently vacated for the season would not warrant protection pursuant to the CDFG Code.~~

Page 4.3-19, MM BIO-3

MM BIO-3 USACE/CDFW/RWQCB Riverine Resources. Prior to the issuance of a grading permit, the Project applicant will obtain a USACE Section 404 Nation Wide Permit, RWQCB Section 401 Water Quality Certificate, and CDFW Section 1602 Streambed Alteration Agreement. ~~No impacts shall occur to onsite drainages until the appropriate permits have been obtained.~~ The Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources and obtain a CDFW-executed Lake and Streambed Alteration (LSA) Agreement authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

The notification to CDFW should provide the following information:

1. A stream delineation including the bed, bank, and channel;
2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al. 2009);

3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and

4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.

Currently, the impacted drainages and overall watershed are not within a service area of an approved mitigation bank. Depending on the timing of impacts and issuance of regulatory permits, should a mitigation bank become approved for the Whitewater River watershed, ~~purchase of~~ at minimum 2.67-acres of habitat creation credits from an approved bank will be purchased. However, since at this time no mitigation bank is approved for the whitewater watershed, it is assumed at minimum 2.67-acres of onsite creation is required as outlined below. If it is determined that onsite mitigation is not feasible, creation of non-wetland waters at an off-site location would be required. The off-site location would be required to have a conservation easement or deed restriction placed over the mitigation area to ensure the site remains mitigation in perpetuity. Additionally, whether on or off-site, the mitigation site will require long-term maintenance and management by a qualified conservancy, including payment of a non-wasting endowment to fund the long-term maintenance.

To meet the criteria of a biologically equivalent or superior alternative, the applicant will offset permanent impacts to a minimum 0.54-acre of MSHCP Section 6.1.2 riverine resources (CDFW jurisdictional resource) as follows including the preparation of an MSHCP DBESP.

- Permanent impacts to a minimum of 0.54-acres of jurisdictional features will be mitigated at a minimum of a 5:1 ratio (2.67 acres) through the creation of in-kind habitat onsite along the eastern and northernmost Project boundary. If it is determined that onsite mitigation or off-site is not feasible, additional alternatives could include, payment into an acceptable and approved mitigation bank should one become available at the time of impacts and permitting.
- A Habitat Mitigation and Monitoring Plan for the creation of in-kind habitat will be prepared, reviewed and approved by the City of Banning, USACE, RWQCB and CDFW. The created habitat will be monitored by the Project proponent for a minimum of 5 years; monitoring reports shall be provided to the City of Banning and appropriate regulatory agency on an annual basis. The restoration area must meet standardized success criteria as described in a Habitat Mitigation and Monitoring Plan, which will be required as part of the permit process and approved by the Resource Agencies.
- A DBESP will be also prepared, reviewed and approved by the City of Banning and MSHCP wildlife agencies prior to the issuance of grading permits.

Page 4.7-19, Third Bullet Point

- **Mobile Sources.** Mobile sources are emissions from motor vehicles. The Project generated traffic was obtained from the Banning Commerce Center (DR 21-7017; ENV 21-1524) Traffic Analysis, March 2023). Project trip generation from the Trip Generation Analysis is based on the following Institute of Transportation Engineers (ITE) land use categories:
    - ITE Land Use 150: Warehousing (660 thousand square feet, 1,130 total daily vehicle trips, which include 396 truck trips).
    - ITE Land Use 155: High-Cube ~~Cold~~ Fulfillment Center (660 thousand square feet, 4,254 total daily vehicle trips, which include 128 truck trips).

Page 4.7-20, Table 4.7-3

Emissions Source	$MTCO_2e$	
	Unmitigated	Mitigated
Area and Indirect Sources		
Construction Amortized Over 30 Years	156	156
Area Source[1]	58	0
Energy (Electricity and Natural Gas)[2]	3,215	1,358
Off-road (Forklifts and Yard Trucks)[3]	1,792	0
Emergency Backup Generator	20	20
Waste[4]	387	96.8
Water and Wastewater	843	761
Subtotal	**6,471**	**2,392**
Carbon Sequestration		
Onsite Habitat – Removal[5]	298	298
Project Landscaping	-151	-151
Subtotal	**147**	**147**
Mobile Sources		
Warehouse Trucks	9,203	9,203
Warehouse Passenger Cars	11,374	11,374
Subtotal	**20,577**	**20,577**
TOTAL	**~~27,048~~ 27,195**	**~~22,969~~ 23,116**
Banning GHG Threshold	3,000	3,000
Exceeds Threshold?	**Yes**	**Yes**

Notes:
1. Mitigation Measure GHG-4 requires electric landscaping equipment, which would reduce area source emissions.
2. Mitigation Measure GHG-1 requires the installation of photovoltaic solar panels to offset energy emissions or acquire energy from the local utility company that has been generated by renewable sources.
3. Mitigation Measure AQ-6 requires cargo handling equipment (including yard trucks, hostlers, yard goats, pallet jacks, and forklifts) to be powered by electricity. Unmitigated emissions from diesel equipment are disclosed for informational purposes.
4. Mitigation Measure GHG-3 requires Project to divert 75 percent of landfill waste.
5. The removal of existing plants will release sequestered CO2 back into the atmosphere.
6. Trees and plants on onsite will capture and store atmospheric CO2 in their biomass, reducing GHG emissions during the process of photosynthesis.
Source: Kimley-Horn. 2023. *Greenhouse Gas Emissions Assessment. CalEEMod Version 2022.1.1.7.* **Appendix G.**

Page 4.8-18, Last Paragraph

The closest airport to the Project site is the Banning Municipal Airport located approximately 1,750 feet to the south. Although the Project is within 2.0 miles of a public airport, Exhibit V-7 of the Banning General Plan Noise Element shows that the Project is located outside the 55 dBA CNEL noise contour. The Project site is located within Zone D, which requires that non-residential uses shall not exceed the intensity criteria of 200 people-per-acre. The Project anticipates a maximum of 2,481 persons employed on the 131.28 acres of land. This would result in a density of 19 persons-per-acre, which is within the intensity criteria. As such, there would be less than significant impacts. Additionally, there are no private airstrips located within the Project vicinity. Therefore, the Project would not expose people working in the Project area to excessive airport- or airstrip-related noise levels and no mitigation is required.

Page 4.14-15, Second Paragraph

To provide a conservative estimate of wastewater generation, it is assumed that the Project would generate the same amount of wastewater as water demanded. Therefore, it should be assumed that the Project would generate 67,500 gpd of wastewater, or 76 AFY, which can be accommodated by the City's existing wastewater treatment facilities.[1] Using this conservative estimate, the Project's wastewater generation would be approximately ~~1.08~~ 1.9 percent of the Banning WWTP daily capacity. Therefore, no new wastewater treatment facilities would need to be constructed for the Project. Further discussion regarding Project wastewater generation is discussed below in Impact 4.19-3. The estimated wastewater generation for the Project, based on the City's average rate of wastewater generation for industrial land uses, the Project would result in 51,000 gpd of wastewater, or approximately 1.42 percent of the Banning WWTP daily capacity of 3.6 million gallons per day.[2] Therefore, the above estimate of 67,500 gpd provided above is considered conservative and should be equal to or exceed the final sewer generation ultimately anticipated for the Project. Therefore, the Project would not require or result in the relocation or construction of new or expanded wastewater facilities, the construction or relocation of which could cause significant environmental effects

Page 4.14-19, First Paragraph

To provide a conservative estimate of wastewater generation, it is assumed that the Project would generate the same amount of wastewater as water demanded. Therefore, it should be assumed that the Project would generate 22,727 gpd of wastewater. Using this conservative estimate, the Project's wastewater generation would be approximately ~~1.7~~ 0.6 percent of the Banning WWTP daily capacity. Therefore, the increase in the daily wastewater generated by the Project site would be minimal. Therefore, impacts to wastewater treatment flows would be less than significant with no mitigation required.

[1] West and Associates Engineering, Inc. 2024. *Water Supply Assessment Banning Commerce Center Development*, page 2-3.
[2] City of Banning. 2006. *City of Banning General Plan Chapter VI. Public Services and Facilities: Water, Wastewater, and Utilities Element,* page VI-2. http://banning.ca.us/DocumentCenter/View/666/GP-Ch-VI-Public-Services?bidId=, (accessed January 2024).